2017 National Trade Estimate Report on

FOREIGN TRADE BARRIERS

Office of the United States Trade Representative

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Assistant U.S. Trade Representative for Trade Policy and Economies:
Ed Gresser

Project Director:
Donald W. Eiss

Project Staff:
Dorothea E. Cheek
Caper Gooden
Mark C. Jordan
Katherine Standbridge
Yvonne Jamison

LIST OF FREQUENTLY USED ACRONYMS

AD	Antidumping
AGOA	African Growth and Opportunity Act
APEC	Asia Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ATC	Agreement on Textiles and Clothing
ATPA	Andean Trade Preferences Act
ATPDEA	Andean Trade Promotion & Drug Eradication Act
BIA	Built-In Agenda
BIT	Bilateral Investment Treaty
BOP	Balance of Payments
CACM	Central American Common Market
CAFTA	Central American Free Trade Area
CARICOM	Caribbean Common Market
CBERA	Caribbean Basin Economic Recovery Act
CBI	Caribbean Basin Initiative
CFTA	Canada Free Trade Agreement
CITEL	Telecommunications division of the OAS
COMESA	Common Market for Eastern & Southern Africa
CTE	Committee on Trade and the Environment
CTG	Council for Trade in Goods
CVD	Countervailing Duty
DDA	Doha Development Agenda
DOL	Department of Labor
DSB	Dispute Settlement Body
EAI	Enterprise for ASEAN Initiative
DSU	Dispute Settlement Understanding
EU	European Union
EFTA	European Free Trade Association
FTAA	Free Trade Area of the Americas
FOIA	Freedom of Information Act
GATT	General Agreement on Tariffs and Trade
GATS	General Agreements on Trade in Services
GDP	Gross Domestic Product
GEC	Global Electronic Commerce
GSP	Generalized System of Preferences
GPA	Government Procurement Agreement
IFI	International Financial Institution
IPR	Intellectual Property Rights
ITA	Information Technology Agreement
LDBDC	Least-Developed Beneficiary Developing Country
MAI	Multilateral Agreement on Investment
MEFTA	Middle East Free Trade Area
MERCOSUL/MERCOSUR	Southern Common Market
MFA	Multifiber Arrangement
MFN	Most Favored Nation
MOSS	Market-Oriented, Sector-Selective

MOU	Memorandum of Understanding
MRA	Mutual Recognition Agreement
NAFTA	North American Free Trade Agreement
NEC	National Economic Council
NIS	Newly Independent States
NSC	National Security Council
NTR	Normal Trade Relations
OAS	Organization of American States
OECD	Organization for Economic Cooperation and Development
OPIC	Overseas Private Investment Corporation
PNTR	Permanent Normal Trade Relations
ROU	Record of Understanding
SACU	Southern African Customs Union
SADC	Southern African Development Community
SME	Small and Medium Size Enterprise
SPS	Sanitary and Phytosanitary Measures
SRM	Specified Risk Material
TAA	Trade Adjustment Assistance
TABD	Trans-Atlantic Business Dialogue
TACD	Trans-Atlantic Consumer Dialogue
TAEVD	Trans-Atlantic Environment Dialogue
TALD	Trans-Atlantic Labor Dialogue
TBT	Technical Barriers to Trade
TEP	Transatlantic Economic Partnership
TIFA	Trade & Investment Framework Agreement
TPRG	Trade Policy Review Group
TPP	Trans-Pacific Partnership
TPSC	Trade Policy Staff Committee
TRIMS	Trade Related Investment Measures
TRIPS	Trade Related Intellectual Property Rights
T-TIP	Trans-Atlantic Trade and Investment Partnership
UAE	United Arab Emirates
UNCTAD	United Nations Conference on Trade & Development
UNDP	United Nations Development Program
URAA	Uruguay Round Agreements Act
USDA	U.S. Department of Agriculture
USITC	U.S. International Trade Commission
USTR	United States Trade Representative
VRA	Voluntary Restraint Agreement
WAEMU	West African Economic & Monetary Union
WB	World Bank
WTO	World Trade Organization

TABLE OF CONTENTS

FOREWORD 1
ALGERIA 7
ANGOLA 13
ARAB LEAGUE 17
ARGENTINA 23
AUSTRALIA 35
BAHRAIN 39
BANGLADESH 41
BRAZIL 47
BRUNEI DARUSSALAM 59
CAMBODIA 61
CANADA 65
CHILE 73
CHINA 77
COLOMBIA 97
COSTA RICA 105
DOMINICAN REPUBLIC 111
ECUADOR 115
EGYPT 123
EL SALVADOR 129
ETHIOPIA 135
EUROPEAN UNION 139
GHANA 185
GUATEMALA 191
HONDURAS 195
HONG KONG 199
INDIA 201
INDONESIA 219
ISRAEL 239
JAPAN 243
JORDAN 259
KAZAKHSTAN 261
KENYA 267
KOREA 275
KUWAIT 289
LAOS 293
MALAYSIA 297
MEXICO 303
MOROCCO 311
NEW ZEALAND 315
NICARAGUA 317
NIGERIA 323
NORWAY 329
OMAN 333

PAKISTAN 337
PANAMA 343
PARAGUAY 347
PERU 351
THE PHILIPPINES 355
QATAR 363
RUSSIA 367
SAUDI ARABIA 385
SINGAPORE 391
SOUTH AFRICA 395
SRI LANKA 403
SWITZERLAND 409
TAIWAN 413
THAILAND 421
TUNISIA 431
TURKEY 435
UNITED ARAB EMIRATES 443
UKRAINE 449
VENEZUELA 455
VIETNAM 463
APPENDIX I 473
APPENDIX II 477

FOREWORD

SCOPE AND COVERAGE

The 2017 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the 32nd in an annual series that highlights significant foreign barriers to U.S. exports. This document is a companion piece to the President's Trade Policy Agenda published by USTR in March.

In accordance with section 181 of the Trade Act of 1974, as added by section 303 of the Trade and Tariff Act of 1984 and amended by section 1304 of the Omnibus Trade and Competitiveness Act of 1988, section 311 of the Uruguay Round Trade Agreements Act, and section 1202 of the Internet Tax Freedom Act, the Office of the U.S. Trade Representative is required to submit to the President, the Senate Finance Committee, and appropriate committees in the House of Representatives, an annual report on significant foreign trade barriers. The statute requires an inventory of the most important foreign barriers affecting U.S. exports of goods and services, foreign direct investment by U.S. persons, and protection of intellectual property rights. Such an inventory enhances awareness of these trade restrictions and facilitates negotiations aimed at reducing or eliminating these barriers.

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

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

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

- Import policies (*e.g.*, tariffs and other import charges, quantitative restrictions, import licensing, customs barriers, and other market access barriers);
- Sanitary and phytosanitary measures and technical barriers to trade;
- Government procurement (*e.g.*, "buy national" policies and closed bidding);
- Export subsidies (*e.g.*, export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);
- Lack of intellectual property protection (*e.g.*, inadequate patent, copyright, and trademark regimes and enforcement of intellectual property rights);
- Services barriers (*e.g.*, limits on the range of financial services offered by foreign financial institutions, restrictions on the use of foreign data processing, and barriers to the provision of services by foreign professionals);

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

- Government-tolerated anticompetitive conduct of state-owned or private firms that restricts the sale or purchase of U.S. goods or services in the foreign country's markets;

- Digital trade barriers (*e.g.*, restrictions and other discriminatory practices affecting cross-border data flows, digital products, Internet-enabled services, and other restrictive technology requirements); and

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

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 highlights both ongoing and emerging barriers to U.S. telecommunication services and goods exports used in the review called for in Section 1377.

To highlight the growing and evolving trade using or enabled by electronic networks and information and communications technology, and reflecting input from numerous stakeholders, relevant country chapters include a dedicated section on barriers to digital trade. This section addresses all issues that are integral to the digital economy including those barriers formerly categorized under "electronic commerce." The section will highlight ongoing and emerging barriers such as restrictions and other discriminatory practices affecting cross-border data flows, digital products, Internet-enabled services, and other restrictive technology requirements. This adjustment will ensure that the information presented in the NTE reflects market developments for U.S. exports.

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

USTR will continue to identify, review, analyze, and address foreign government standards-related and SPS measures that affect U.S. trade. USTR coordinates rigorous interagency processes and mechanisms, through the Trade Policy Staff Committee and, more specifically, through specialized TBT and SPS subcommittees. These TPSC subcommittees, which include representatives from agencies with an interest in foreign standards-related and SPS measures, maintain an ongoing process of informal consultation and coordination on standards-related and SPS issues as they arise.

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

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. USTR has also introduced new mechanisms to enhance its monitoring of the steps that U.S. FTA partners have taken to implement and comply with 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 enforcement measures in FTA countries, and USTR staff regularly works with FTA countries to monitor practices and directly engages governments and other actors. The Administration has reported on these activities in the 2016 Trade Policy Agenda and 2015 Annual Report of the President on the Trade Agreements Program.

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

This report discusses the largest export markets for the United States, including 58 countries, the European Union, Taiwan, Hong Kong, and one regional body. The discussion of Chinese trade barriers is structured and focused to align more closely with other Congressional reports prepared by USTR on U.S.-China trade issues. The China section includes cross-references to other USTR reports where appropriate. As always, the omission of particular countries and barriers does not imply that they are not of concern to the United States.

NTE sections report the most recent data on U.S. bilateral trade in goods and services and compare the data to the preceding period. This information is reported to provide context for the reader. The merchandise trade data contained in the NTE are based on total U.S. exports, free alongside (f.a.s.)[ii] value, and general U.S. imports, customs value, as reported by the Bureau of the Census, Department of Commerce (NOTE: These data are ranked in an Appendix according to the size of the export market). The services data are drawn from the October 2015 Survey of Current Business, compiled by the Bureau of Economic Analysis in the Department of Commerce (BEA). The direct investment data are drawn from the September 2015 Survey of Current Business, also from BEA.

TRADE IMPACT ESTIMATES AND FOREIGN BARRIERS

Wherever possible, this report presents estimates of the impact on U.S. exports of specific foreign trade barriers and other trade distorting practices. Where consultations related to specific foreign practices were proceeding at the time this report was published, estimates were excluded, in order to avoid prejudice to those consultations.

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

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

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

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

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

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

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

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

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

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

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Endnotes:

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

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

The United States has taken a leading role in addressing bribery and corruption in international business transactions and has made real progress over the past quarter century building international coalitions to fight bribery and corruption. Bribery and corruption are now being addressed in a number of fora. Some of these initiatives are now yielding positive results.

The United States led efforts to launch the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-bribery Convention). In November 1997, the United States and 33 other nations adopted the Anti-bribery Convention, which currently is in force for 41 countries, including the United States. The Anti-bribery Convention obligates its parties to criminalize the bribery of foreign public officials in the conduct of international business. It is aimed at proscribing the activities of those who offer, promise, or pay a bribe (for additional information, see http://www.export.gov/tcc and http://www.oecd.org).

The United States also played a critical role in the successful conclusion of negotiations that produced the United Nations Convention Against Corruption, the first global anticorruption instrument. The Convention was opened for signature in December 2003, and entered into force December 14, 2005. The Convention contains many provisions on preventive measures countries can take to stop corruption, and requires countries to adopt additional measures as may be necessary to criminalize fundamental anticorruption offenses, including bribery of domestic as well as foreign public officials. As of December 2016, there were 181 parties, including the United States.

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

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

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

ALGERIA

TRADE SUMMARY

The U.S. goods trade deficit with Algeria was $992 million in 2016, a 33.7 percent decrease ($504 million) over 2015. U.S. goods exports to Algeria were $2.2 billion, up 19.3 percent ($361 million) from the previous year. Corresponding U.S. imports from Algeria were $3.2 billion, down 4.2 percent. Algeria was the United States' 54th largest goods export market in 2016.

U.S. foreign direct investment (FDI) in Algeria (stock) was $4.8 billion in 2015 (latest data available), a 3.2 percent decrease from 2014.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Vehicles

In March 2015, the Algerian government enacted various new requirements for imported vehicles, with a focus on passenger automobiles. Algerian officials assert that these new requirements apply to all vehicles, but it appears the enforcement of these requirements has focused on imported vehicles. Exporters face particular challenges because the safety requirements are vague, appearing to be based loosely on United Nations Economic Commission for Europe (UNECE) vehicle standards, thus complicating efforts to comply. Moreover, it appears many of the requirements address the particular design features of components rather than their actual performance with respect to safety. Some requirements are unique to Algeria. For example, industry representatives have referenced the requirement for rear-seat knee airbags and seatbelt minders for all seats in commercial vehicles. Algeria also has not clarified whether vehicles that conform to U.S. Federal Motor Vehicle Safety Standards meet its requirements.

All vehicles entering Algeria must be accompanied by a "certificate of conformity" before they are inspected by a representative of the Ministry of Industry and Mines. Algeria also requires this certificate in order for companies to obtain the letter of credit necessary to finance the import of a vehicle. Insufficient prior notice of these various new requirements led to thousands of cars being held on arrival or at the port of origin in 2015 because of non-compliance, including approximately 400 vehicles from one U.S. manufacturer, which were eventually grandfathered under the previous standards. The standards otherwise remain in effect for all imported vehicles, which has forced carmakers to make unique and costly adjustments to models sold in the Algerian market.

At a March 2016 Trade and Investment Framework Agreement (TIFA) Council meeting with Algerian officials, the United States highlighted the negative impact of these new requirements on United States-Algeria economic relations, given the lack of prior consultation with industry as well as the insufficient time for implementation.

Food Products

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

Sanitary and Phytosanitary Barriers

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

Algeria generally declines to issue certificates to permit the importation of beef and poultry from the United States, although it did grant a one-time import certificate for beef to be used in a U.S. Government export promotion event in 2016. There are no regulations prohibiting the importation of U.S. beef into Algeria, but the government of Algeria has expressed concerns about the widespread use of growth hormones in the United States. A certificate is being negotiated between U.S. and Algerian veterinary authorities to allow the importation into Algeria of U.S. breeding cattle.

IMPORT POLICIES

Tariffs

Algeria is not a WTO member and thus does not bind any of its tariffs through the WTO Agreement. Tariffs on imported goods range from zero to 70 percent. Nearly all finished manufactured products entering Algeria are subject to a 30 percent tariff, with some limited categories subject to a 15 percent rate. Goods facing the highest rates are those that have direct equivalents produced in Algeria, including some pharmaceuticals. The few items that are duty-free are generally intermediate goods from the European Union (EU), which are used in manufacturing and covered by the EU-Algeria Association Agreement that entered into force in 2005.

In addition, most imported goods are subject to the 17 percent value-added tax (VAT). An additional 0.3 percent tax is levied on a good if the applicable customs duty exceeds 20,000 Algerian dinars (about $180). Algeria is expected to adopt a law in early 2017 that would increase the top band of the VAT to 19 percent.

Customs Procedures

Clearing goods through Algerian customs is the most frequently reported problem facing foreign companies operating in Algeria. Delays can reportedly take weeks or months, and in many cases, there is no official 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 to be stamped with a "Visa Fraud" note from the Ministry of Commerce, indicating that the goods have successfully passed a fraud inspection, before the goods are cleared. Authorizations from other ministries are also frequently required, causing additional bureaucratic delays, especially when the regulations do not clearly specify which ministry's authority is being exercised.

Storage fees at Algerian ports of entry are high, and the fee rates double when goods are stored for longer than 10 days. Firms report that bribery is used widely to secure the release of shipments, and both U.S. and non-U.S. company representatives claim that shipments are sometimes deliberately held at port to facilitate bribes to customs officials.

Import Restrictions

Pharmaceuticals and Medical Devices

Since 2010, Algeria's Ministry of Health has issued regulations, pursuant to a 1985 law, to ban imports of a number of pharmaceutical products, medical devices, and other medical goods. At the end of 2016, an estimated 460 products had been banned, an increase from the previous year. Algeria has also set import

quotas for drugs for which an equivalent is produced domestically. Imports of a drug are prohibited if at least three domestic producers make an equivalent. The Ministry of Health has been applying these policies despite the inability of local production to meet demand for dozens of affected medications.

Import Licenses and Quotas

Based on new authority in the 2016 Finance Law, the Ministry of Commerce now requires licenses for the import of goods in the following "strategic" sectors: steel and metallurgy; hydraulic bindings; electrical appliances; industrial chemistry; automobiles; pharmaceuticals; aeronautics; shipbuilding and repair; advanced technologies; agribusiness; textiles, garments, leather, and derivatives; and lumber and furniture. Other products under consideration for such license requirements include wood, ceramics, iron, raisins, garlic, potato chips, and some confectionary products. For imported goods not subject to quantitative limits, the licensing is automatic, but for items subject to annual quotas – like automobiles, cement, and steel reinforcing rods (rebar) – it constitutes a significant barrier to trade.

Vehicles

On May 8, 2016, the Ministry of Commerce issued licenses allowing the import of just 83,000 vehicles over the next six months. All automobile imports had previously been blocked, including vehicles that had been ordered and paid for before the imposition of the license requirement. All vehicles that had not arrived in Algerian ports before November 8, 2016 were blocked from entering for the rest of the year. Distributors of U.S. automobile companies imported approximately 30,000 vehicles in 2014, but were able to import less than 3,000 in 2016. The estimated gain in trade if this barrier were removed would be more than $500 million per year.

The U.S. Government wrote to the Algerian Minister of Commerce in May 2016 outlining the detrimental effects on bilateral trade and investment that these quotas had caused.

According to industry sources, the Ministry has indicated that automobile imports will be further reduced to 55,000 for 2017, with the issuance of 2017 licenses to distributors based on 2016 market share and a willingness to establishing manufacturing in Algeria. Distributors who did not file plans to build an automobile assembly plant in Algeria with the Ministry of Industry and Mines by December 31, 2016, will reportedly not be granted a license to import vehicles in 2017.

Imports of used vehicles and construction equipment have been banned since 2007.

Other Product Bans

Imports of all types of used machinery are prohibited. All products containing pork or pork derivatives are also prohibited.

GOVERNMENT PROCUREMENT

Under the 2016 Finance Law, all ministries and state-owned enterprises (SOEs) are required to purchase domestically manufactured products whenever available. The procurement of foreign goods is permitted only with special authorization at the minister level and if a locally made product cannot be identified. Algeria is neither a party nor an observer to the WTO Government Procurement Agreement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Algeria remains on the Priority Watch List in the 2016 Special 301 Report. The United States commends Algeria for its ongoing effort to promote awareness of the importance of intellectual property rights (IPR). However, Algeria continues to inadequately enforce IPR, including patent and trademark protection. Though the production of counterfeit goods has been nearly eradicated, the importation of counterfeit goods has increased dramatically, as has the use of unlicensed software. An estimated 85 percent or more of software in the country is pirated. Further, Algeria has failed to enact an effective system of protection against unfair commercial use and unauthorized disclosure of data generated by pharmaceutical companies to obtain marketing approval for their products. U.S. companies have reported unlicensed production of their brand-name drugs in the Algerian market.

SERVICES BARRIERS

Banking

Since 2010, Algeria has restricted banks controlled by foreign shareholders from making loans to Algerian subsidiaries.

Direct wire payments for imported goods are not permitted. Instead, all importers must secure letters of credit covering at least the full cost of the imported goods for any shipments totaling at least 4 million Algerian dinars (approximately $36,300), and the validity of the letters of credit is limited to 60 days.

The government tightly controls foreign exchange for Algerian firms. Algerian companies in the hydrocarbons sector must receive 100 percent of export revenue in local currency, while other Algerian companies can receive up to 50 percent of their export earnings in U.S. dollars.

With few exceptions, the Algerian government prohibits Algerian citizens from holding financial assets abroad. The government permits Algerians to obtain foreign currency for the importation of goods only if they have in local currency the equivalent of the hard currency cost of the imports.

Electronic Payment Services

Electronic payment services are limited in Algeria due to weak consumer credit culture and to underdeveloped telecommunications infrastructure needed to support electronic banking. The government banned consumer credit from 2009 to 2014, and consumer loans are almost entirely restricted to the purchase of domestically-produced goods. Credit cards are rare, and those that exist are primarily local-use cards, known as *cartes interbancaire* (CIBs), issued by local banks. Internationally recognized cards such as MasterCard and Visa have been authorized for use within Algeria, but local banks generally only issue the cards as prepaid debit cards to customers intending to use them on trips abroad.

INVESTMENT BARRIERS

Algeria's investment law requires Algerian ownership of at least 51 percent in all projects involving foreign investments. This requirement originated as part of the 2006 law governing hydrocarbons, but was expanded in the 2009 supplementary budget law to cover all foreign investments.

A new investment law passed in June 2016 states that the Algerian government will "accompany" all foreign investments during the establishment phase. Prospective investors must work with the relevant ministry or ministries to negotiate, register, and set up their businesses. U.S. businesses have commented that the process is subject to political influence, and that companies not given an informal "green light" by

the relevant ministry may not be able to establish their company in Algeria. The lack of transparency behind the decision-making process makes it difficult to determine the reasons for any delays.

Algeria is working to develop a legal framework to facilitate franchising. Because franchise royalties may not be repatriated, it is difficult for foreign franchises to operate in Algeria.

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

BARRIERS TO DIGITAL TRADE

Under current law, Algerian citizens may not purchase goods online from abroad. Businesses, however, may purchase items online and import them for business-related uses.

OTHER BARRIERS

State-Owned Enterprises

State-owned enterprises (SOEs) comprise about two-thirds of the Algerian economy. The national oil and gas company Sonatrach is the most prominent SOE, but SOEs are present in all sectors. Algeria previously gave equal opportunity to foreign and local companies competing for government contracts, but in the last few years the government has favored SOEs and other Algerian companies.

ANGOLA

TRADE SUMMARY

The U.S. goods trade deficit with Angola was $1.6 billion in 2016, a 3.6 percent decrease ($60 million) over 2015. U.S. goods exports to Angola were $1.3 billion, up 9.4 percent ($110 million) from the previous year. Corresponding U.S. imports from Angola were $2.9 billion, up 1.8 percent. Angola was the United States' 69th largest goods export market in 2016.

U.S. foreign direct investment in Angola (stock) was $24 million in 2015 (latest data available), a 98.7 percent decrease from 2014.

IMPORT POLICIES

Tariffs and Nontariff Measures

Angola is a member of the World Trade Organization (WTO) and the Southern African Development Community (SADC). However, Angola has delayed implementation of the 2003 SADC Protocol on Trade, which seeks to reduce tariffs. The Angolan government is concerned that implementation of the SADC Protocol on Trade would lead to a large increase in imports, particularly from South Africa. Angola plans to introduce a new harmonized tariff schedule in 2017. The Angolan government has stated that the new tariff regime will greatly facilitate trade and decrease costs, but it has not announced details.

Customs Barriers

Administration of Angola's customs service has improved in the last few years, but remains a barrier to market access. Under Presidential Decree No. 63/13, pre-shipment inspection is no longer mandatory for goods shipped after June 12, 2013. However, traders may continue to contract for pre-shipment inspection services from private inspection agencies if they wish to benefit from faster "green channel" access, or if pre-shipment inspection is required by their letter of credit agreement. Some importers find that the fees charged by Bromangol, a private laboratory that dominates the inspection market, are excessive.

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

The importation of certain goods may require specific authorization from various government ministries, which can result in delays and extra costs. Goods that require ministerial authorization include: pharmaceutical substances and saccharine and derived products (Ministry of Health); fiscal or postal stamps, radios, transmitters, receivers, and other devices (Ministry of Post and Telecommunications); weapons, ammunition, fireworks, and explosives (Ministry of Interior); plants, roots, bulbs, microbial cultures, buds, fruits, seeds, and crates and other packages containing these products (Ministry of Agriculture); poisonous and toxic substances and drugs (Ministries of Agriculture, Industry, and Health); and of other goods imported to be given away as samples (Ministry of Customs). The import of goods such as poultry has also been hindered at times through the use of restrictive import licensing rules.

GOVERNMENT PROCUREMENT

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

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

A new Public Procurement law entered into force on September 16, 2016 (Law National Assembly Law No. 9/16, of 16 June 2016), encompassing both public procurement and rules on the performance of some contracts. This law represents an effort to reform and modernize Angola's procurement regime, and is a condition of an ongoing African Development Bank loan to support the reform of the electric power sector in Angola.

Angola is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Angola was not listed on the 2016 Special 301 Report. Intellectual property rights (IPR) are administered by the Ministry of Industry (trademarks, patents, and designs) and by the Ministry of Culture (authorship, literary, and artistic rights). Angola is a party to the World Intellectual Property Organization (WIPO) Convention, the Paris Convention for the Protection of Industrial Property, and the WIPO Patent Cooperation Treaty. Although Angolan law provides basic IPR protection and the National Assembly continues to work to strengthen existing legislation, IPR protection remains weak due to lack of enforcement.

INVESTMENT BARRIERS

Angola can be a difficult environment for foreign investors. Oil revenues contribute 75 percent of government revenues and are the dominant source of foreign exchange deposits for the Central Bank. Starting in late 2014, as a direct result of the further decline in oil prices, foreign exchange deposits diminished. To manage the depleting reserves, in 2016 the Central Bank of Angola implemented a process that severely limited foreign exchange approvals for private citizens and businesses. American and non-American businesses alike, report facing significant impediments when seeking approvals to repatriate profits and make outward remittances in foreign currency. Local importers whom deposit foreign currency are often unable to withdraw their deposits without authorization from the Central Bank. The process implemented in 2016 prioritizes the authorization for foreign exchange for imports for the energy sector, food, and medicine.

American and foreign companies report significant impediments to repatriating profits out of Angola. Central Bank approvals for remittance and royalties are subject to particularly severe delays. Corporations report that, following direct appeals to the Central Bank, they are able to access foreign exchange to remit only very small portions of their local currency accounts**.**

On August 26, 2015, the Angolan government enacted a new private investment law that stripped the National Agency for Private Investment (ANIP) of its authority with respect to attracting, facilitating, and

approving investments. The law assigned responsibility for overseeing new investments across various ministries. ANIP was folded into a new entity, the Angolan Investment and Export Promotion Agency. The new private investment law maintains the existing requirement that a $1 million investment is required of foreign investors to be eligible for fiscal incentives from the government. The threshold for eligibility for these incentives for Angolan investors is lowered to $500,000. The law also requires at least a 35 percent local participation in foreign investments in the following strategic sectors: electricity, water, tourism, hospitality, transportation, logistics, telecommunications, information technology, construction, and media. The previous law required local partnerships in only the energy, banking, and insurance sectors.

The new private investment law will not apply to existing investments (pre-September 2015), which will continue to be governed by the old legal framework. Investments in Angola's mining, finance, and petroleum sectors are not affected by the new law, as they continue to be governed by sector-specific legislation. The investment law expressly prohibits private investment in strategic areas such as defense and national security; banking activities relating to the operations of the Central Bank of Angola and the Mint; the administration of ports and airports; and other areas where the law gives the state exclusive responsibility. Under the new law, foreign investors pay higher taxes on dividends and profit repatriation. The new tax rate starts at 15 percent and rises to as much as 50 percent, depending on the date and amount of repatriation.

By law, the Council of Ministers has 30 days to review a foreign investment application, although in practice decisions are often subject to lengthy delays. Obtaining the proper permits and business licenses to operate in Angola is time consuming, and adds to the cost of investment. The World Bank's "Doing Business in 2017" report, ranking Angola 182 out of 190 countries, noted that it takes an average of 66 days to start a business in Angola compared to a regional average of 29.7 days.

The Angolan justice system can be slow and arduous. The World Bank's "Doing Business in 2017" report estimates that enforcing contracts (measured by the amount of time elapsed between the filing of a complaint and the receipt of restitution) generally takes 1,296 days in Angola, whereas the average period in sub-Saharan Africa is 650 days. While existing law contemplates domestic and international arbitration, arbitration law is not widely practiced in the country.

The Angolan government is gradually implementing legislation for the petroleum sector, enacted in November 2003, which requires many foreign oil services companies to form joint venture partnerships with local companies. With respect to the provision of goods and services not requiring heavy capital investment or specialized expertise, foreign companies may only participate as a contractor or sell manufactured products to Angolan companies for resale. Foreign petroleum companies face local content requirements forcing them to acquire low capital investment goods and services from Angolan-owned companies. For activities requiring a medium level of capital investment and a higher level of expertise (not necessarily specialized), foreign companies may only participate in association with Angolan companies. The Foreign Exchange Law for the Petroleum Sector requires that all petroleum, oil, and gas companies use Angola-domiciled banks to make all payments, including payments to suppliers and contractors located outside of Angola. Furthermore, payments for goods and services provided by resident service providers must be made in local currency.

OTHER BARRIERS

Corruption

Corruption is prevalent in Angola for many reasons including but not limited to, an inadequately trained civil service, a highly centralized bureaucracy, antiquated regulations, and a lack of implementation of anticorruption laws. "Gratuities" and other facilitation fees are sometimes requested to secure quicker

service and approval. It is common for Angolan government officials to have substantial private business interests that are not necessarily publicly disclosed. Likewise, it is difficult to determine the ownership of some Angolan companies. The business climate continues to favor those connected to the government. Laws and regulations regarding conflict of interest are not widely enforced. Some investors report pressure to form joint ventures with specific Angolan companies believed to have connections to political figures.

ARAB LEAGUE

The effect of the Arab League's boycott of Israeli companies and Israeli-made goods on U.S. trade and investment in the Middle East and North Africa varies from country to country. While the boycott still on occasion can pose a barrier (because of associated compliance costs and potential legal restrictions) for individual U.S. companies and their subsidiaries doing business in certain parts of the region, it has for many years had an extremely limited practical effect overall on U.S. trade and investment ties with many key Arab League countries. 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, Yemen, and the United Arab Emirates. 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.

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

U.S. antiboycott laws (the 1976 Tax Reform Act (TRA) and the 1977 amendments to the Export Administration Act (EAA)) were adopted to require U.S. firms to refuse to participate in foreign boycotts that the United States does not sanction. The Arab League boycott of Israel was the impetus for this legislation and continues to be the principal boycott with which U.S. companies must be concerned. The EAA's antiboycott provisions, implementation of which is overseen by the U.S. Department of Commerce's Office of Antiboycott Compliance (OAC), prohibit certain types of conduct undertaken in support of the Arab League boycott of Israel. These types of prohibited activity include, *inter alia*, agreements by companies to refuse to do business with Israel, furnishing by companies of information about business relationships with Israel, and implementation of letters of credit that include prohibited boycott terms. The TRA's antiboycott provisions, administered by the Department of the Treasury and the Internal Revenue Service, deny certain foreign tax benefits to companies that agree to requests from boycotting countries to participate in certain types of boycotts.

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

Boycott activity can be classified according to three categories. The primary boycott prohibits the importation of goods and services from Israel into the territory of Arab League members. This prohibition may conflict with the obligation of Arab League members that are also Members of the WTO to treat products of Israel on a most favored nation basis. The secondary boycott prohibits individuals, companies (both private and public sector), and organizations in Arab League members from engaging in business with U.S. firms and firms from other countries that contribute to Israel's military or economic development.

Such firms may be placed on a blacklist maintained by the Central Boycott Office (CBO), a specialized bureau of the Arab League; the CBO often provides this list to other Arab League member governments, which decide whether or to what extent to follow it in implementing any 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 are responsible for enforcing the boycott, and enforcement efforts vary widely among them. Some Arab League member governments have consistently maintained that only the Arab League as a whole can entirely revoke the boycott. Other member governments support the view that adherence to the boycott is a matter of national discretion; thus, a number of governments have taken steps to dismantle various aspects of their national boycotts. The U.S. Government has on numerous occasions indicated to Arab League member governments that their officials' attendance at periodic CBO meetings is not conducive to improving trade and investment ties, either with the United States or within the region. Attendance of Arab League member government officials at CBO meetings varies; a number of governments have responded to U.S. officials that they only send representatives to CBO meetings in an observer capacity, or to push for additional discretion in national enforcement of the CBO-drafted company blacklist. Ongoing political upheaval in Syria since 2011 has prevented the CBO from convening meetings on a regular basis.

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

EGYPT: Egypt has not enforced any aspect of the boycott since 1980, pursuant to its peace treaty with Israel. However, U.S. firms occasionally have found that some government agencies use outdated forms containing boycott language. In past years, Egypt has included boycott language drafted by the Arab League in documentation related to tenders funded by the Arab League. The revolution and resultant political uncertainty in Egypt since early 2011 introduced some uncertainty with respect to future Egyptian approaches to boycott-related issues, but thus far the Egyptian government has affirmed its continued commitment to the peace treaty.

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.

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

IRAQ: U.S. companies and investors consider the existence of boycott-related requirements in procurement contracts and tenders issued by the government of Iraq as significant disincentives for doing business in the country. It is estimated that since 2010, U.S. companies have lost more than $1 billion in sales opportunities in Iraq due to Arab League boycott-related requests.

Despite antiboycott guidance given on two occasions from the Iraqi Council of Ministers to all ministries, the number of boycott-related requests from Iraqi entities increased from 2009 to 2014. In 2016, there were 52 prohibited requests (as defined by U.S. antiboycott laws) from Iraqi entities reported to the U.S. Department of Commerce, down from 62 in 2015. Requests emanated from several Iraqi government entities, including the Ministry of Health (MOH) and its procurement arm, the Iraqi State Company for

Importation of Drugs and Medical Appliances (Kimadia), the Ministry of Planning, and the South Oil Company.

The MOH committed to the United States in June 2013 that it would stop issuing boycott-related requests. Since that time, however, the MOH has issued several boycott-related requests that negatively affected U.S. suppliers of medical and pharmaceutical products. In January 2014, the head of Kimadia informed the United States that the MOH and Kimadia would move to end the practice of including Arab League boycott-related requirements in tender packages for new procurements. The South Oil Company, which had stopped issuing tenders with boycott language several years ago, recently resumed issuing tenders containing boycott-related language.

YEMEN: Yemen has not put a law in place regarding the boycott, though it continues to enforce the primary aspect of the boycott and does not trade with Israel. Yemen in the past has stated that, absent an Arab League consensus to end the boycott, it will continue to enforce the primary boycott, though it pledged to adhere to its 1995 governmental decision to renounce observance of the secondary and tertiary aspects of the boycott. Continuing serious political unrest within the country and resultant deterioration in the government's ability to implement policies make it difficult to predict Yemen's future posture toward boycott-related issues.

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.

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

ALGERIA: Algeria does not maintain diplomatic, cultural, or direct trade relations with Israel, though indirect trade reportedly does take 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.

MOROCCO: Moroccan law contains no specific references to the Arab League boycott. The government informally recognizes the primary aspect of the boycott due to Morocco's membership in the Arab League, but does not enforce any aspect of it. According to previously published Israeli statistics, Morocco in recent years has been Israel's seventh largest trading partner in Africa and third largest 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.

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

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

COMOROS, DJIBOUTI, AND SOMALIA: None of these countries has officially participated in the Arab League boycott. Djibouti generally supports Palestinian causes in international organizations and there is little direct trade between Djibouti and Israel. However, the government currently does not enforce any aspects of the boycott.

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

MAURITANIA: Though Mauritania "froze" its diplomatic relations with Israel in March 2009 in response to Israeli military engagement in Gaza, Mauritania has continued to refrain from enforcing any aspect of the boycott.

GULF COOPERATION COUNCIL (GCC): In September 1994, the GCC member countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates) announced an end to their enforcement of 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. Although all GCC states are complying with these stated plans, some commercial documentation containing boycott-related language continues to surface on occasion and impact individual business transactions.

The situation in individual GCC member countries is as follows:

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

Kuwait: Kuwait continues to recognize the 1994 GCC decision and has not applied secondary or tertiary aspects of the boycott since 1991. Kuwait claims to have eliminated all direct references to the boycott in procurement documentation as of 2000. Kuwait has a three person boycott office, which is part of the General Administration for Customs. Although Kuwaiti officials reportedly regularly attend Arab League boycott meetings, it is unclear whether they are active participants.

Oman: Oman does not apply any aspect of the boycott and has no laws providing for boycott enforcement. Although boycott-related language occasionally appears in tender documents, Omani officials are committed to ensure that such language is not included in new tender documents and have removed boycott-related language when brought to their attention. Omani customs processes Israeli-origin shipments entering with Israeli customs documentation, although Omani firms typically avoid marketing any identifiably Israeli consumer products. Telecommunications and mail flow normally between the two countries. Omani diplomatic missions are prohibited from taking part in Arab League boycott meetings.

Qatar: Qatar has a boycott law but the extent to which the government enforces it is unclear. Although Qatar renounced implementation of the boycott of U.S. firms that do business in Israel (the secondary and tertiary boycott) in 1994, U.S. firms and their subsidiaries continue to report receiving boycott-related requests from public Qatari companies; in those instances, companies have made an effort to substitute alternative language. An Israeli trade office opened in Qatar in May 1996, but Qatar ordered that office closed in January 2009 in protest against the Israeli military action in Gaza. Despite this closure, Qatar continues to allow trade with Israel and allows Israelis to visit the country. Official data from the Qatari government indicated that there was approximately $3 million in trade between Qatar and Israel in 2009. Actual trade, including Israeli exports of agricultural and other goods shipped via third countries, is likely higher than the official figures. 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 indicated that Israeli citizens would be welcome to attend the World Cup.

Saudi Arabia: Saudi Arabia, in accordance with the 1994 GCC decision, modified its 1962 law, resulting in the termination 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 companies have usually been willing to void or revise boycott-related language in commercial documents when they are notified of its use.

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

Non-Arab League Countries

In recent years, press reports have occasionally surfaced regarding the implementation of officially sanctioned boycotts of trade with Israel by governments of non-Arab League countries, particularly some member states of the 57 member Organization of the Islamic Conference (OIC), headquartered in Saudi Arabia (Arab League and OIC membership overlaps to a degree, though OIC members are 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 perhaps to simply 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 Tajikistan, Turkmenistan, and Kazakhstan impose no boycotts on trade with Israel and in some cases have actively encouraged such trade, while Turkey has an active history of trade with Israel

ARGENTINA

TRADE SUMMARY

The U.S. goods trade surplus with Argentina was $3.9 billion in 2016, a 27.3 percent decrease ($1.5 billion) over 2015. U.S. goods exports to Argentina were $8.6 billion, down 8.3 percent ($772 million) from the previous year. Corresponding U.S. imports from Argentina were $4.7 billion, up 18 percent. Argentina was the United States' 30th largest goods export market in 2016.

U.S. exports of services to Argentina were an estimated $8.1 billion in 2015 (latest data available) and U.S. imports were $2.1 billion. Sales of services in Argentina by majority U.S.-owned affiliates were $9.4 billion in 2014 (latest data available).

U.S. foreign direct investment (FDI) in Argentina (stock) was $13.3 billion in 2015 (latest data available), a 1.7 percent increase from 2014. U.S. direct investment in Argentina is led by manufacturing, information, and wholesale trade.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Conformity Assessment and Safety Certificate Requirements for Electrical Products

Since 2013, Argentina has maintained conformity assessment requirements that obligate foreign manufacturers and importers to obtain safety certifications from Argentine certification bodies for all imported electrical and electronic products before they can enter commerce in Argentina. These repetitive testing requirements are applicable only to foreign manufacturers, and they impose significant delays and increase costs.

Additionally, pursuant to Resolution 508/2016, which was issued in October 2015 and modified in July 2016 by Resolution 171/2016, importers of low-voltage electrical equipment have since November 2015 been required to obtain safety certificates for their imports. The resolutions establish the Argentine Gas Institute as the authority for granting the safety certificates. Dispositions 578 through 586, issued in January 2017, authorize the acceptance of international certification results for some electronic products, alleviating the testing requirements for certain products. However, U.S. companies report that they continue to face bureaucratic delays in obtaining safety certificates, which increases administrative costs.

Sanitary and Phytosanitary Barriers

Food Safety and Animal Health

Live Cattle, Beef, and Beef Products

Argentina banned imports of all U.S. live cattle, beef, and beef products in 2002 due to concerns about bovine spongiform encephalopathy (BSE). In June 2015, through Resolution 238/2015, Argentina's National Agricultural and Food Health and Quality Service (SENASA) published new import requirements for ruminants and ruminant products, replacing previous requirements. Resolution 238/2015 adopted three World Organization for Animal Health (OIE) categories for BSE risk classification. Through Resolution 238/2015, Argentina recognized the OIE's classification of the United States as a country with negligible BSE risk. In March 2016, the U.S. Department of Agriculture (USDA) sent a proposal to Argentina

requesting full market access for all U.S. beef and beef products. USDA is working with SENASA on the proposal.

Animal Health

Pork

Argentina does not currently allow imports of U.S. pork. In October 2016, the United States proposed revisions to SENASA on the sanitary certificate to address concerns raised by Argentina in previous discussions. SENASA had indicated that it will only accept imports of U.S. pork from herds that have tested negative for Trichinellosis and have no reported cases of Porcine Reproductive and Respiratory Syndrome (PRRS). The United States does not consider these requirements to be science-based, however, and the OIE does not recognize trade in pork as posing a threat of transmitting the disease. U.S. producers maintain stringent biosecurity protocols that have virtually eradicated trichinae in commercial pork production. Thus, the risk of introducing PRRS into the Argentine herd due to the import of U.S. pork is negligible. The United States will continue to engage with SENASA to resolve these issues.

Poultry

Argentina does not allow imports of fresh, frozen, and chilled poultry from the United States due to concerns over Avian Influenza (AI). Argentina also has not recognized the U.S. sanitary inspection system as equivalent to the Argentine system. In October 2015, USDA's Animal and Plant Health Inspection Service (APHIS) and Foreign Agricultural Service provided SENASA a comprehensive presentation on the status of Highly Pathogenic Avian Influenza (HPAI) in the United States and on the success of the U.S. Government's eradication program. In addition, APHIS requested that Argentina regionalize its restrictions related to HPAI either by state or county. On November 30, 2015, APHIS informed SENASA that the United States had complied with all the required OIE actions and requirements related to HPAI needed to be declared free of the disease after the 2015 HPAI outbreak. Argentina has indicated that it would accept cooked poultry products from the United States, but there is no agreement yet on the terms of the necessary sanitary certificate as Argentina has maintained that the U.S. poultry inspection system is not equivalent to the Argentine system.

IMPORT POLICIES

Tariffs

Argentina is a member of the Southern Common Market (MERCOSUR), formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. Venezuela was suspended as a full member from MERCOSUR in December 2016. MERCOSUR maintains a Common External Tariff (CET) schedule with most favored nation (MFN) applied rates ranging from zero percent to 35 percent *ad valorem*. Argentina's import tariffs follow the MERCOSUR CET with some permitted exceptions. Argentina's average MFN applied tariff was 13.6 percent in 2015. Argentina's average bound tariff rate in the WTO is significantly higher at 31.8 percent. According to current MERCOSUR rules, any good introduced into any member country must pay the CET to that country's customs authorities. If the product is then re-exported to any other MERCOSUR country, the CET must be paid again to the second country. Modifications to MERCOSUR tariff rates are made through resolutions and are published on the official website, which can be viewed at: http://www.mercosur.int/innovaportal/v/7661/2/innova.front/resoluciones-2016.

MERCOSUR members have agreed to increase import duty rates temporarily to a maximum rate of 35 percent on 100 tariff items per member country. For Argentina, the list of products subject to the maximum tariff rate as of January 2016 can be viewed at:

http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/257919/norma.htm.

MERCOSUR member countries are also allowed to set import tariffs independently for some types of goods, including computer and telecommunications equipment, sugar, and some capital goods. Argentina imposes a 14 percent tariff on imports of capital goods that are also produced domestically. Imports of certain other capital goods that are not produced domestically are subject to a reduced *ad valorem* tariff of 2 percent. A list of the goods affected and their respective tariff rates can be found at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/250000-254999/254829/norma.htm.

In 2010, MERCOSUR's Common Market Council (CMC) advanced toward the establishment of a Customs Union with its approval of a Common Customs Code (CCC) through Decisions 027/2010 and Decision 056/2010 (both dated December 2010) to implement 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 thus far, only Argentina has done so.

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

Nontariff Barriers

Import Licenses

Argentina subjects imports to automatic or non-automatic licenses that are managed through the Comprehensive Import Monitoring System (SIMI), established in December 2015 by the National Tax Agency (AFIP) through Resolutions 5/2015 and 3823/2015. The United States continues to have significant questions about whether the adoption of the SIMI brings Argentina's import licensing measures into compliance with its WTO obligations, and the United States is working with Argentina to address these concerns.

The resolutions require that importers submit electronically detailed information about goods to be imported into Argentina. Once the information is submitted, relevant Argentine government agencies review the application through a "Single Window System for Foreign Trade." The automatic import licensing requirements apply to approximately 87 percent of Argentina's tariff schedule. The list of products subject to non-automatic licensing has been modified several times, with a net increase since the beginning of the SIMI system. As of December 2016, Argentina maintained non-automatic import license requirements on 12,348 12-digit tariff lines, including on products the government deems import-sensitive such as automobiles, paper and cardboard, iron and steel, nuclear reactors, electrical materials and parts, toys, textiles and apparel, and footwear. The full text of Resolution 5/2015 with the affected tariff lines can be accessed at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/257251/norma.htm.

Foreign Transactions Monitoring Unit

In November 2014, via Decree 2103/2014, the Argentine government established the Unit of Monitoring and Traceability of Foreign Trade Operations, coordinated by the Chief of Cabinet with participation from the Ministry of Economy, the Customs Office, the AFIP, the National Securities and Exchange Commission, Financial Information Unit, and the Central Bank, among other financial regulatory agencies. The stated objective of this Joint Unit is to track all international trade operations to ensure transparency and accuracy and to prevent over- and under-invoicing by commercial entities. Many enterprises, especially multinationals, have expressed concerns that this Joint Unit further increases governmental controls over international trade.

Customs Valuation

Argentina continues to apply reference values to several thousand products. Under this system, authorities establish benchmark unit prices for customs valuation purposes for certain goods that originate in, or are imported from, specified countries. These benchmarks are not, in fact, "prices" because they are not paid or payable when the respective goods are sold for export to Argentina. They are used, nonetheless, to establish a minimum price for market entry and dutiable value. Importers of affected goods must pay duties calculated on the reference value, unless they can prove that the transaction was conducted at arm's length.

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

Certificates of Origin

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

Express Delivery and Electronic Commerce

On August 26, 2016, Argentina issued Resolutions 3915 and 3916, allowing the import of goods via mail or through an express delivery service provider. Non-commercial mail shipments with a value of $200 or less and a weight not greater than two kilograms may now be delivered door-to-door. Books, printed material, and documents may be delivered door-to-door without the need to complete an international postal shipment declaration. 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 certain other import requirements, subject to certain conditions, including an annual limit of five shipments per person. Buyers have to pay a 50 percent tax on all but the first $25 of their orders.

Prior to the issuance of these regulations, simplified customs clearance procedures on express delivery shipments were only available for shipments valued at $1,000 or less, and some of the requirements for couriers, such as having to declare the tax identification codes for senders and addressees, rendered the process time-consuming and costly.

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

Ports of Entry

Argentina restricts entry points for several classes of goods, including sensitive goods classified in 20 Harmonized Tariff Schedule chapters (*e.g.,* textiles; shoes; electrical machinery; iron, steel, metal, and other manufactured goods; and watches), through specialized customs procedures for these goods. A list of products affected and the ports of entry for those products is available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/130000-134999/131847/norma.htm.

Used Capital Goods Imports

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

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

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

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

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

Used Goods for Consumption

Resolution 909/1994, issued by the Ministry of Economy, places restrictions on the importation of certain used goods for consumption, such as parts and components that are not used in the manufacture of other products. Decree 1205, issued November 29, 2016, modified the list of restricted items and established import tariffs ranging from 6 to 28 percent for some of these items. The full list of restricted items can be viewed at http://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/268328/norma.htm. The list includes electronic and recording equipment; railroad vehicles and other railroad parts; optic, photography and filming equipment; tractors; buses; aircrafts; and ships.

Used Clothing Imports

Argentina maintains an import prohibition on used clothing.

National 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 of private enterprises. Private companies determined by the government to be making "artificial" or "unjustified" profits may be subject to fines of up to 10 million pesos (approximately $770 thousand) and a potential 90-day closure of their business. This law is still in effect.

In February 2015, Argentina issued Resolution 17, which creates the "System of Monitoring the Supply and Availability of Goods and Inputs" (SIMONA). SIMONA is a data tracking tool that aims to detect production or distribution issues before they affect supply. Argentina also uses SIMONA to collect price data. Pursuant to Resolution 17, any company engaging in production or distribution in Argentina must report via SIMONA any impediments to its production or distribution process.

Taxes

In August 2012, the Argentine Tax Authority (AFIP) issued Resolution 3373, which raised the rate of certain taxes charged after import duties are levied, thereby increasing the tax burden for importers. The value-added tax (VAT) advance rate rose from 10 percent to 20 percent on imports of consumer goods, and from 5 percent to 10 percent on imports of capital goods. The income tax advance rate on imports of all goods increased from 3 percent to 6 percent, except when the goods are intended for consumption or for use by the importer, in which case an 11 percent income tax rate applies.

Since 2009, Argentina has applied a 21 percent VAT on information technology and electronic products, including mobile phones, cameras, and tablets produced outside the Special Customs Area within Tierra del Fuego province. Additionally, imports of these electronics products were subject to a 35 percent import duty, while imports of electronic components were subject to a 12 percent duty. Decree 117/2017, issued on February 17, 2017, eliminates the 35 percent duty on imports of a number of electronic devices effective April 1, 2017, and the 12 percent import duty on electronic components as of February 21, 2017. The list of products subject to Decree 117 can be found here:
https://www.boletinoficial.gob.ar/#!DetalleNorma/159229/20170220.

On July 5, 2016 the Ministry of Production and the Ministry of Energy and Mining issued Joint Resolutions 123 and 313, which allow companies to obtain tax benefits on purchases of solar or wind energy equipment for use in investment projects that incorporate at least 60 percent local-content in their electromechanical installations. In cases where local supply is insufficient to reach the 60 percent threshold, the threshold can be reduced to 30 percent. The resolutions also provide tax exemptions for imports of capital and

intermediate goods that are not locally produced for use in the investment projects. For a list of goods that are not locally produced, see Annex 1 of the resolutions, found at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/260000-264999/263282/norma.htm.

On August 1, 2016, Argentina issued law 27263, which, once implemented, will provide tax benefits to automobile manufacturers for the purchase of locally-produced automotive parts and accessories incorporated into specific types of vehicles. The tax benefits range from four to 15 percent of the value of the purchased parts. The list of vehicle types included in the regime can be seen at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/260000-264999/263955/Norma.htm.

Consumer Goods Price Control Program

In January 2014, the Argentine government launched a voluntary consumer goods price control program called "Precios Cuidados." Under the program, participating businesses agree 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. The current program is in effect until May 6, 2017 and includes 545 products. The full list of the goods can be viewed at: http://precioscuidados.gob.ar/.

In February 2016, the Argentine government issued resolution 12/2016, which established the "Electronic System of Advertised Prices" (SEPA) program, accessible online or via mobile app, to monitor retail prices. Supermarkets are required to publish their price lists and customers can submit firsthand price information. Customers can complain about price increases on any given product to the National Commission for the Defense of Competition (CNDC), which has the authority to fine companies if it determines the price increases are not justified.

EXPORT POLICIES

Export Tariffs

Argentina has a long history of applying export tariffs on a variety of agricultural commodities to increase government revenues, with lower rates on processed goods to incentivize value-added processes. In December 2015, through Decrees 133/2015 and 160/2015, the government eliminated export taxes on most goods. A few export taxes, however, were retained. Soybeans are taxed at 30 percent; soy flour and oil at 27 percent; soy pellets and other refined mixed soy oils at 27 percent; bovine leather at 10 percent; wool not carded or combed at 5 percent, and paper and cardboard waste for recycling at 20 percent. Export taxes on biodiesel are 5.24 percent in December 2016. The full text of the decrees can be found at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/256979/norma.htm and http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/257076/norma.htm.

On February 12, 2016, the Argentine government issued decree 349/2016, eliminating previously-existing export duties on metal and non-metal mining products. Those duties had been between 5 and 10 percent. The full text of the decree can be found at: http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=258595.

The MERCOSUR Common Customs Code (CCC) restricts future export taxes and anticipates a transition to a common export tax policy, but the CCC is not yet in effect. In November 2012, Argentina became the first MERCOSUR member to ratify the CCC, but all MERCOSUR member countries must ratify the CCC before it goes into effect.

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.

Export Registrations and Permits

Since December 29, 2015, Argentina has required exporters of grains, oilseeds, and their derivatives to obtain Affidavits of Foreign Sales ("DJVE" or Declaraciones Juradas de Ventas al Exterior) and register the exportation with the Office of Coordination and Evaluation of Subsidies to Domestic Consumption (UCESCI). Approved DJVEs are valid for 180 days, except DJVEs for wheat, which are valid for 45 days. In the case of soybeans and other soy products, exporters are required to pay 90 percent of the export tax at the time of the DJVE approval. On September 26, 2016, the Ministry of Agroindustry, together with the Ministry of Production and the Ministry of Treasury and Public Finances, issued Joint Resolution 1-E, extending the DJVE requirement for the 2016-2017 agricultural year.

Prior to March 30, 2016, an export permit was required for the exportation of dairy products. However, the permit requirement was replaced by a requirement to obtain DJVEs prior to export. Export permits are still required for the exportation of meat. However, meat exports are not restricted in practice.

SUBSIDIES

In October 2014, Argentina launched the "Ahora 12" program, which allows individuals to finance the purchase of certain domestically-manufactured goods, ranging from clothing to home appliances, in 12 monthly installments without interest. The program has been extended several times. On November 23, 2016, the program was extended until March 31, 2017, and the duration of interest-free financing was increased to 18 months. Consequently, the program was rebranded "Ahora 18." Products eligible for Ahora 18 include electronic notebooks and tablets, tourist packages, and motorcycles. The list of goods qualifying for the program can be found at http://www.ahora12.gob.ar/.

Argentina provides full or partial VAT refunds to exporters of consumer goods. The Ministry of Agro-Industry maintains a list of qualifying agricultural products. The reimbursement scheme was last updated in December 2016 through Decree 1341, which can be viewed at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/270000-274999/270117/norma.htm. The decree also provides an additional 0.5 percent refund to exporters of products that are certified with geographic or origin indications; are certified as organic; or that meet quality and innovation standards that qualify the good to be labelled "Argentine Food a Natural Choice." These certifications and labels are granted by the Ministry of Agro-Industry.

Argentina currently has a tax-exempt trading area called the Special Customs Area (SCA), located in Tierra del Fuego province. The SCA was established in 1972 through Law 19,640 to promote economic activity in the southern province. The SCA program, which is set to expire at the end of 2023, provides benefits for established companies that meet specific production, exportation, and employment objectives. Goods produced in Tierra del Fuego and shipped through the SCA to other parts of Argentina are exempt from some local taxes and benefit from reductions in other taxes. Additionally, capital and intermediate goods imported into the SCA for use in production are exempt from import duties. Goods produced in and exported from the SCA are exempt from export taxes. Since November 2009, cell phones, televisions, digital cameras, and other electronic items not produced in the SCA are subject to a 21 percent VAT. Some products are brought from outside Argentina to facilities in the SCA where they are taken apart and reassembled for sale inside Argentina in order to qualify for tax benefits.

GOVERNMENT PROCUREMENT

Argentine law establishes a national preference for local industry for most government procurement if the domestic supplier's tender is no more than five percent to seven percent higher than the foreign tender. The amount by which the domestic bid may exceed a foreign bid depends on the size of the domestic company making the bid. The preference applies to procurement by all government agencies, public utilities, and concessionaires. There is similar legislation at the sub-national (state) level.

On November 16, 2016 the government passed a private-public partnership law (No. 27,328) that regulates public-private contracts. The law lowers 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 which mandates at least 33 percent local content for every public project.

Argentina is not a signatory to the WTO Agreement on Government Procurement, but it is an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Argentina remained on the Priority Watch List in the 2016 Special 301 Report. Enforcement challenges and other factors have diminished market access for U.S. IP-intensive industries. The absence of sustained enforcement efforts – including under the criminal laws – sufficient to have a deterrent effect, coupled with judicial inefficiency, have made it possible for *La Salada,* one of South America's largest black markets for counterfeit and pirated goods, to flourish and generate smaller branches throughout the country. Apparent lack of understanding about technology and online jurisdiction within the judicial system hinder the ability of right holders, law enforcement, and prosecutors to halt, through legal action, the growth of illegal online markets. Some progress was made in 2015 with the closing of notorious online market Cuevana.tv, though various mirror sites and a mobile platform still persist.

The situation for innovators in the pharmaceutical and agrochemical sectors also presents significant concerns. First, the scope of patentable subject matter is significantly restricted under Argentine law. Second, the patent pendency backlog continues to be excessive. Third, there is no means of adequate protection against unfair commercial use and unauthorized disclosure of undisclosed test and other data submitted to the government in conjunction with its lengthy and challenging marketing approval process. The Argentine Congress is considering legislative proposals to update the national seed law. Some proposals may negatively affect the ability to protect and enforce plant variety rights and other intellectual property rights. The United States will continue to engage Argentina on these and other issues.

SERVICES BARRIERS

Foreign Tourism

Since December 17, 2015, purchases of transportation tickets and tourist packages to travel abroad, if paid for in cash or by bank transfer, have been subject to a 5 percent tax.

Audiovisual Services

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

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

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

Insurance Services

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

In November 2016, however, SSN eased reinsurance restrictions to allow foreign companies to provide reassurance at 10 percent of the ceded premium, starting in January 2017. This percentage is scheduled to be increased gradually to a maximum of 80 percent by 2024. SSN requires that all investments and cash equivalents held by locally-registered insurance companies be located in Argentina.

Telecommunications

Telecommunication services are regulated by the Media Law and the Digital Law. Presidential Decree 267/2015 amended the Media Law, adding provisions that prohibit satellite television suppliers from also providing telecommunications services (including broadband Internet access) and video-on-demand services. The amendment also prohibited the bundling of satellite television with any telecommunications services. In addition, the decree maintains certain regulatory requirements for satellite television (*e.g.,* an obligation to carry certain free-to-air television channels) that are not applied to cable television suppliers, putting satellite providers at a competitive disadvantage. Moreover, mobile and fixed telephone companies are prohibited from entering the cable pay-TV market until January 1, 2018. The U.S. Government raised concerns with Argentina about possible discriminatory aspects of the law. On December 30, 2016, the Ministry of Communications issued Decree 1340, which created a grandfather provision allowing satellite television suppliers that already held licenses for information technology services to continue providing such services, including broadband Internet access. The Decree maintains the prohibitions on satellite service provides from bundling services and on telephone companies from operating in the cable market until January 1, 2018.

INVESTMENT BARRIERS

Pension System

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

Foreign Exchange

Hard currency earnings on exports of both goods and services must be converted to pesos in the local official foreign exchange market. In January 2017, Argentina issued Resolution 47 granting exporters a maximum of ten years from date of export to fulfill the requirement to convert foreign currency to pesos. Also in January 2017, Argentina issued Resolution 1, which eliminated a previous requirement that capital inflows into Argentina remain in the country for a minimum of 120 days. In August 2016, the Central Bank issued Circular A 6037, which nullified a former requirement that Argentines obtain government authorization for foreign currency purchases in excess of $2 million.

Localization Measures

Argentina maintains certain localization measures aimed at encouraging domestic production. For example, the Argentine National Mining Agency (Agencia Nacional de Minería) requires mining companies registered in Argentina to use Argentine-flagged vessels to transport minerals and their industrial derivatives for export from Argentina. Argentina's Mining Law (No. 3/2012) requires mining companies registered in Argentina to set up import-substitution departments to increase purchases of local goods and services in connection with engineering projects.

Argentina also requires that radio and television (via airwaves and cable) advertisements have a minimum of 60 percent local content.

In November 2015, the government issued Resolution 1219, which went into effect in May 2016, requiring mobile and cellular radio-communication equipment manufacturers operating in Tierra del Fuego to incorporate certain percentages of local content into their production processes and products, including batteries, screws, chargers, technical manuals, and packaging and labelling. The percentage of local content required ranges from 10 to 100 percent depending on the process or item. For a detailed description of local content percentage requirements, see: http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/255494/norma.htm. In cases where local supply is insufficient to meet local content requirements, companies may apply for an exemption.

AUSTRALIA

TRADE SUMMARY

The U.S. goods trade surplus with Australia was $12.7 billion in 2016, a 10.3 percent decrease ($1.5 billion) over 2015. U.S. goods exports to Australia were $22.2 billion, down 11 percent ($2.8 billion) from the previous year. Corresponding U.S. imports from Australia were $9.5 billion, down 12 percent. Australia was the United States' 17th largest goods export market in 2016.

U.S. exports of services to Australia were an estimated $22.3 billion in 2015 (latest data available) and U.S. imports were $7.0 billion. Sales of services in Australia by majority U.S.-owned affiliates were $51.4 billion in 2014 (latest data available), while sales of services in the United States by majority Australia-owned firms were $22.5 billion.

U.S. foreign direct investment in Australia (stock) was $167.4 billion in 2015 (latest data available), a 5.4 percent decrease from 2014. U.S. direct investment in Australia is led by nonbank holding companies, mining, and finance/insurance.

TRADE AGREEMENTS

The United States-Australia Free Trade Agreement (FTA) entered into force on January 1, 2005. Since then the U.S. and Australian governments have continued to meet regularly to review implementation. Under the agreement, trade in goods and services and foreign direct investment have continued to expand. Since the FTA entered into force, the value of annual U.S. goods exports to Australia has risen 59 percent to $22.2 billion in 2016. U.S. services exports to Australia have increased by 223 percent since the agreement entered into force. Over 99 percent of U.S. exports of consumer and industrial goods now enter Australia duty free.

In addition to the United States, Australia has bilateral FTAs with Chile, China, Japan, Korea, Malaysia, New Zealand, Singapore, and Thailand as well as with ASEAN as a group. Australia is also a participant in the Regional Comprehensive Economic Partnership (RCEP) Asian regional trade negotiations which include, in addition to Australia, the ten ASEAN countries, China, Japan, Korea, India, and New Zealand. In November 2015, Australia and the European Union announced plans to launch an FTA negotiation.

SANITARY AND PHYTOSANITARY BARRIERS

Animal Health

Beef and Beef Products

Heat-treated beef: Australia's Department of Agriculture and Water Resources (DAWR) notified the U.S. Department of Agriculture in June 2015, that Food Standards Australia New Zealand assessed the bovine spongiform encephalopathy (BSE) status of the United States to be Category 1 as of May 28, 2015. U.S. and Australian officials continue to work to finalize an export certificate for heat-treated, shelf-stable beef products from the United States, after which the export of these products from the United States to Australia will be able to resume. Australia seeks certification that heat-treated beef imports will be derived from animals that are born, raised, and slaughtered in the United States. Taking into consideration World Organization for Animal Health guidelines and U.S. BSE surveillance and control measures, the U.S. Department of Agriculture is advocating that beef products made from beef from cattle imported from

Canada or Mexico and slaughtered in the United States under FSIS jurisdiction should also be eligible for processing into products exported to Australia.

Fresh beef: For fresh (chilled or frozen) beef and beef products, the Australian government announced in 2015 the start of a review of its import requirements for three countries that have applied for eligibility to export to Australia: the United States, Japan, and the Netherlands. This review is considering fresh (*i.e.*, chilled or frozen) beef and beef products such as meat, bone, and offal of cattle, buffalo, and bison, and is a necessary step in the process of fully reopening the Australian market to U.S. beef. In December 2016, DAWR released a draft policy review on Australian import of fresh beef and beef products from the United States and several other countries for stakeholder review. A final policy review with recommendations will be published after consideration of comments and will be the basis for a decision on import access for fresh U.S. beef. The United States will continue to urge Australia to open its market fully to U.S. beef and beef products based on science, the OIE guidelines, and the United States' negligible BSE risk status as recognized by the OIE.

Pork

Frozen boneless pork is currently the top U.S. agricultural export to Australia, valued at $136 million in 2015. However, due to concerns about porcine reproductive and respiratory syndrome (PRRS) and post-weaning multisystemic wasting syndrome (PMWS), importations of fresh/chilled pork and bone-in products are not currently 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. The United States is engaged with Australia on technical matters related to this issue. The U.S. Government will continue to make addressing access to the Australian market for fresh/chilled pork, bone-in pork, and pork products a high priority.

Poultry

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

In 2012, Australia initiated an evaluation of whether it would grant access for U.S. cooked turkey meat to the Australian market under amended import conditions. The Australian government is currently conducting an import risk analysis to assess this issue. In August 2016, DAWR released the draft review of cooked turkey meat from the United States for comment. The United States has identified resolution of this issue as a high priority and continues to work with Australia to gain meaningful commercial market access for cooked turkey meat.

Plant Health

Stone Fruit

From 2013 to 2016, the United States gained access to the Australian market for all species of California stone fruit. The United States is continuing to work with Australia to expand access for U.S. stone fruit from other U.S. states.

Apples

Australia currently prohibits the importation of apples from the United States based on concerns about fire blight and other pests. The U.S. Government and U.S. stakeholders have engaged with Australian officials to demonstrate that U.S. mature, symptomless apples pose no risk of transmission of fire blight. 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. The United States provided additional information to Australia in December 2014, and expects Australia to finalize the import risk analysis for apples from the United States. The United States continues to work to obtain access to Australia's market for apples, which is a priority for the United States.

GOVERNMENT PROCUREMENT

Under the AUSFTA, the Australian government opened its market for covered government procurement to U.S. suppliers, eliminating preferences for domestic suppliers and committing to use fair and transparent procurement procedures. Since 2015, the Australian government has been negotiating to accede to the WTO's plurilateral Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Australia generally provides strong intellectual property rights protection and enforcement through legislation that, among other things, criminalizes copyright piracy and trademark counterfeiting. Under the AUSFTA, Australia must provide that a pharmaceutical product patent owner be notified of a request for marketing approval by a third party for a product claimed by that patent. U.S. and Australian pharmaceutical companies have expressed concerns about delays in this notification process.

SERVICES BARRIERS

Audiovisual Services

The Australian Content Standard of 2005 requires commercial TV broadcasters to produce and screen Australian content, including 55 percent of transmissions between 6:00 a.m. and midnight (and also requires 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 in a year between the hours of 6:00 a.m. and midnight, other than the time occupied by exempt advertisements (which include advertisements for imported cinema films, videos, recordings, live appearances by overseas entertainers, and community service announcements). These local content requirements do not apply to cable or online programming.

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

The Australian commercial radio industry Code of Practice requires that up to 25 percent of all music broadcast between 6:00 a.m. and midnight be performed by Australians. In July 2010, the Australian Communications and Media Authority announced a temporary exemption from the Australian music quota for digital-only commercial radio stations (*i.e.*, stations not also simulcast in analog). This exemption was renewed in 2014 and remains in effect.

INVESTMENT BARRIERS

Foreign direct investment into Australia is regulated by the Foreign Acquisitions and Takeovers Act 1975 and Australia's Foreign Investment Policy. The Foreign Investment Review Board (FIRB), a division of Australia's Treasury, screens potential foreign investments in Australia above a threshold value that stands at A$252 million as of January 1, 2016. Based on advice from the FIRB, Australia's Treasurer may deny or place conditions on the approval of particular investments above the threshold on national interest grounds.

Under the AUSFTA, all U.S. greenfield investments are exempt from FIRB screening. In addition, under the AUSFTA, non-greenfield U.S. investments are only screened above a (higher) threshold value, which stands at A$1,094 million as of January 1, 2016. All foreign persons, including U.S. investors, must notify the Australian government and get prior approval to make investments of 5 percent or more in enterprises in the media sector, regardless of the value of the investment.

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

BAHRAIN

TRADE SUMMARY

The U.S. goods trade surplus with Bahrain was $134 million in 2016, a 63.7 percent decrease ($234 million) over 2015. U.S. goods exports to Bahrain were $902 million, down 29 percent ($369 million) from the previous year. Corresponding U.S. imports from Bahrain were $768 million, down 15 percent. Bahrain was the United States' 78th largest goods export market in 2016.

U.S. exports of services to Bahrain were an estimated $321 million in 2015 (latest data available) and U.S. imports were $1.1 billion.

U.S. foreign direct investment (FDI) in Bahrain (stock) was $168 million in 2015 (latest data available).

The United States-Bahrain Free Trade Agreement

Upon entry into force of the United States-Bahrain Free Trade Agreement (FTA) in August 2006, 100 percent of bilateral trade in consumer and industrial products, and trade in most agricultural products, immediately became duty free. Duties on other products were phased out gradually over the first ten years of the Agreement. The FTA also provided a 10-year transitional period for preferential tariff treatment for certain quantities of textiles and apparel that did not meet the otherwise applicable requirement of being locally sourced, in order to assist U.S. and Bahraini producers in developing and expanding business contacts. This provision expired on July 31, 2016, such that textiles and apparel must now generally be made from either U.S. or Bahraini yarn or fabric to benefit from preferential tariffs under the FTA.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Energy Drinks

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

Conformity Assessment Marking

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

Sanitary and Phytosanitary Barriers

In November 2016, the GCC announced that it would implement a December 2016 version of the "GCC Guide for Control on Imported Foods" in October 2017. The United States continues to raise concerns about the Guide, particularly a possible requirement to revise U.S. health export certificates for food and agricultural products destined for GCC countries. The GCC has not provided a scientific justification for its revised certificate statements, some of which may not follow the guidelines of the Codex Alimentarius Commission, the International Plant Protection Convention and the World Organization for Animal Health. The United States continues to request that the GCC delay implementation of the Guide and that experts work to address these concerns.

GOVERNMENT PROCUREMENT

The FTA requires covered entities in Bahrain to conduct procurements covered by the agreement in a fair, transparent, and nondiscriminatory manner.

Bahrain is an observer but not a signatory to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

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

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

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

OTHER BARRIERS

In 2015, the Ministry of Industry, Commerce and Tourism issued an order banning network marketing schemes. The order has been used to prevent direct selling and multi-level marketing organizations from operating in Bahrain; one U.S.-headquartered multi-level marketing firm was ordered to close its storefront and cease sales in Bahrain with little advance warning.

BANGLADESH

TRADE SUMMARY

The U.S. goods trade deficit with Bangladesh was $5.0 billion in 2016, a 0.6 percent decrease ($32 million) over 2015. U.S. goods exports to Bangladesh were $895 million, down 5.0 percent ($47 million) from the previous year. Corresponding U.S. imports from Bangladesh were $5.9 billion, down 1.3 percent. Bangladesh was the United States' 79th largest goods export market in 2016.

U.S. foreign direct investment in Bangladesh (stock) was $589 million in 2015 (latest data available), a 24.3 percent increase from 2014.

IMPORT POLICIES

Bangladesh's import policies are outlined in the Import Policy Order issued by the Ministry of Commerce. Foreign exchange is controlled by the Bangladesh Bank in accordance with Foreign Exchange Control policies.

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

Tariffs

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

Bangladesh levies tariffs at four primary levels of imported goods, and publishes the applied rates at: http://customs.gov.bd/portal/services/tariff/index.jsf. Generators, information technology equipment, raw cotton, textile machinery, certain types of machinery used in irrigation and agriculture, animal feed for the poultry industry, certain drugs and medical equipment, and raw materials imported for use in specific industries are generally exempt from tariffs. Samples in reasonable quantity can be carried by passengers during travel and are not subject to tariffs; however, samples are subject to tariffs if sent by courier.

The average Most Favored Nation (MFN) tariff rate is 15.5 percent, with average rates for agricultural products higher than for industrial goods. The maximum MFN applied rate is 25 percent. Products subject to rates of from 5 percent to 25 percent include general input items, basic raw materials, and intermediate and finished goods. Bangladesh provides concessions for the import of capital machinery and equipment, as well as for specified inputs and parts, which makes determinations of tariff rates a complex and non-transparent process. Other charges applicable to imports are an advance income tax of 5 percent; a value-added tax of 5 percent to 15 percent, with exemptions for input materials previously mentioned; and a supplementary duty of 10 percent to 150 percent, which applies to luxury items such as cigarettes and perfume.

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.

Nontariff Measures

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

Import Licenses

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

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

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

Registration Certificate

Registered commercial and industrial importers are classified into six categories based on the maximum value of annual imports. Initial registration fees and annual renewal fees vary depending on the category. For example, for the sixth category, which applies if annual imports exceed approximately $640,000, the initial registration fee is approximately $770 and the renewal fee is approximately $385.

An importer must apply in writing to the concerned Import Control Authority (ICA) for registration in any of the six categories, and provide necessary documents, including an original copy of the "Chalan" (the Treasury payment form) as evidence of payment of the required registration fees. The ICA makes an endorsement under seal and signature on the IRC for each importer, indicating the maximum value of annual imports and the renewal fee. An importer may not open a letter of credit in excess of the maximum value of annual imports.

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

GOVERNMENT PROCUREMENT

Government procurement is primarily undertaken through public tenders under the Public Procurement Act of 2006 and conducted by the Central Procurement Technical Unit (CPTU). The CPTU was established in April 2002 as a unit within the Implementation Monitoring and Evaluation Division (IMED) of the Ministry of Planning. A Director-General who reports directly to the Secretary of IMED leads the CPTU. The government of Bangladesh publicly subscribes to principles of international competitive bidding; however, charges of corruption are common. Bangladesh recently launched a national electronic Government Procurement portal at http://eprocure.gov.bd, but U.S. companies have raised various 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. Public-private partnership projects are awarded under the PPP Act of 2015.

Bangladesh is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Although Bangladesh has shown improved enforcement of IPR, counterfeit goods continue to be widely available, and music and software piracy are widespread. U.S. and other international companies in the software, publishing, clothing, and consumer product industries complain that inadequate IPR enforcement damages their business prospects in Bangladesh and, in certain cases, damages them in other markets due to pirated physical goods sourced from Bangladesh. Bangladesh is in the initial stages of formulating a national intellectual property policy which holds promise in addressing the challenges facing IPR holders in Bangladesh, but the effort has unfortunately not made measurable progress during the past year.

Foreign software companies face significant challenges with registering and enforcing their copyrights in Bangladesh. Although the annual bilateral trade talks between the United States and Bangladesh, the Trade and Investment Cooperation Framework Agreement, have made progress on this issue by attaining recognition for certain foreign country copyrights, Bangladesh has not yet instituted a gazette notification system that would make enforcement of these rights practicable.

SERVICES BARRIERS

Foreign companies are allowed to provide services in Bangladesh except in sectors that are subject to administrative licensing processes. Yet new market entrants face significant restrictions with respect to most regulated commercial fields (including telecommunications, banking, and insurance), and the process for establishing legal entities such as financial institutions is subject to strict regulatory requirements. There have been reports that licenses are not always awarded in a transparent manner. Transfer of control of a business from local to foreign shareholders requires prior approval from the Bangladesh Bank (control is defined as the ability to control the board of directors or a majority of the directors). In 2016, the Bangladesh Investment Development Authority (BIDA) was formed from the merger of the Board of Investment and the Privatization Commission. BIDA's goal is to push for implementation of a One-Stop Service Act and to become Bangladesh's one-stop private investment promotion and facilitation agency.

Telecommunications

In 1997 the government of Bangladesh opened telecommunications services to increased competition by removing the sector from the "Reserve List," and established the Bangladesh Telecommunication Regulatory Commission (BTRC) as the regulatory authority. The BTRC was established to facilitate dependable telecommunication services, with the mobile sector as its primary focus. Yet BTRC's licensing practices limit foreign participation in the telecommunications industry. Furthermore, frequent changes to

regulations and tax policy in the sector increase business uncertainty, thereby decreasing the incentive to invest.

Bangladesh imposes the highest taxes on mobile services of any country in South Asia. Taxation of the mobile industry represents the largest source of tax revenue for the government of Bangladesh. Under the present tax regime, the mobile industry is taxed like a supplier of luxury goods, with a series of taxes imposed at various levels of operation. Mobile network operators pay 5.5 percent of their revenue to the BTRC as a spectrum fee, 1 percent of their revenue into a social obligation fund, and approximately $633,000 as an annual licensing fee. A tax of approximately $1.25 is imposed on the sale of SIM cards, and a three percent supplementary duty is applied to charges for phone usage. Handsets are subject to a 15 percent import duty. Under the 2013-2014 Finance Act, the corporate income tax rate for listed telecommunications companies was raised to 40 percent from the prior rate of 35 percent, while the corporate income tax rate for mobile service providers that are not publicly listed in the Bangladesh capital markets is 45 percent.

Owners of passive network infrastructure (such as mobile network towers) are obliged to share their infrastructure. For example, Grameenphone – the country's largest telecommunications provider – has signed infrastructure sharing agreements with Banglalink, Robi, Airtel Bangladesh, as well as over 50 providers of Mobile Network Operators, Interconnection Exchange, International Gateway, International Internet Gateway, International Terrestrial Cable, Internet Protocol Telephony Service Provider, Public Switched Telephone Network, Worldwide Interoperability for Microwave Access, Internet Service Provider, and Nationwide Telecommunication Transmission Network services. In addition, the BTRC is in the process of drafting new mobile network tower guidelines. However, the process for drafting these guidelines has been delayed for nearly three years, and draft guidance would impose a cap of 49 percent on foreign ownership of mobile network towers.

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

2G networks cover almost the entire population in Bangladesh. 3G licenses were awarded at the end of 2013, and now approximately 80 percent of the population has 3G coverage. The government is keen to introduce 4G services in Bangladesh by the end of 2017, and has given approval to state-owned operator Teletalk and three private mobile operators to provide the service. According to the BTRC, the government will auction 4G spectrum in June 2017 as the guidelines for 4G services are being prepared. Mobile operators are currently preparing their networks and conducting 4G LTE trials before the upcoming 4G spectrum license allocations.

Insurance

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

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

National Payment Switch

In December 2012, Bangladesh began phasing in a National Payment Switch (NPSB) for processing electronic transactions through various channels, including ATMs, point of sale, mobile devices, and the Internet. The main objectives of the NPSB are to create a common electronic platform for payments throughout Bangladesh, facilitate the expansion of debit and credit card-based payments, and promote electronic commerce.

Initially, only ATM transactions were routed through the NPSB. Yet Bangladesh intends to expand the system and, at present, seems to be requiring certain point of sale transactions to be routed through the system. In practical terms, the NPSB is limiting the ability of global suppliers of electronic payment services to participate in the market. While there has been no formal guidance from Bangladesh Bank requiring them to do so, financial institutions report that they have been pressured informally to use NPSB rather than other commercial payment switches available. Bangladesh Bank's position as both regulator and market participant (it owns NPSB) creates a formidable barrier for competitors to the NPSB.

Security of NPSB transactions is another issue raised by market participants. The NPSB can only process magnetic strip data and cannot yet process the data stored on secure chips. Banks and payment networks have requested that the central bank review its policies on the NPSB and hold discussions with all stakeholders to address their security concerns.

Broadcasting

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

OTHER BARRIERS

Bureaucratic inefficiencies often discourage investment in Bangladesh. Overlapping administrative procedures and a lack of transparency in regulatory and administrative systems can frustrate investors seeking to undertake projects in the country. Frequent transfers of top- and mid-level officials in various 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 under current law. But U.S. and other international investors have raised concerns that outbound transfers from Bangladesh remain cumbersome and that applications to repatriate profits or dividends can be held for additional information gathering or otherwise delayed, if tax disputes arise. Government officials cite concerns that allowing even limited outward transfers would lead to a flood of capital from Bangladesh.

U.S. and other international companies have raised concerns that the National Board of Revenue has arbitrarily reopened sometimes decades-old tax cases, with particular targeting of cases involving multinational companies.

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

Land disputes are common, and both U.S. companies and citizens have filed complaints about fraudulent land sales. For example, sellers fraudulently claiming ownership have transferred land to good faith purchasers while the actual owners were living outside of Bangladesh. In other instances, U.S.-Bangladeshi dual citizens have purchased land from legitimate owners only to have third parties make fraudulent claims of title to extort settlement compensation.

Likewise, corruption remains a serious impediment to investment in Bangladesh. While the government has established legislation to combat bribery, embezzlement, and other forms of corruption, enforcement is inconsistent. The 2007-2008 caretaker government attempted to address the culture of corruption in Bangladesh by increasing prosecutions, implementing systemic reforms, and strengthening the role of the Anti-Corruption Commission (ACC), the main institutional anti-corruption watchdog. Continual efforts to ease public procurement rules and proposals to curb the independence of the ACC, however, have undermined even these limited institutional safeguard efforts. A 2013 amendment to the ACC Law removed the ACC's authority to sue public servants without prior government permission. While the ACC has increased pursuit of cases against lower-level government officials and some higher-level officials, there remains a large backlog of cases.

Concerns over the safety of infrastructure and industrial relations practices also have discouraged greater investment and trade. The rapid growth of the garment sector in recent years has led to unregulated expansion in the number and size of factories. The collapse of the Rana Plaza building and the death of 1,129 workers in April 2013 highlighted health and safety concerns in the country's factories and the lack of effective oversight and regulation. Recent initiatives by the government of Bangladesh, international garment buyers, and the International Labor Organization have led to improvements in factory safety standards and transparency over the past three years, although remediation of safety issues has progressed unevenly. A lack of meaningful progress towards labor law reform overall, including in the country's export processing zones, has also been a major point of concern for Bangladeshi and international stakeholders. Limited protections for labor organizations, weak enforcement of existing protections, and long delays in the labor court system have led to a deep distrust of sanctioned association and bargaining processes, and a reliance on unofficial or "wildcat" industrial actions.

BRAZIL

TRADE SUMMARY

The U.S. goods trade surplus with Brazil was $4.1 billion in 2016, a 1.5 percent decrease ($61 million) over 2015. U.S. goods exports to Brazil were $30.3 billion, down 4.3 percent ($1.4 billion) from the previous year. Corresponding U.S. imports from Brazil were $26.2 billion, down 4.7 percent. Brazil was the United States' 12th largest goods export market in 2016.

U.S. exports of services to Brazil were an estimated $28.1 billion in 2015 (latest data available) and U.S. imports were $7.8 billion. Sales of services in Brazil by majority U.S.-owned affiliates were $47.0 billion in 2014 (latest data available), while sales of services in the United States by majority Brazil-owned firms were $2.0 billion.

U.S. foreign direct investment in Brazil (stock) was $65.3 billion in 2015 (latest data available), a 10.0 percent decrease from 2014. U.S. direct investment in Brazil is led by manufacturing, nonbank holding companies, and finance/insurance.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Telecommunications – Acceptance of Test Results

Pursuant to Resolution 323 of November 2002, the Brazilian National Telecommunications Agency (ANATEL) requires testing of telecommunication products and equipment by designated testing facilities in Brazil, rather than allowing testing by a facility certified by an independent certification body. The only exception is in cases where the equipment is too large or too costly to transport to the designated testing facilities. Because of these requirements, U.S. manufacturers and exporters must present virtually all of their information technology and telecommunication equipment for testing at laboratories located in Brazil before that equipment can be placed on the Brazilian market. This redundant testing increases costs for U.S. exporters and can delay the time to market for their products.

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

Toys – Conformity Assessment Procedures

In December 2016, Brazil's National Institute of Metrology, Quality, and Technology (INMETRO) issued a final measure providing for testing and conformity assessment requirements for toys (Ordinance 563/2016). The measure will enter into force on December 30, 2018. Since July 2014, INMETRO had been developing new testing requirements (Ordinances 310/2014; 489/2014; 428/2015; and 597/2015), which are intended to improve conformity assessment procedures and consolidate all toy-related

certification requirements into a single measure. Under previous regulations, toy manufacturers were required to register manufacturing facilities; the new regulation goes further and requires the registration of each toy as part of a family of products. In addition, it appears that product labels have to bear a separate registration number for each product family, which must be obtained through a new "Object Registration" (Registro de Objeto) system prior to importation. The application of the new Object Registration system to toys is expected to increase the complexity of the existing certification system, create delays in importing toys, and increase costs for importers and Brazilian consumers. This system also requires U.S. exporters to submit commercially sensitive and confidential business information.

Quality Requirements for Wine and Derivatives of Grape and Wine

On May 24, 2016, Brazil notified the WTO Committee on Technical Barriers to Trade (TBT) of the draft technical regulation to set the official identity and quality standards for wine and derivatives of grape and wine products. The U.S. Government and industry submitted comments on the draft regulation in July 2016. Previous drafts of this measure were notified to the TBT Committee in 2010 and 2015. The U.S. industry continues to be concerned that Brazil's definition of wine coolers and wine cocktails is overly trade restrictive and does not allow for the addition of colors, aromas and flavors that are already permitted in spirits-based beverages. There are also concerns that the measure requires analytical parameters for laboratory analysis that do not correlate with the safety and quality of the product. We seek to clarify the varieties of grapes that are allowed to make fine wine, the types of sugars that may be added to wine for sweetening, and the pesticides that are allowable. We also seek at least a six month transition period to adapt to new labeling requirements. The United States expressed its concern to Brazil regarding the drafts of this measure in the June and November 2016 TBT Committee meetings. We will continue to raise concerns and seek clarifications as Brazil finalizes this measure in 2017.

Sanitary and Phytosanitary Barriers

Pork

U.S. fresh, frozen and further processed pork products are ineligible for import into Brazil. Brazil has indicated it will only authorize imports of U.S.-origin pork and pork products that have been tested and shown to be free of trichinae or otherwise mitigated. The United States does not consider these requirements for trichinosis to be necessary as U.S. pork producers maintain stringent biosecurity protocols that serve to limit the incidence of trichinosis in the United States to extremely low levels in commercial swine. On August 10, 2016, USDA sent a U.S. export certificate proposal for fresh pork and pork products to the Ministry of Agriculture, Livestock, and Food Supply (MAPA). MAPA is reviewing the proposal.

IMPORT POLICIES

Tariffs

Brazil is a member of the Southern Common Market (MERCOSUR) customs union, formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. Venezuela was suspended as a full member from MERCOSUR in December 2016. MERCOSUR maintains a Common External Tariff (CET) schedule, with most favored nation (MFN) applied tariff rates ranging from zero to 35 percent *ad valorem*. The CET allows for a limited number of exceptions, but Brazil's import tariffs generally follow the MERCOSUR CET. Brazil's MFN applied tariff rate averaged 10 percent for agricultural products and 13.5 percent for non-agricultural products in 2015. Brazil's average bound tariff rate in the WTO is significantly higher at 35.4 percent for agricultural products and 30.8 percent for non-agricultural products. Brazil's maximum bound tariff rate for industrial products is 35 percent, while its maximum bound tariff rate for agricultural products is 55 percent. Given the large disparities between bound and applied rates, U.S. exporters face

significant uncertainty in the Brazilian market because the government frequently increases and decreases tariffs to protect domestic industries from import competition and to manage prices and supply. The lack of predictability with regard to tariff rates makes it difficult for U.S. exporters to forecast the costs of doing business in Brazil.

Brazil imposes relatively high tariffs on imports across a wide range of sectors, including automobiles, automotive parts, information technology and electronics, chemicals, plastics, industrial machinery, steel, and textiles and apparel. Under a July 16, 2015 MERCOSUR Common Market Council decision, Brazil is permitted to maintain 100 exceptions to the CET until December 31, 2021. Using these exceptions, Brazil maintains higher tariffs than its MERCOSUR partners on certain goods, including cellular phones, telecommunications equipment, computers and computer printers, wind turbines, certain chemicals and pharmaceuticals, cosmetics, joint cement, hydrogenated castor oil, white mineral oils, hydrogen carbonate, machining centers, speed changers, and certain instruments and models designed for demonstration purposes.

In 2010, MERCOSUR's Common Market Council (CMC) advanced toward the establishment of a Customs Union with its approval of a Common Customs Code (CCC) through Decisions 027/2010 and Decision 056/2010 (both dated December 2010) to implement 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 thus far, only Argentina has done so. Brazil's executive branch continues to work on draft legislation to ratify the CCC.

Brazil agreed to establish a 750,000 metric ton (MT) duty-free MFN tariff-rate quota (TRQ) for wheat as part of its Uruguay Round commitments. Brazil has never opened the TRQ, and therefore, no wheat has been shipped under it. In April 1996, Brazil notified the WTO of its intent to withdraw the wheat TRQ in accordance with the negotiating process established in Article XXVIII of the GATT 1994. Brazil applies the CET tariff rate for wheat of 10 percent, but could increase this rate at any time to as high as the 55 percent WTO bound rate. The United States continues to seek predictable and meaningful access to the Brazilian market for U.S. wheat growers.

Nontariff Barriers

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

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

On August 31, 2015, Brazil issued a decree to reform its excise tax regime for alcoholic beverages, which introduced a tax advantage for domestic producers of cachaça, a distinctive product produced from sugarcane. Pursuant to this decree, which was signed into law on December 30, 2015, Brazil imposes a 25

percent *ad valorem* IPI on domestically-produced cachaça, while imposing a 30 percent *ad valorem* IPI on all other alcoholic beverages, including Tennessee Whiskey, bourbon, gin and vodka.

Brazil generally prohibits imports of used consumer goods, including automobiles, clothing, tires, medical equipment, and information and communications technology (ICT) products, as well as imports of certain blood products. However, Secretariat of Foreign Trade (SECEX) Ordinance 23/2011 establishes an exceptions list of 25 categories of used goods approved for import under certain specific circumstances. Brazil also restricts the entry of certain types of remanufactured goods (*e.g.*, earthmoving equipment, automotive parts, and medical equipment). Brazil only allows the importation of such goods if an importer can provide evidence that the goods are not or cannot be produced domestically, or if they meet certain other limited exceptions.

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

Import Licenses and Customs Procedures

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

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

U.S. footwear and apparel companies have expressed concern about the extension of non-automatic import licenses and certificate of origin requirements on non-MERCOSUR footwear, textiles and apparel. They also note the imposition of 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.

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

U.S. companies continue to complain of burdensome documentation requirements for the import of certain types of goods that apply even if imports are on a temporary basis. In addition, the Ministry of Health's regulatory agency, ANVISA, must approve product registrations for imported pharmaceuticals, medical devices, health and fitness equipment, cosmetics, and processed food products. The registration process at ANVISA typically takes from three months to more than a year for new versions of existing products and more than six months for new products.

SUBSIDIES

The Plano Brasil Maior (Greater Brazil Plan) industrial policy offers a variety of tax, tariff, and financing incentives to encourage local producers and production for export. For example, Brazil allows tax-free

purchases of capital goods and inputs to domestic companies exporting over 50 percent of their output. Similarly, the Reintegra program, launched in December 2011 as part of Plano Brasil Maior, exempted from certain taxes exports of goods covering 8,630 tariff lines, and allowed Brazilian exporters to receive up to three percent of their gross receipts from exports in tax refunds. The Reintegra program expired at the end of 2013 and was reintroduced in July 2014 through Law 13043/2014. The program was amended in September 2014 through Decree 8304 to add sugar, ethanol, and cellulose, among others, to the list of eligible products. The Reintegra program was amended again in February 2015 (Decree 8415) and October 2015 (Decree 8543), establishing that throughout most of 2015, exporters received one percent of gross receipts from exports in tax refunds, dropping to 0.1 percent for 2016, and increasing to two percent for 2017.

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

In 2015 (latest data available), Brazil's National Bank for Economic and Social Development (BNDES) provided approximately $40.7 billion (R$135.94 billion) in assistance to various sectors of the Brazilian economy through several different programs. BNDES provided approximately $1.3 billion (R$4.5 billion) to the Investment Maintenance Program (PSI) in 2016 to finance the purchase of locally-manufactured capital goods at preferential fixed rates. Most of the lending under this program was used to finance infrastructure projects under the Growth Acceleration and the Logistics Investment programs. Total BNDES financing dropped 27.6 percent in 2015 compared to 2014.

Another BNDES program, FINAME, provides preferential financing for the sale and export of Brazilian machinery and equipment, and provides financing for the purchase of imports of such goods provided that such goods are not produced domestically. The funding is used to finance capacity expansions and equipment purchases in industries such as steel and agriculture. BNDES also provides preferential financing for wind and solar farm development, contingent upon progressively more stringent local content requirements. Currently, wind turbine suppliers of any nationality are eligible to receive preferential BNDES financing, provided the wind towers are built with at least 70 percent Brazilian steel by 2016, and photovoltaic suppliers must use 60 percent Brazilian-made components by 2020. In 2015, BNDES funding for FINAME was approximately $7.45 billion (R$24.88 billion).

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

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

Brazil provides tax reductions and exemptions on many domestically-produced ICT and digital goods that qualify for status under the Basic Production Process (Processo Produtivo Básico, or PPB). The PPB

provides benefits for the production and development of goods that incorporate a certain minimum amount of local content. Tax exemptions are also provided for the development and build-out of telecommunications broadband networks that utilize locally developed products and investments under the Special Taxation Regime for the National Broadband Installation Program for Telecommunication Networks (Regime Especial de Tributação do Programa de Banda Larga para Implantação de Redes de Telecomunicações, or REPNBL-Redes).

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

Brazil also provides a broad range of assistance to its agricultural sector in the form of low interest financing, price support programs, tax exemptions, and tax credits. Brazil establishes minimum guaranteed prices for specific commodities through different programs to ensure that the returns to producers do not fall below the guaranteed level. These programs include the Federal Government Acquisition (AGF) program, the Acquisition from Public Option Contracts (POC) program, the Premium for Product Outflow (PEP) program, and the Premium Equalizer Payment to the Producer (PEPRO) program. Under the AGF and POC programs, the Brazilian government purchases commodities to maintain prices at the level of the minimum guaranteed price. Under the PEP and PEPRO programs, producers or processors receive a government payment in return for purchasing commodities shipped to specified regions in Brazil or exported. The primary difference between these two programs is that the PEP payment goes to the first purchaser of the commodity while PEPRO payments are made through an auctioning system to producers or cooperatives, but the administration of the programs is the same. The amount of the PEP/PEPRO payment is based on the difference between the minimum price set by the government and the prevailing market price. Each PEP/PEPRO auction notice specifies the commodity to be tendered and the approved destinations for that product, including export destinations. From 2003 through 2015, approximately 38 million metric tons of commodities received assistance under PEPRO at a cost of R$4.4 billion (U.S. $1.2 billion). Most of that assistance was for cotton, corn, wheat, and oranges. In 2015, the PEPRO program also supported the production of 33,000 metric tons of rubber. In November 2016, the Ministry of Agriculture, Livestock, and Food Supply (MAPA) announced that they would use both the PEP and PEPRO programs for wheat, which fell below the minimum price in October.

GOVERNMENT PROCUREMENT

U.S. companies without a substantial in-country presence regularly face significant obstacles to winning government contracts and often are more successful in subcontracting with larger Brazilian firms. 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.

Brazil gives procurement preference to firms that produce in Brazil and that fulfill certain economic stimulus requirements such as generating employment or contributing to technological development, even if their bids are up to 25 percent more expensive than bids submitted by foreign firms not producing in Brazil. The law allows for "strategic" ICT goods and services procurements to be restricted to those with indigenously developed technology. The Ministry of Industry, Foreign Trade, and Services maintains an 8 percent preference margin for domestic producers in the textile, clothing, and footwear industries when bidding on government contracts, and 5 percent to 25 percent preference margins for domestically produced backhoes, motor graders, and a variety of pharmaceuticals.

In 2012, Brazil's Ministry of Science, Technology and Innovation issued the "Bigger IT Plan," which establishes a process for the government to evaluate and certify that software products are locally developed in order to qualify for price preferences. Brazil's regulations (Decrees 8.184, 8.185, and 8.186) require federal agencies and parastatal entities to give preferences as high as 25 percent for domestically produced high technology products such as printers and data processing machines, executive jets, certain ICT equipment, and local software services.

Presidential Decree 8.135, adopted in 2013, imposes cyber auditing requirements on IT systems used by Brazilian government entities. The decree continues to be implemented in stages and is a concern for U.S. technology companies because of the potentially prohibitive costs of having a system certified for an individual market.

State-controlled oil company Petrobras' local content requirements are established and regulated by Brazil's National Petroleum Agency (ANP). Local content requirements vary by hydrocarbon resource block (the geographic area that is awarded by the Brazilian government to companies for oil and gas exploration), and within that block local content requirements differ for equipment, workforce, and services. Beginning with offshore bid rounds in 2003, local content requirements were as low as 30 percent. Over time, ANP requirements have gradually become more rigorous with local content requirements now commonly ranging between 37-60 percent depending on the location and type of hydrocarbon block to be explored. Technology-intensive equipment and services are subject to higher local content requirements than low-technology equipment and services.

Brazil is not a signatory to the WTO Agreement on Government Procurement (GPA).

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Brazil remained on the Special 301 Watch List in 2016. Brazil is an increasingly important market for domestic and foreign IP-intensive industries; however, administrative and enforcement challenges continue to stymie market access. Brazil has taken steps to address a backlog of pending patent and trademark applications, including the implementation of a Patent Prosecution Highway pilot program for oil and gas industry applications, but considerable delays remain, with reported pendency averages of three years for trademarks and 11 years for patents. A regulation that gives the health regulatory agency, ANVISA, the authority to conduct a parallel review of patent applications for pharmaceutical products and processes further exacerbates delays of patent registrations and has prevented patent examination by the National Institute of Industrial Property (INPI). Further, while Brazilian law and regulations provide for protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for veterinary and agricultural chemical products, similar protection is not provided for pharmaceutical products. Additionally, in spite of continued enforcement efforts by some Brazilian agencies, pirated and counterfeit goods remain in physical markets, and pirated content is readily accessible online. The United States will continue to engage Brazil on these and other IP-related issues.

SERVICES BARRIERS

Audiovisual Services and Broadcasting

Brazil imposes a fixed tax on each foreign film released in theaters, on foreign home entertainment products, and on foreign programming for broadcast television. The taxes are significantly higher than the corresponding taxes levied on Brazilian productions.

Remittances to foreign producers of audiovisual works are subject to a 25 percent income withholding tax. The producer can elect to invest 70 percent of this tax in local independent productions. In addition, local distributors of foreign films are subject to a levy equal to 11 percent of remittances to the foreign producer. This levy, a component of the CONDECINE (Contribution to the Development of a National Film Industry), is waived if the producer agrees to invest an amount equal to three percent of the remittance in local independent productions. The CONDECINE levy is also assessed on foreign video and audio advertising.

Brazil requires that all films and television shows be printed locally. Importation of color prints for the theatrical and television markets is prohibited. Domestic film quotas also exist for theatrical screening and home video distribution.

In 2011, Brazil enacted law 12.485, which covers the subscription television market, including satellite and cable television. The law permits telecommunication companies to offer television packages with their services and removes the previous 49 percent limit on foreign ownership of cable television companies. However, there are content quotas requiring every channel to air at least three and a half hours per week of Brazilian programming during prime time. Additionally, one-third of all channels included in any television package must be Brazilian. The law also makes subscription television programmers subject to the 11 percent CONDECINE levy on remittances. This levy may be waived if an amount equal to three percent of remittances is invested in local productions. In addition, the law delegates significant programming and advertising regulatory authority to the national film industry development agency, ANCINE.

Cable and satellite operators are subject to a fixed levy on foreign content and foreign advertising released on their channels. Foreign ownership in media outlets is limited to 30 percent, including the print and "open broadcast" (non-cable) television sectors. Eighty percent of the programming aired on "open broadcast" television channels must be Brazilian.

Express Delivery Services

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

The Brazilian government charges a flat 60 percent duty for all goods imported through the Simplified Customs Clearance process used for express delivery shipments. This flat rate is higher than duties normally levied on goods arriving through regular mail, putting express delivery companies at a competitive disadvantage. The Simplified Customs Clearance process is applicable only to shipments having no commercial purpose; business-to-business and business-to-consumer shipments are not eligible for express clearance. Moreover, Brazilian Customs has established maximum value limits of $5,000 for exports and $3,000 for imports sent using express services. Express delivery companies may transport shipments of higher value, but such shipments are subject to a formal import and declaration process.

Financial Services

Through Resolutions 225 and 232, the Brazilian National Council on Private Insurance (CNSP) restricts foreign insurers' participation in the Brazilian market. Brasil Resseguros SA, a state-controlled company, monopolized the provision of reinsurance in Brazil until the enactment of Complementary Law 126 in 2007, which allowed private reinsurers to operate in the Brazilian market. The Superintendent Office of Private Insurance (SUSEP) keeps and discloses a list of reinsurance companies authorized to function in Brazil. In August 2010, the Brazilian government passed Complementary Law 126/2007, an updated form of Complementary Law 137/2010, to liberalize entrance into national markets for foreign firms. For a foreign company to qualify as an admitted reinsurer, it must have a representation office in Brazil, meet the requirements of Complementary Law 126/2007, keep an active registration with SUSEP, and maintain a minimum solvency classification issued by a risk classification agency equal to Standard & Poor's or Fitch ratings of at least BBB.

In July 2015, under CNSP Resolution 332, the Brazilian government announced a significant relaxation of the restrictions on foreign insurers' participation in the Brazilian market, established in Resolutions 225 and 232. Under the new rules, the preferential offer rate for local reinsurers will remain at 40 percent of each cession, but mandatory cessions will be decreased to 30 percent in 2017, 25 percent in 2018, 20 percent in 2019, and 15 percent in 2020. The cap on intra-group cessions, currently 20 percent, will be increased annually to 30 percent in 2017, 45 percent in 2018, 60 percent in 2019, and 75 percent in 2020. Although the restrictions will not be eliminated entirely under the new rules, these changes mark a significant improvement.

Telecommunications

Auctions

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

Local Content Requirements

The rules governing a recent spectrum auction in Brazil appear to require winning bidders to provide a preference for technology, services, equipment, and materials produced in Brazil, as they build out their networks. Previous auctions held in 2012 and 2014 likewise appear to mandate the purchase of domestically-produced and domestically-developed goods during network build-out.

Among the major regulations of concern are the Certification of National Technology Software and Related Services (or CERTICs) and the Basic Production Process (8248/1991). Brazil's Bigger IT Industrial Plan (*"TI Maior"*) includes the CERTICs certification component, which favors software developed in Brazil

in public procurement processes. Although some stakeholders report the policy has not been applied recently, it has not been formally rescinded. Under the Basic Production Process, Brazil provides tax incentives for locally sourced information and ICT equipment. This process is currently being challenged by the European Union and Japan in the WTO, and a decision from the dispute settlement panel is expected to be issued soon.

Satellites

In 2004, ANATEL issued resolution 386, which requires foreign satellite operators to acquire landing rights and pay annual landing rights fees to provide service in Brazilian territory. These landing rights are granted for a fixed term no longer than 15 years, after which time the landing rights must be reacquired in order to continue providing services. Moreover, ANATEL increased the reserve amounts at auction for satellite filings by 17-fold between 2006 and 2015, and these reserve amounts in turn determine the landing rights fees for foreign satellites. These landing fees are unpredictable and higher for foreign companies than for Brazilian firms.

Unlike a Brazilian-owned auction winner that acquires the exclusive right to operate a satellite and its associated frequencies from the selected Brazilian orbital location, the operator of a foreign-licensed satellite does not acquire the same exclusive right when seeking an authorization to provide services in Brazil. Instead, the foreign satellite operator obtains a non-exclusive right (a landing right) to provide service in Brazilian territory. The foreign satellite operator obtains its authorization from its own local administration to construct, launch, and operate a space station from a specific orbital location. Landing rights in a given jurisdiction simply allow the satellite operator to provide a satellite service legally in that jurisdiction, in competition with all other terrestrial and satellite operators that are licensed there.

INVESTMENT BARRIERS

Foreign Ownership of Agricultural Land

The National Land Reform and Settlement Institute (INCRA) administers the purchase and lease of Brazilian agricultural land by foreigners. Under the applicable rules, the area of agricultural land bought or leased by foreigners cannot account for more than 25 percent of the overall land area in a given municipal district. Additionally, no more than 10 percent of agricultural land in any given municipal district may be owned or leased by foreign nationals from the same country. The rules also make it necessary to obtain congressional approval before large plots of agricultural land can be purchased by foreign nationals, foreign companies, or Brazilian companies with majority foreign shareholding. Draft Law 4059/2012, which would lift the limits on foreign ownership of agricultural land, is expected to be voted on by the Brazilian Congress in 2017.

BARRIERS TO DIGITAL TRADE

Data Localization

Data localization was not included in the original text of Brazil's 2014 Civil Rights Framework for the Internet, or *Marco Civil*, legislation. However, Brazil is currently considering draft legislation that could regulate cross border data flows and storage requirements. While these bills advanced in committee in 2016, they are not expected to come to a floor vote until mid-2017.

As Brazil looks to complement *Marco Civil* with comprehensive data protection and privacy legislation, it is considering several proposals that could be modeled after the European Union's approach. The United States and the technology industry intend to work with Brazil during the legislative process to spur

innovation, economic growth, and societal well-being through flexible regulatory regimes, robust cross-border data flows, and a free and open Internet.

Technology

Source Code

Presidential Decree 8135/2013 requires that government agencies procure email, file sharing, teleconferencing and Voice over Internet Protocol (VoIP) services from a federal Brazilian public entity such as the SERPRO, Brazil's Federal Data Processing Agency. Subsequent implementing regulations (Portarias 141 and 54) impose additional requirements including auditing of government contractors' systems and access to their source code. In August 2016, the Ministry of Planning announced its intention to revoke the decree in favor of approved hardware and software solutions for government entities, but it has not yet issued an alternative measure.

Internet Services

Liability/Safe Harbor

Although there are proposed laws that would modify *Marco Civil*, including a provision that would force online companies to assume liability for all user communications and publications, these proposals have not advanced substantially in Brazil's Congress. Industry submissions cite eight concerning proposals originating in the Brazilian Parliamentary Commission of Inquiry (CPI) Cybercrimes Commission. Of these, the most advanced proposal is PL 5204/2016, which would amend *Marco Civil* to allow the judiciary, in consideration of public interest, proportionality, scope, and speed, to block Internet sites and applications to deter to cybercrime. Instant messaging applications would be excluded from blocking.

BRUNEI DARUSSALAM

TRADE SUMMARY

The U.S. goods trade surplus with Brunei was $601 million in 2016, a 427.1 percent increase ($487 million) over 2015. U.S. goods exports to Brunei were $615 million, up 360.8 percent ($481 million) from the previous year. Corresponding U.S. imports from Brunei were $14 million, down 29.1 percent. Brunei was the United States' 92nd largest goods export market in 2016.

U.S. exports of services to Brunei were an estimated $74 million in 2015 (latest data available) and U.S. imports were $9 million.

TECHNICAL BARRIERS TO TRADE

Technical Barriers to Trade

Meat and Poultry Products – Halal Standards

Most food sold in Brunei is certified as *halal*. However, there is a small market for non-*halal* foods, which must be sold in designated rooms in grocery stores separated from other products or at restaurants that are specified as non-*halal*. The Ministry of Religious Affairs administers Brunei's *halal* standards, which are among the most stringent in the world.

Under the *Halal* Meat Act, *halal* meat (including beef, mutton, lamb, and chicken) can be imported only by a person holding a *halal* import permit and an export permit from the exporting country. The importers and local suppliers of *halal* meat must be Muslim. The Bruneian government maintains a list of the foreign and local slaughtering centers that have been inspected and declared fit for supplying meat that can be certified as *halal*. Brunei's stringent system of abattoir approval involves on-site inspections carried out by Bruneian government officials for every establishment seeking to export meat or poultry to Brunei. *Halal* meat must be kept separately from non-*halal* meat at all times, and halal certification must be renewed annually by the Brunei Religious Council. Non-*halal* food importers must also notify the Ministry of Religious Affairs.

IMPORT POLICIES

Tariffs

Brunei has bound 95.3 percent of its tariff lines, according to the WTO, with an average bound MFN tariff rate of 25.4 percent. Its average applied MFN tariff rate is 1.2 percent. With the exception of a few products, including coffee, tea, tobacco, and alcohol, tariffs on agricultural products are zero. Brunei applies duties of up to 20 percent on automotive parts.

GOVERNMENT PROCUREMENT

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

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

Brunei is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Brunei has made recent progress on IPR enforcement and was not listed in the 2016 Special 301 Report. Concerns remain in some areas, however, including with respect to whether Brunei provides effective protection against unfair commercial use and against unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. The United States will continue to work bilaterally with Brunei to address these concerns.

OTHER BARRIERS

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

In June 2016, the Brunei government announced a land code amendment that has created uncertainty over land rights. The order would retroactively restrict non-citizens, including Brunei ethnic minorities, from buying, selling, or holding land by means of powers of attorney or trust deeds. The amendments were published in the official government gazette, but have not been implemented. Domestic and foreign stakeholders in Brunei have raised concerns about the retroactive application of these amendments to existing contracts.

CAMBODIA

TRADE SUMMARY

The U.S. goods trade deficit with Cambodia was $2.5 billion in 2016, a 7.0 percent decrease ($184 million) over 2015. U.S. goods exports to Cambodia were $362 million, down 7.5 percent ($29 million) from the previous year. Corresponding U.S. imports from Cambodia were $2.8 billion, down 7.0 percent. Cambodia was the United States' 103rd largest goods export market in 2016.

IMPORT POLICIES

Tariffs

Cambodia is one of the few least-developed WTO Members that made binding commitments on all products in its tariff schedule when it joined the WTO in 2004. Cambodia's overall simple average bound tariff rate is 19.1 percent, while the average applied tariff rate is around 11.2 percent. Cambodia's highest applied tariff rate is 35 percent, which is imposed across a number of product categories, including a wide variety of prepared food products, bottled and canned beverages, cigars and cigarette substitutes, table salt, paints and varnishes, cosmetic and skin care products, glass and glassware, electrical appliances, cars, furniture, video games, and gambling equipment.

Customs

Both local and foreign businesses have raised concerns that the Customs and Excise Department engages in practices that are nontransparent and that appear arbitrary. Importers frequently cite problems with undue processing delays, burdensome paperwork, and unnecessary formalities.

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

Taxation

Cambodia levies trade-related taxes in the form of customs duties, additional taxes on gasoline ($0.02 per liter) and diesel oil ($0.04 per liter), two indirect taxes (a value-added tax (VAT) and an excise tax), and taxes on exports. The VAT is applied at a uniform rate of 10 percent. To date, the VAT has been imposed only on large companies, but the Cambodian government is working to expand the base to which the tax is applied. To meet this objective, the Department of Taxation has piloted a number of measures. One recent effort allows customers to submit purchase receipts to the department via a smart phone application, which allows the tax department staff to see discrepancies when they look at companies' tax reports, thereby discouraging tax evasion. The VAT is not collected on exports and services consumed outside of Cambodia (technically, a zero percent VAT applies). Subject to certain criteria, the zero percent rate also applies to businesses that support exporters and subcontractors that supply goods and services to exporters, such as agricultural exporters and garment and footwear manufacturers.

GOVERNMENT PROCUREMENT

The government has a general requirement for competitive bidding in procurements valued over KHR 100 million (approximately $25,000). However, 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. Additionally, differing

prequalification procedures exist at the provincial level, which further limit the opportunity for prospective contractors to participate in tenders.

Irregularities in the public procurement process are common despite a strict legal requirement for audits and inspections. Despite accusations of malfeasance at a number of ministries, the Cambodian government has taken little action to investigate irregularities.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Cambodia was not listed in the 2016 Special 301 Report, and public awareness of the dangers of counterfeit products is gradually increasing. However, the U.S. Government has some concerns regarding the protection and enforcement of intellectual property rights in Cambodia. Pirated CDs, DVDs, software, garments, and other copyrighted materials, as well as an array of counterfeit goods, including pharmaceuticals, are reportedly widely available in Cambodian markets. The rates of signal and cable piracy also remain high and online sites purveying pirated music, films, eBooks, software, and television shows are spreading and gaining in popularity. Legislation that would address protection of trade secrets is under review at the Ministry of Commerce and expected to be sent to the Council of Ministers in 2017. In addition, legislation on encrypted satellite signals is under the consultation at the Ministry of Posts and Telecommunications, and legislation on semiconductor layout designs is under review at the Ministry of Industry and Handicraft. The United States will continue to meet bilaterally with Cambodia under our bilateral TIFA and other dialogues to urge Cambodia to take steps to improve IPR protection and enforcement.

Cambodia acceded to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (the Madrid Protocol) in June 2015. With this accession, an applicant can apply for a trademark in Cambodia by filing a single international application at a national or regional intellectual property office of a country or region that is party to the system.

Although legal enforcement of the protection of collective rights is still limited, the Ministry of Culture and Fine Arts enacted framework regulation for collective management organizations in 2016. Collective management organizations are formed by copyright owners to manage their rights in common, by administering licenses, collecting royalties, and enforcing rights on their behalf.

Cambodia is a member of the Patent Cooperation Treaty and became bound to the treaty on December 8, 2016. In addition, in November 2016, Cambodia acceded to the Hague Agreement Concerning the International Registration of Industrial Designs, which took effect on February 25, 2017. The Ministry of Industry and Handicrafts Office of Patents and Industrial Design has indicated that it is planning to join the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure in 2017.

INVESTMENT BARRIERS

Cambodia's constitution restricts foreign ownership of land. A 2010 law allows foreign ownership of property above the ground floor of a structure, but stipulates that no more than 70 percent of a building can be foreign-owned, and that foreigners cannot own property within 30 kilometers of the national border. Although foreign investors may use land through concessions and renewable leases, the Cambodian government in 2012 imposed a moratorium on Economic Land Concessions (ELCs), which allowed long-term leases of state-owned land. The Cambodian government reportedly also has reviewed and revoked previously granted ELCs on the grounds that the recipients had not complied with the ELC terms and

conditions. As of February 2016, the Cambodian government reported that a countrywide review of ELCs resulted in the re-appropriation of over one million hectares of land, but land rights activists dispute the accuracy of these reports.

Investors also report high electricity and logistics costs, poor infrastructure, lack of human resources, and corruption as challenges to the investment climate.

BARRIERS TO DIGITAL TRADE

The Ministry of Commerce projects that a draft electronic commerce law will be available for parliamentary review in 2017. Cambodia is the only ASEAN country that has not yet enacted an electronic commerce law.

OTHER BARRIERS

Corruption

Both foreign and local businesses have identified corruption in Cambodia as a major obstacle to business and a deterrent to investment, with Cambodia's judiciary viewed as one of the country's most corrupt institutions. In 2010, Cambodia adopted anti-corruption legislation and established a national Anti-Corruption Unit to undertake investigations, implement law enforcement measures, and conduct public outreach. Enforcement, however, remains inconsistent. The Anti-Corruption Unit's participation in investigations of political opponents of the ruling party has tarnished its reputation as an unbiased enforcer of rules.

Cambodia began publishing official fees for public services at the end of 2012 in an effort to combat "facilitation" payments, but this exercise has yet to be completed. After national elections in July 2013, certain agencies, such as the Ministry of Commerce and the General Department of Taxation, started providing online information and services in an effort to reduce paperwork and unofficial fees. In addition, anti-corruption information has been incorporated into the national high school curriculum, and civil servants' salaries are disbursed through commercial banks. Although these changes have improved Cambodia's scoring on Transparency International's Corruption Perception Index for 2015, the country still ranked 150th out of 167 countries.

Judicial and Legal Framework

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

Smuggling

The smuggling (illegal importation) of products, such as cosmetics, textiles, wood, sugar, vehicles, fuel, soft drinks, livestock, crops, and cigarettes, remains widespread, and the Cambodian government has worked to address this issue. It has issued numerous orders to stop smuggling and has created various anti-smuggling units within government agencies, including the General Department of Customs and Excise, and has established a mechanism within this department to accept and act upon complaints from the private sector and foreign governments. Enforcement efforts, however, remain weak and inconsistent.

CANADA

TRADE SUMMARY

The U.S. goods trade deficit with Canada was $11.2 billion in 2016, a 27.7 decrease ($4.3 billion) over 2015. U.S. goods exports to Canada were $266.8 billion, down 4.9 percent ($13.8 billion) from the previous year. Corresponding U.S. imports from Canada were $278.1 billion, down 6.1 percent. Canada was the United States' largest goods export market in 2016.

U.S. exports of services to Canada were an estimated $56.4 billion in 2015 (latest data available) and U.S. imports were $29.0 billion. Sales of services in Canada by majority U.S.-owned affiliates were $134.5 billion in 2014 (latest data available), while sales of services in the United States by majority Canada-owned firms were $89.0 billion.

U.S. foreign direct investment in Canada (stock) was $352.9 billion in 2015 (latest data available), a 1.5 percent decrease from 2014. U.S. direct investment in Canada is led by manufacturing, nonbank holding companies, and finance/insurance.

Trade Agreements

North American Free Trade Agreement – The North American Free Trade Agreement (NAFTA), signed by the United States, Canada, and Mexico (the Parties), entered into force on January 1, 1994. At the same time, the United States suspended the United States-Canada Free Trade Agreement, which had entered into force in 1989. Under the NAFTA, the Parties progressively eliminated tariffs and nontariff barriers to trade in goods among them, provided improved access for services, established strong rules on investment, and strengthened protection of intellectual property rights. After signing the NAFTA, the Parties concluded supplemental agreements on labor and the environment.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANTIARY BARRIERS

Technical Barriers to Trade

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 seeds of a variety that is not registered. The purpose of variety registration is to provide government oversight to ensure that health and safety requirements are met and that information related to the identity of the variety is available to regulators in order to prevent fraud. However, there are concerns that the variety registration system is slow and cumbersome. The United States is consulting with Canada on steps to modernize and streamline Canada's variety registration system.

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.

IMPORT POLICIES

Agricultural Supply Management

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

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

Milk Classes

Canada provides milk components at discounted prices to domestic processors under the Special Milk Class Permit Program (SMCPP). These prices are "discounted" in the sense that they are lower than Canadian support prices and reflect U.S. or world prices. The SMCPP is designed to help Canadian processed products compete against imports in Canada and in foreign markets. Effective May 1, 2016, the Canadian Milk Supply Management Committee (CMSMC) modified an existing national milk class, Class 4(m), to extend discount pricing to a wider range of Canadian dairy ingredients, including liquid dairy ingredients (an action taken by CMSMC as an agency of Canada's government). An agreement reached between Canadian dairy farmers and processors in July 2016 included a new national milk class (Class 7) that extends discount pricing to an even wider range of Canadian dairy ingredients. Provincial milk marketing boards (agencies of Canada's governments) began implementing Class 7 in February 2017. Both Class 7 and the modification to Class 4(m) are aimed at undercutting the price and displacing current sales of U.S. dairy ingredients.

The United States has raised its serious concerns with Class 7 and the modification to Class 4(m) (and Class 6—see below) with Canada bilaterally and at the WTO Committee on Agriculture, and is examining these milk classes closely.

Ontario Milk Class 6

Ontario introduced a provincial Ingredient Strategy and implemented a new milk class on April 1, 2016, (Class 6) that provides Ontario processors skim milk solids at discounted prices, aiming to undercut the price and displace current sales of U.S. dairy ingredients.

Restrictions on U.S. Grain Exports

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

Under the *Canada Grain Act*, the inspection certificate for grain grown outside Canada, including U.S. grain, can only state the country of origin for that grain and not issue a grade. Also, the *Canada Grain Act* directs the Canadian Grain Commission to "establish grades and grade names for any kind of western grain

and eastern grain and establish the specifications for those grades" by regulation. The explicit division between "eastern grain" and "western grain," are defined in the *Canada Grain Act* as "grain grown in the [Eastern or Western] Division," defined geographically within Canada, further underscores that grading is only available to Canadian grains. Under the *Canada Grain Act,* only grain of varieties registered under Canada's *Seeds Act* may receive a grade higher than the lowest grade allowable in each class

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

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

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

Personal Duty Exemption

Canada's personal duty exemption for residents who bring back goods from short trips outside of its borders is less generous than the U.S. personal duty exemption. Canadians who spend more than 24 hours outside of Canada can bring back C$200 worth of goods duty free, or C$800 for trips over 48 hours. Canada provides no duty exemption for returning residents who have been out of Canada for fewer than 24 hours. U.S. retailers have raised concerns about the effect of this policy on purchases by Canadians on short trips to the United States.

***De Minimis* Threshold**

De minimis refers to the maximum threshold below which no duty or tax is charged on imported items. Canada's *de minimis* threshold remains at C$20, which is the lowest among industrialized nations. By comparison, in March 2016, the United States raised its *de minimis* threshold from $200 to $800. Some stakeholders, particularly shipping companies and online retailers, maintain that Canada's low *de minimis* threshold creates an unnecessary trade barrier.

Wine, Beer, and Spirits

Canadians face high provincial taxes on personal imports of U.S. wines and spirits upon their return to Canada from the United States. This inhibits Canadians from purchasing U.S. alcoholic beverages while in 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 in those provinces 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 sell), reference prices (either maximum prices the liquor board is willing to pay or prices below which imported products may not be sold), labeling requirements, discounting policies (requirements that suppliers offer rebates or reduce their prices to meet sales targets), and distribution policies.

British Columbia

In January 2017, the United States requested WTO dispute settlement consultations on British Columbia measures regarding the sale of wine in grocery stores. These measures allow only British Columbia wines to be sold on grocery store shelves, while imported wine in grocery stores can only be sold in a "store within a store" under controlled access with separate case registers, discriminating against the sale of U.S. wine in grocery stores. These regulations appear to breach Canada's WTO commitments and have adversely impacted U.S. wine producers.

Ontario

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

Quebec

Quebec's new measure raises concerns that it may discriminate against imported wines. The measure may advantage Quebec craft wine producers by allowing them to bypass the liquor board, *Société des alcools du Québec* (SAQ), and therefore also the liquor board mark-ups, to sell directly to grocery stores.

DOMESTIC SUPPORT MEASURES

Aerospace Sector Support

Canada released a comprehensive review of its aerospace and space programs in November 2012. The review offered 17 recommendations intended to strengthen the competitiveness of Canada's aerospace and space industries and guide future government involvement in both sectors. Recommendations called on the Canadian government to create a program to support large-scale aerospace technology demonstration, co-fund a Canada-wide initiative to facilitate communication among aerospace companies and the academic community, implement a full cost recovery model for aircraft safety certification, support aerospace worker training, and co-fund aerospace training infrastructure.

The review also recommended that the Canadian government continue funding the Strategic Aerospace and Defense Initiative (SADI). The SADI provides repayable support for strategic industrial research and pre-competitive development projects in the aerospace, defense, space, and security industries, and has authorized C$1.32 billion to fund 33 advanced research and development projects since its establishment in 2007.

The Canadian federal government and the Quebec provincial government announced aid to the Bombardier aircraft company in 2008 to support research and development related to the launch of the new class of Bombardier CSeries commercial aircraft. The federal government provided C$350 million in financing for the CSeries aircraft, and the government of Quebec provided another C$118 million. The federal government and Quebec government also are offering commercial loans to potential buyers of the aircraft. In February 2017, the government of Canada announced $284 million assistance to Bombardier. The federal government will make a direct $97 million repayable contribution to Bombardier's Montreal-based CSeries program, and a $187 million loan to Bombardier's Toronto-based Global 7000 program using

Canada's Strategic Aerospace and Defense Initiative, making it one of the largest loans ever made with the SADI program. In June 2016, Bombardier reached a final agreement with the Quebec government for the province to buy a 49.5 percent equity share in a CSeries joint-venture for $1 billion, with a commitment by the company to maintain aircraft manufacturing operations in Quebec for a period of 20 years. Under the agreement, Bombardier received two $500 million payments from the Quebec government, the first on June 30 and the second on September 1.

In February 2017, Brazil requested consultations in the World Trade Organization alleging that Canadian federal and provincial subsidies provided to Bombardier are inconsistent with Canada's international trade obligations. The United States will join these consultations as a third party.

The United States will continue to monitor carefully any government financing and support of the CSeries aircraft.

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

Canada has committed to spend approximately C$25 million from 2009 to 2018 to support the Green Aviation Research and Development Network and provide additional funding to the National Research Council's Industrial Research Assistance Program to support research and development in Canada's aerospace sector. Canada's federal government announced in October 2016 that a consortium of companies and academic institutions, led by Bombardier, will receive up to C$54 million to develop "the next generation of aircraft technologies."

GOVERNMENT PROCUREMENT

Canada has made commitments to open its government procurement to U.S. suppliers under the WTO Agreement on Government Procurement (GPA) and NAFTA. The current agreements provide U.S. businesses with access to procurement conducted by most Canadian federal departments and a large number of provincial entities, and to procurement by some but not all of Canada's Crown Corporations. The 2010 United States-Canada Agreement on Government Procurement includes market access obligations which have either expired or are captured under the revised GPA.

Hydro-Québec, a provincial-level Crown Corporation in Quebec, maintains a local (Quebec) content requirement in its procurements for wind energy projects, and these local content requirements can pose hurdles for U.S. companies in the renewable energy sector in Canada.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Protection and enforcement of intellectual property rights (IPR) is a continuing priority in bilateral trade relations with Canada. In 2013, the U.S. Government moved Canada from the Priority Watch List in the Special 301 Report to the Watch List in light of steps taken to improve copyright protection through the Copyright Modernization Act. The United States welcomed Canada's amendment to its Copyright Act in June 2015 that extends protection for sound recordings from 50 to 70 years from the date of recording. With respect to pharmaceuticals, the United States continues to have concerns about the application of patent utility standards that Canadian courts have adopted. The United States has concerns about due process and transparency of the geographical indications system in Canada, including commitments Canada

took under the Canada-EU Comprehensive Economic and Trade Agreement (CETA) on October 30, 2016.

On IPR enforcement, Canada's Parliament passed the Combating Counterfeit Products Act on December 9, 2014, but the United States is disappointed that Canada did not amend this legislation to allow for inspection of in-transit counterfeit trademark goods and pirated copyright goods entering Canada destined for the United States. Additionally, there continue to be questions about the effectiveness of Canada's copyright safe harbor system. The United States continues to work with Canada to address IPR issues.

SERVICES BARRIERS

Telecommunications

Canada maintains a 46.7 percent limit on foreign ownership of certain suppliers of facilities-based telecommunication services (*i.e.*, those with more than 10 percent market share), except for submarine cable operations. This is one of the most restrictive regimes among developed countries. Canada also requires that Canadian citizens comprise at least 80 percent of the membership of boards of directors of facilities-based telecommunication service suppliers. As a consequence of these restrictions on foreign ownership, the role of U.S. firms in the Canadian market as wholly U.S.-owned operators has been limited to that of resellers, dependent on Canadian facilities-based operators for critical services and component parts.

Canadian Content in Broadcasting

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

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

For cable television and direct-to-home broadcast services, more than 50 percent of the channels received by subscribers must be Canadian channels. Non-Canadian channels must be pre-approved ("listed") by the CRTC. Upon an appeal from a Canadian licensee, the CRTC may determine that a non-Canadian channel competes with a Canadian pay or specialty service, in which case the CRTC may either remove the non-Canadian channel from the list (thereby revoking approval to supply the service) or shift the channel into a less competitive location on the channel dial.

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

In September 2015, the CRTC released a new Wholesale Code that governs certain commercial arrangements between broadcasting distribution undertakings, programming undertakings, and exempt digital media undertakings. A proposal in the new Wholesale Code to apply a code of conduct designed for vertically-integrated suppliers in Canada (*i.e.*, suppliers that own infrastructure and programming) to foreign programming suppliers (who by definition cannot be vertically integrated, as foreign suppliers are

prohibited from owning video distribution infrastructure in Canada) has raised significant stakeholder concerns. Additionally, stakeholders have expressed concern related to provisions in the Wholesale Code that affect U.S. broadcast signals and services within Canada. The Wholesale Code came into force January 22, 2016.

U.S. suppliers of programming also have raised concerns about a CRTC policy not to permit simultaneous substitution of advertising for the Super Bowl, beginning in the 2016-2017 season. Simultaneous substitution is a process by which broadcasters can insert local advertising into a program, overriding the original U.S. advertising and providing the Canadian broadcaster an independent source of revenue. U.S. suppliers of programming believe that the price Canadian networks pay for Super Bowl rights is determined by the value of advertising they can sell in Canada, and that the CRTC's decision reduces the value of their programming. On August 19, 2016, the CRTC issued a formal rule preventing simultaneous substitution during the Super Bowl by a major Canadian telecommunication company, which has exclusive rights to air the Super Bowl in Canada. The United States is highly concerned about this policy.

INVESTMENT BARRIERS

The Investment Canada Act (ICA) has regulated foreign investment in Canada since 1985. Foreign investors must notify the government of Canada prior to the direct or indirect acquisition of an existing Canadian business above a threshold value. Canada amended the ICA in 2009 to raise the threshold for Canada's "net benefit" review of foreign investment. The threshold currently stands at C$600 million and had been scheduled to increase to C$1 billion in 2019. The government announced November 1, 2016 that the threshold for review will be raised to C$1 billion in 2017, two years sooner than originally planned 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. Foreign acquisition proposals under government review must demonstrate a "net benefit" to Canada to be approved. The Industry Minister may disclose publicly that an investment proposal does not satisfy the net benefit test and publicly explain the reasons for denying the investment, so long as the explanation will not do harm to the Canadian business or the foreign investor.

Under the ICA, the Industry Minister can make investment approval contingent upon meeting certain conditions such as minimum levels of employment and research and development. Since the global economic slowdown in 2009, some foreign investors in Canada have had difficulty meeting these conditions.

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

BARRIERS TO DIGITAL TRADE

Data Localization

The Canadian federal government is consolidating information and communication technology (ICT) services across 63 Canadian federal government email systems under a single platform. The tender for this project cited national security as a reason for requiring the contracted company to keep data in Canada. This requirement effectively precludes U.S.-based "cloud" computing suppliers from participating in the procurement process, unless they replicate data storage and processing facilities in Canada. The public sector represents approximately one third of the Canadian economy and is a major consumer of U.S.

services, particularly in the information and communication technology sector. The requirement, therefore, is likely to have significant impact on U.S. exports of a wide array of products and services.

British Columbia and Nova Scotia each have laws that mandate that personal information in the custody of a public body must be stored and accessed only in Canada unless one of a few limited exceptions applies. These laws prevent public bodies, such as primary and secondary schools, universities, hospitals, government-owned utilities, and public agencies, from using U.S. services when there is a possibility that personal information would be stored in or accessed from the United States.

CHILE

TRADE SUMMARY

The U.S. goods trade surplus with Chile was $4.1 billion in 2016, a 37.9 percent decrease ($2.5 billion) over 2015. U.S. goods exports to Chile were $12.9 billion, down 16.2 percent ($2.5 billion) from the previous year. Corresponding U.S. imports from Chile were $8.8 billion, up 0.3 percent. Chile was the United States' 23rd largest goods export market in 2016.

U.S. exports of services to Chile were an estimated $4.0 billion in 2015 (latest data available) and U.S. imports were $1.6 billion. Sales of services in Chile by majority U.S.-owned affiliates were $9.6 billion in 2014 (latest data available), while sales of services in the United States by majority Chile-owned firms were $180 million.

U.S. foreign direct investment (FDI) in Chile (stock) was $27.3 billion in 2015 (latest data available), a 1.0 percent increase from 2014. U.S. direct investment in Chile is led by mining, finance/insurance, and manufacturing.

THE UNITED STATES-CHILE FREE TRADE AGREEMENT

The FTA entered into force on January 1, 2004. Pursuant to the FTA, Chile immediately eliminated tariffs on over 85 percent of bilateral trade in goods. All duties for U.S. goods entering Chile were eliminated on January 1, 2015. Since the FTA's entry into force, trade between the United States and Chile more than tripled, making the United States Chile's second-largest trading partner (after China, which is a significant importer of Chile's copper).

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANTIARY BARRIERS

Technical Barriers to Trade

Nutritional Labeling

On June 26, 2016, Decree 13, the implementing regulation to the Law on Food Nutritional Composition and its Advertising (Number 20.606, published in June 2012), came into effect. The regulation addresses the labeling of the nutritional composition and the advertising of certain food products. It requires warning labels on certain prepackaged food products if they exceed specified thresholds of sodium, sugar, energy (calories), and saturated fats. Specifically, the regulation requires food products that exceed the thresholds to bear a black octagonal "stop" sign for each category with the words "High in" salt, sugar, energy, or saturated fat. Foods exceeding thresholds in more than one category would require multiple stop signs. The thresholds are established based on a 100 gram or 100 ml serving and are not calibrated to the actual serving size of the package of food being sold.

Additionally, the regulation prohibits the use of images deemed to constitute "advertising to children" under age 14 for any product requiring one or more "stop" signs. Implementation of Decree 13, particularly the interpretation of registered trademarks on product packaging as advertising, has been inconsistent. The Ministry of Health has prevented products from entering the Chilean market on the basis that images on product packaging, including registered trademarks, is within the ambit of the decree and constitutes

advertising to children. These actions have resulted in delays, shortages, and repackaging that have cost U.S. firms millions of dollars in lost sales and other expenses.

The United States has raised concerns about this issue with Chile within the framework of the WTO Committee on Technical Barriers to Trade (WTO TBT Committee), in the Free Trade Commission and TBT Committee established under the FTA, and other fora. The United States will continue to raise these issues with Chile.

Cell Phone Labeling and Emergency Warning Alerts

A new "norm" for cellphone labeling was announced by Chile's Ministry of Transportation and Telecommunications (Subtel) on June 16, 2016. This requirement is expected to enter into force in the first half of 2017. Labels will be required to indicate whether cellphones or mobile devices are suitable for 2G, 3G, or 4G. Authorities have not officially clarified who will bear the cost of labeling or if stickers are expected to be applied in Chile or at point of origin. For a 4G phone certification, the device must support the bands 700 MHz, 2600 MHz and Advanced Wireless Services (AWS). In Chile, some mobile phone companies currently pay an extra cost to unlock the AWS band. Thus if a device has 4G capability but the AWS band is not accessible it will be labeled instead as 2G or 3G. We have asked Chile to notify this measure to the WTO.

In June 2016, Subtel published External Resolution 1474, which calls for a mandatory and universal emergency alert (vibration) to be included in all cellphone or mobile devices. The Resolution is expected to enter into force in March 2017. Subtel has not defined the list of certifying agents, clarified the technical guidelines for the new emergency alert system, nor enumerated a plan for transition of compatibility requirements with existing inventory in-country.

Sanitary and Phytosanitary Barriers

Salmonid Products Ban

In 2010, Chile's Ministry of Fisheries, SERNAPESCA, suspended imports of salmonid species from all countries, including the United States, due to Chile's revised import regulations for aquatic animals, including salmonid eggs. Under the new regulations, U.S. producers cannot export salmonid eggs to Chile until SERNAPESCA completes a risk analysis and an on-site audit of the USDA's oversight of aquatic animal exports and U.S. salmonid egg production sites. An audit of USDA's oversight of production sites in the states of Washington and Maine was conducted in 2011. USDA and SERNAPESCA have continued technical discussions. The United States and Chile agreed, through an exchange of several letters in late 2014 and again in 2015, to steps to advance Chile's consideration of a resumption of imports from the states of Washington and Maine. In November 2016 USDA's Animal and Plant Health Inspection Service (APHIS) sent additional technical information requested by SERNAPESCA. APHIS is waiting for a formal response from SERNAPESCA.

IMPORT POLICIES

Tariffs and Taxes

Chile has one of the most open trade regimes in the world with a uniform MFN applied tariff rate of 6 percent for nearly all goods. Certain goods carry unique tariffs, such as tobacco products (nearly 60 percent) and pyrotechnics (50 percent). A surcharge is applied to imports of luxury goods, including new cars.

Many capital goods may be imported with an applied tariff rate of zero percent under specific conditions. Pursuant to the FTA, as of January 1, 2015, all originating U.S. goods enter Chile duty free.

Importers must pay a 19 percent value-added tax (VAT) calculated based on the cost, insurance, freight (CIF) value of the import. The VAT is also applied to nearly all domestically produced goods and services. Certain products (regardless of origin) are subject to additional taxes, such as an 18 percent tax on sugared non-alcoholic beverages, a 20 percent tax on beers and wines, and a 31.5 percent tax on distilled alcoholic beverages. Cigarettes are subject to a 30 percent *ad valorem* tax plus approximately $0.07 per cigarette; other tobacco products have taxes between 52.6 percent and 59.7 percent.

Pursuant to changes in Chile's tax law, foreign shareholders must pay a 35 percent tax on capital gains that are recognized in connection with the sale or other transfer of Chilean shares on or after January 1, 2017. This tax change applies to capital gains from the sale of shares in Chilean companies, regardless of their participation in the stock exchange (Bolsa de Comercio). Such capital gains were previously subject to tax at a rate of 20 or 35 percent, depending on certain requirements. Under the new rules, the rate is 35 percent on net gain in all cases. Under the U.S. – Chile dual tax treaty, which has not yet been ratified by the U.S. Senate, certain companies would be exempt from the 35 percent tax. The tax treaty would also reduce withholding tax rates on royalties, dividends, interest payments, and capital gains. Further, the treaty would exempt U.S. engineering, financial services, and other service companies from a 35 percent withholding tax, and U.S.-headquartered banks and insurance companies would be subject to a reduced 4 percent withholding tax rate on interest earned in Chile.

Import Controls

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. Licensing requirements appear to be used primarily for statistical purposes; legislation requires that most import licenses be granted as a routine procedure. More rigorous licensing procedures apply for certain products such as pharmaceuticals and weapons.

Nontariff Barriers

Companies are required to contract the services of a customs broker when importing or exporting goods valued at over $1,000 free on board (FOB). Companies established in any of Chile's free trade zones are exempt from the obligation to use a customs broker when importing or exporting goods, and noncommercial shipments valued at less than $500 also are exempted. Chile's two free trade zones are the Free Zone of Iquique in the northern tip of Chile and the Free Zone of Punta Arenas in the southern tip.

EXPORT POLICIES

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

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Chile remained on the Priority Watch List in the 2016 Special 301 Report due to weaknesses in the adequacy and effectiveness of Chile's protection and enforcement of intellectual property rights. Specific obstacles include lack of protection against the unlawful circumvention of technological protection measures, lack of effective remedies to address satellite and cable TV piracy, failure to ratify the (1991) Act of the International Convention for the Protection of New Varieties of Plants, and an ineffective Internet Service Provider liability regime. The 2016 Report also urged Chile to address challenges in reviewing patent issues in connection with applications to market pharmaceutical products and to provide adequate protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approvals for pharmaceutical products. The United States continues to work with Chile to address these and other IP issues.

CHINA

TRADE SUMMARY

The U.S. goods trade deficit with China was $347.0 billion in 2016, a 5.5 percent decrease ($20.1 billion) over 2015. U.S. goods exports to China were $115.8 billion, down 0.3 percent ($297 million) from the previous year. Corresponding U.S. imports from China were $462.8 billion, down 4.2 percent. China was the United States' 3rd largest goods export market in 2016.

U.S. exports of services to China were an estimated $48.4 billion in 2015 (latest data available) and U.S. imports were $15.1 billion. Sales of services in China by majority U.S.-owned affiliates were $54.9 billion in 2014 (latest data available), while sales of services in the United States by majority China-owned firms were $4.8 billion.

U.S. foreign direct investment in China (stock) was $74.6 billion in 2015 (latest data available), a 10.5 percent increase from 2014. U.S. direct investment in China is led by manufacturing, wholesale trade, and depository institutions.

KEY TRADE BARRIERS

The United States continues to pursue vigorous and expanded bilateral and multilateral engagement to increase the benefits that U.S. businesses, workers, farmers, ranchers, service providers and consumers derive from trade and economic ties with China. In an effort to remove Chinese barriers blocking or impeding U.S. exports and investment, the United States uses outcome-oriented dialogue at all levels of engagement with China, while also taking concrete steps to enforce U.S. rights at the WTO as appropriate. 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 2016 USTR Report to Congress on China's WTO Compliance, issued on January 9, 2017, at https://ustr.gov/sites/default/files/2016-China-Report-to-Congress.pdf. The USTR Report to Congress on China's WTO Compliance provides comprehensive information on the status of the trade and investment commitments that China has made through the United States-China Joint Commission on Commerce and Trade (JCCT) and the United States-China Strategic and Economic Dialogue (S&ED).

INTELLECTUAL PROPERTY RIGHTS 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 IPR of domestic and foreign rights holders, as required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). Currently, China is in the midst of a further round of revisions to these laws and regulations, as it seeks to make them more effective. Nevertheless, inadequacies in China's IPR protection and enforcement regime continue to present serious barriers to U.S. exports and investment. As a result, China was again placed on the Priority Watch List in USTR's 2016 Special 301 report. In addition, in December 2016, USTR announced the results of its 2016 Out-of-Cycle Review of Notorious Markets, which identifies online and physical markets that exemplify key challenges in the global struggle against piracy and counterfeiting. Several Chinese markets were among those named as notorious markets.

Trade Secrets

The protection and enforcement of trade secrets in China is a serious problem and has been the subject of high-profile attention and engagement in recent years. Thefts of trade secrets for the benefit of Chinese companies have occurred both within China and outside of China. Offenders in many cases continue to operate with impunity. Most troubling are reports that actors affiliated with the Chinese government and the Chinese military have infiltrated the computer systems of U.S. companies, stealing terabytes of data, including the companies' intellectual property (IP), for the purpose of providing commercial advantages to Chinese enterprises. To help address these challenges, the United States previously has won commitments from China not to condone this type of state-sponsored misappropriation of trade secrets and has urged China to make certain key amendments to its trade secrets-related laws and regulations, particularly with regard to a draft revision of the *Anti-unfair Competition Law*. China also has committed to issue judicial guidance to strengthen its trade secrets regime. The United States also has urged China to take actions to address this problem across the range of state-sponsored actors and to promote public awareness of this issue. In 2016, China circulated for public comment a draft of proposed revisions to the *Anti-unfair Competition Law*, but it included only minor changes to the provisions on trade secrets and therefore did not address the full range of U.S. concerns in this area. At the November 2016 JCCT meeting, China confirmed that it is strengthening its trade secrets regime and plans to bolster several areas of importance, including the availability of evidence preservation orders and damages based on market value as well as the issuance of a judicial interpretation on preliminary injunctions and other matters.

Bad Faith Trademark Registration

Of particular and growing concern is the continuing registration of trademarks in bad faith. Although China has taken some steps to address this problem, 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. At the November 2016 JCCT meeting, China publicly noted the harm that may be caused by bad faith trademarks and confirmed that it is taking further steps to combat bad faith trademark filings.

Pharmaceuticals

The United States continues to engage China on a range of patent and technology transfer concerns relating to pharmaceuticals. At the December 2013 JCCT meeting, China committed to permit supplemental data supporting pharmaceutical patent applications. However, to date, it appears that China has only implemented that commitment in part. In October 2016, China circulated for public comment proposed revisions to its *Patent Examination Guidelines*, which included a proposed revision that would clarify that examiners must consider in their examination process certain post-filing supplemental data. If implemented, this proposed revision would represent an important step toward the supplemental data practice in the United States and other jurisdictions.

Meanwhile, many other concerns remain, including the need to provide effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to provide effective enforcement against infringement of pharmaceutical patents. Additionally, a backlogged drug regulatory approval system presents market access and patient access concerns. At the December 2014 JCCT meeting, China committed to significantly reduce time-to-market for innovative pharmaceutical products through streamlined processes and additional funding and personnel.

A serious concern that first arose in 2015 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, a State Council measure issued in final form without having been made available for public comment calls for expedited regulatory approval to be granted to innovative new drugs where the applicant's manufacturing capacity has been shifted to China. The United States is pressing China to reconsider this approach.

In April 2016, the China 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 marketing approval of new drugs. Given its inconsistency with international science-based regulatory practices, which are based on safety, efficacy and quality, the draft measure elicited serious concerns from the United States and U.S. industry. Subsequently, at the November 2016 JCCT meeting, China agreed not to link a pricing commitment to drug registration evaluation and approval. In addition, China agreed not to require any specific pricing information when implementing the final measure.

Online Piracy

Online piracy continues on a large scale in China, affecting a wide range of industries, including those involved in distributing legitimate music, motion pictures, books and journals, software and video games. While increased enforcement activities have helped stem the flow of online sales of some pirated offerings, much more sustained action and attention is needed to make a more meaningful difference for content creators and rights holders, particularly small and medium-sized enterprises. At the same time, the United States has urged China to consider ways to create a broader policy environment that helps foster the growth of healthy markets for licensed and legitimate content. The United States also has urged China to revise existing rules that have proven to be counterproductive. For example, new rules on the review of foreign television content present a serious concern for the continued viability of licensed streaming of foreign television content via online platforms, as these rules are disrupting legitimate commerce while inadvertently creating conditions that allow for pirated content to displace legitimate content online. Similarly, quotas on foreign video content available on online platforms (limited, per platform, to 30 percent of the previous year's expenditure on content) limit distribution options and drive consumers to illegitimate sites to access popular content.

Counterfeit Goods

Although rights holders report increased enforcement efforts by Chinese government authorities, counterfeiting in China, affecting a wide range of goods, remains widespread. One area of particular U.S. concern involves medications. Despite 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 agreed 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 agreed to publish revisions to the *Drug Administration Law* in draft form for public comment and to take into account the opinions of the United States and other relevant stakeholders. To date, China has not amended this law, reportedly due to the prioritization of reforming the drug regulatory system to reduce the drug approval lag.

INDUSTRIAL POLICIES

Overview

China continued to pursue a wide array of industrial policies in 2016 that seek to limit market access for imported goods, foreign manufacturers and foreign service suppliers, while offering substantial government guidance, resources and regulatory support to Chinese industries. The principal beneficiaries of these constantly evolving policies are China's state-owned enterprises, as well as other favored domestic companies attempting to move up the economic value chain.

Secure and Controllable ICT Policies

In 2015 and 2016, global concerns heightened over a series of Chinese measures that would impose severe restrictions on a wide range of U.S. and other foreign ICT products and services with an apparent long-term goal of replacing foreign ICT products and services. Concerns centered on requirements that ICT equipment and other ICT products and services in critical sectors be "secure and controllable."

Some of these policies would apply to wide segments of the Chinese market. For example, in July 2015, China passed a *National Security Law* whose stated purpose is to safeguard China's security, but it also includes sweeping provisions addressing economic and industrial policy. Additionally, in September 2015, the State Council published a big data development plan, which for the first time set a timetable for adopting "secure and controllable" products and services in critical departments by 2020. China also enacted a *Counterterrorism Law* in December 2015 and then a *Cybersecurity Law* in November 2016, which imposed far-reaching and onerous trade restrictions on imported ICT products and services in China.

Other policies would apply to specific sectors of China's economy. A high profile example from December 2014 is a draft measure issued 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 imposed a series of criteria that would shut out foreign ICT providers from China's banking sector. While CBRC subsequently suspended work on this draft measure following strong complaints from the United States, other specific sectors currently pursuing "secure and controllable" policies include the insurance sector and the electronic commerce sector, among other sectors.

In 2015, the United States, in concert with other governments and stakeholders around the world, raised serious concerns at the highest levels of government within China. President Obama and President Xi discussed this issue during the state visit of President Xi in September and agreed on a set of principles for trade in information technologies. The issue was also raised in connection with the June 2015 S&ED meeting and the November 2015 JCCT meeting, with China making a series of additional important commitments with regard to technology policy.

China reiterated many of these commitments at the November 2016 JCCT meeting, where it affirmed that its "secure and controllable" policies are not to unnecessarily limit or prevent commercial sales opportunities for foreign ICT suppliers or unnecessarily impose nationality based conditions and restrictions on commercial ICT purchases, sales or uses. China also agreed that it would notify relevant technical regulations to the WTO Committee on Technical Barriers to Trade (TBT Committee).

Indigenous Innovation

In 2016, policies aimed at promoting "indigenous innovation" continued to represent an important component of China's industrialization efforts. Through intensive, high-level bilateral engagement, the United States previously secured a series of critical commitments from China that generated major progress in de-linking indigenous innovation policies at all levels of the Chinese government from government procurement preferences, culminating in the issuance of a State Council measure mandating that provincial and local governments eliminate any remaining linkages by December 2011. At the November 2016 JCCT meeting, in response to U.S. concerns regarding the continued issuance of inconsistent measures, China announced that its State Council had issued a document requiring all local regions and all agencies to "further clean up related measures linking indigenous innovation policy to the provision of government procurement preference."

Addressing related concerns, the United States, using the U.S.-China Innovation Dialogue, persuaded China to take an important step at the May 2012 S&ED meeting, where China committed to treat IPR owned or developed in other countries the same as IPR owned or developed in China. The United States also used the 2012 JCCT process to press China to revise or eliminate specific measures that appeared to be inconsistent with this commitment. Throughout 2013 and 2014, China reviewed specific U.S. concerns, and the United States and China intensified their discussions. At the December 2014 JCCT meeting, China clarified and underscored that it will treat IPR owned or developed in other countries the same as domestically owned or developed IPR, and it further agreed that enterprises are free to base technology transfer decisions on business and market considerations, and are free to independently negotiate and decide whether and under what circumstances to assign or license intellectual property rights to affiliated or unaffiliated enterprises.

In 2016, China's measures on "secure and controllable" ICT policy included provisions that would create discriminatory indigenous innovation preferences. In addition, China's recent steps to reform its drug review and approval system raised new concerns related to indigenous innovation and technology transfer. For example, in 2015, China's State Council issued a measure that calls for expedited review and approval to be granted to "innovative new drugs with manufacturing capacity shifted to China." At the November 2016 JCCT meeting, China issued a helpful clarification on the intent of its "secure and controllable" policies, a subject on which the United States will continue to engage with China closely in 2017.

Technology Transfer and Technology Localization

While some longstanding concerns regarding technology transfer remain unaddressed, and new ones have emerged, such as tying government preferences to the localization of technology in China and granting regulatory review and approval preferences to innovative drug manufacturers that shift their production to China, some progress has been made in select areas. For example, China committed at the December 2013 JCCT meeting not to finalize or implement a selection catalogue and rules governing official use vehicles. The catalogue and rules would have interfered with independent decision making on technology transfer and would have effectively excluded vehicles produced by foreign and foreign-invested enterprises from important government procurement opportunities. At the same time, new technology-transfer proposals continue to proliferate. For example, in late 2016, ostensibly to further cybersecurity goals, China proposed a draft standard on the "security controllable evaluation index for central processing units" (semiconductors) that ranked products on the degree to which product design was duplicable in China—essentially requiring technology transfer in order to rank high on this index. How authorities intend to

utilize this index is unclear, but it would appear to create a basis for discriminating against foreign semiconductors based on the degree to which technology is transferred to China.

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, where the claims focused on China's export restraints on rare earths, tungsten and molybdenum, which are key inputs for a multitude of U.S.-made products, including hybrid automobile batteries, wind turbines, energy-efficient lighting, steel, advanced electronics, automobiles, petroleum, and chemicals. China removed those export restraints in May 2015. In July 2016, the United States launched a third WTO case challenging export restraints maintained by China. The challenged export restraints include export quotas and export duties maintained by China on various forms of 11 raw materials, including antimony, chromium, cobalt, copper, graphite, indium, lead, magnesia, talc, tantalum and tin. These raw materials are key inputs in important U.S. manufacturing industries, including aerospace, automotive, construction and electronics.

Subsidies

China has continued to provide substantial subsidies to its domestic industries, causing injury to U.S. industries. Some of these subsidies also appear to be prohibited under WTO rules. The United States has addressed these subsidies through countervailing duty proceedings conducted by the Commerce Department, invocation of a trade policy compliance mechanism established by China's State Council, 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. Since joining the WTO 15 years ago, China has not yet submitted to the WTO a complete notification of subsidies maintained by the central government, and it did not notify a single sub-central government subsidy until July 2016, when it provided information only on sub-central government subsidies that the United States had challenged as prohibited subsidies in a WTO case.

Excess Capacity

Chinese government actions and financial support in manufacturing industries like steel and aluminum have contributed to massive excess capacity in China, with the resulting over-production distorting global markets and hurting U.S. producers and workers in both the United States and third country markets such as Canada and Mexico, where U.S. exports compete with Chinese exports. While China recognizes the severe excess capacity problem in these industries, among others, and has taken steps to try to address this problem, there have been mixed results.

From 2000 to 2014, China accounted for more than 75 percent of global steelmaking capacity growth. While China's capacity growth appears to have slowed since 2014, according to Organization for Economic Cooperation and Development (OECD) figures, China's efforts to address excess capacity to date have not resulted in reduced total steelmaking capacity in China. Currently, China's capacity alone exceeds the

combined steelmaking capacity of the European Union (EU), Japan, the United States, and Russia. China has no comparative advantage with regard to the energy and raw material inputs that make up the majority of costs for steelmaking, yet China's capacity has continued to grow and is estimated to have exceeded 1.16 billion metric tons (MT) in 2016, despite weakening demand domestically and abroad. Steel demand in China decreased 5 percent in 2015 as compared to 2014, and demand in China has been projected to decrease by another 1 percent in 2016 and then by 2 percent in 2017, according to the World Steel Association. As a result, China's steel exports grew to be the largest in the world, at 93 million MT in 2014, a 50-percent increase over 2013 levels, despite sluggish steel demand abroad. In 2015, Chinese exports reached a historic high of 110 million MT, and China's steel exports are expected to grow even further in 2016, causing increased concerns about the detrimental effects that these exports may have on the already saturated world market for steel.

Similarly, monthly production of primary aluminum in China doubled between January 2011 and July 2015 and continues to grow, despite a severe drop in global aluminum prices during the same period. Large new facilities are being built with government support, including through energy subsidies, as China's primary aluminum production accounted for 54 percent of global production from January through October 2016. As a consequence, China's aluminum excess capacity is contributing to a severe decline in global aluminum prices, harming U.S. plants and workers.

Not unlike the situations in the steel and aluminum industries, China's production of soda ash has increased as domestic demand has stagnated. As a result, China's soda ash exports increased 23 percent in 2015 as compared to the previous year, and this trend has continued in 2016. Further, China's soda ash production, which totaled 26 million MT in 2015, is projected to grow at nearly 3 percent annually through 2020, which is more than double China's projected 1.2 percent annual increase in domestic demand over that same time period. It also is estimated that China's excess soda ash capacity will continue to grow in the coming years, reaching over 10.5 million MT by 2019.

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

Value-added Tax Rebates and Related Policies

As in prior years, in 2016, the Chinese government attempted to manage the export of many primary, intermediate and downstream products by raising or lowering the VAT rebate available upon export. China sometimes reinforces its objectives by imposing or retracting export duties. These practices have caused tremendous distortion and uncertainty in the global markets for some products, particularly downstream products where China is a leading world producer or exporter, such as products made by the steel, aluminum and soda ash industries. These practices, together with other policies, such as excessive government subsidization, also have contributed to severe excess capacity in these same industries. A positive development took place at the July 2014 S&ED meeting, when China agreed 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. To date, however, China has not made any movement toward the adoption of international best practices.

Strategic Emerging Industries

In 2010, China's State Council issued a decision on accelerating the cultivation and development of "strategic emerging industries" (SEIs) that called upon China to develop and implement policies designed to promote rapid growth in government-selected industry sectors viewed as economically and strategically important for transforming China's industrial base into one that is more internationally competitive in cutting-edge technologies. China subsequently identified seven sectors for focus under the SEI initiative, including energy-saving and environmental protection, new generation information technology, biotechnology, high-end equipment manufacturing, new energy, new materials and new-energy vehicles. The list of sectors was expanded with the issuance of China's 13th Five-year Plan in March 2016.

To date, import substitution policies have been included in some SEI development plans at the sub-central government level. For example, a development plan for the light-emitting diode (LED) industry issued by the Shenzhen municipal government included a call to support research and development in products and technologies that have the ability to substitute for imports. Shenzhen rescinded the plan in 2013 following U.S. Government intervention with China's central government authorities.

Similarly, some central and sub-central government measures use local content requirements as a condition for enterprises in SEI sectors to receive financial support or other preferences. For example, in the high-end equipment manufacturing sector, China has maintained an annual program that conditioned the receipt of a subsidy on an enterprise's use of at least 60 percent Chinese-made components when manufacturing intelligent manufacturing equipment. Citing WTO concerns, the United States began pressing China in 2014 to repeal or modify these measures. In 2015, China reported that it had decided not to renew this subsidy program.

In addition, an array of Chinese policies designed to assist Chinese automobile enterprises in developing electric vehicle technologies and in building domestic brands that can succeed in global markets continued to pose challenges in 2016. As previously reported, these policies have generated serious concerns about discrimination based on the country of origin of IP, forced technology transfer, research and development requirements, investment restrictions and discriminatory treatment of foreign brands and imported vehicles. Although significant progress has been made in addressing some of the challenges posed by these policies, more work remains to be done.

In May 2015, China's State Council released "Made in China 2025," a long-term plan spearheaded by the Ministry of Industry and Information Technology (MIIT) intended to raise industrial productivity through more advanced and flexible manufacturing techniques. Specifically, through Made in China 2025, the Chinese government hopes to make advanced manufacturing technologies and sectors a key driver of economic growth. The implicated technologies and sectors include 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, power equipment, farm machinery, new materials, biopharmaceuticals and advanced medical products. According to industry experts, Made in China 2025 represents a modest improvement over SEI development plans and indigenous innovation initiatives rolled out over the past decade. However, Made in China 2025 includes many holdovers from these prior state-driven plans and initiatives, as it, for example, sets targets for indigenous production or control of up to 40 percent of certain critical components in the aerospace, power and construction sectors, among other sectors, by 2020, while aiming to achieve substantial productivity gains in these sectors. Industry experts are skeptical that China will be able to reach its Made in China 2025 goals due to other policies that hold back competition, limit market access and over-regulate new technologies and cross-border data flows.

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, among others, because companies in these industries are unable to purchase high-quality, lower-cost remanufactured products produced outside of China.

Standards

In the standards area, two principal types of problems harm U.S. companies. First, Chinese government officials in some instances have reportedly pressured foreign companies seeking to participate in the standards-setting process to license their technology or intellectual property on unfavorable terms. Second, China has continued to pursue unique national standards in a number of high technology areas where international standards already exist, such as 3G and 4G telecommunication standards, Wi-Fi standards and information security standards. The United States continues to press China to address these specific concerns, but to date this bilateral engagement has yielded minimal progress.

Currently, China is undergoing a large-scale reform of its standards system. As part of this reform, China is seeking to incorporate a "bottom up" strategy in standards development in addition to the existing "top down" system. At the same time, the existing technical committees continue to develop standards. For example, the technical committee for cybersecurity standards has begun allowing foreign companies to participate in standards development and setting, with several U.S. and other foreign companies being allowed to vote and to participate at the working group level in standards development.

Government Procurement

China has committed itself to join the WTO's Government Procurement Agreement. To date, however, the United States, the EU, and other GPA parties have viewed China's offers of coverage as highly disappointing in scope and coverage. China submitted its fifth revised offer in December 2014. This offer showed progress in a number of areas, including thresholds, entity coverage and services coverage. Nonetheless, remains far from acceptable as significant deficiencies remain in a number of critical areas, including thresholds, entity coverage, services coverage and exclusions.

China's current government procurement regime is governed by two important laws. The Government Procurement Law, which is administered by the Ministry of Finance, governs purchasing activities conducted with fiscal funds by state organs and other organizations at all levels of government in China. The Tendering and Bidding Law falls under the jurisdiction of the National Development and Reform Commission 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. The United States will continue to work with the Chinese government to ensure that China's future GPA offers include coverage of government procurement regardless of which law it falls under, including procurement conducted by both government entities and other entities, such as state-owned enterprises.

Investment Restrictions

China seeks to protect many domestic industries through a restrictive investment regime, which adversely affects foreign investors in services sectors, agriculture, extractive industries and manufacturing sectors. In a recent survey, the OECD ranked investment restrictiveness in China at over five times the average of the 58 G20 and OECD members surveyed. In line with its own plans for domestic reform, including as expressed through the November 2013 Third Plenum Decision, China continues to consider improvements to its foreign investment regime, including through the use of a "negative list" as a mechanism to govern access for foreign investors (meaning that all investments are permitted except for those explicitly excluded). However, many aspects of China's current investment regime, including lack of substantial liberalization, maintenance of a case-by-case administrative approval system and the potential for a new and overly broad national security review, continue to cause foreign investors great concern. In addition, foreign enterprises report that Chinese government officials may condition investment approval on a requirement that a foreign enterprise transfer technology, conduct research and development in China, satisfy performance requirements relating to exportation or the use of local content or make valuable, deal-specific commercial concessions.

In part to address these investment restrictions, the United States has engaged in negotiations with China to conclude a high-standard bilateral investment treaty (BIT). In negotiations with the United States, China committed for the first time to negotiate a BIT that would provide national treatment at all phases of investment, including market access (*i.e.*, the "pre-establishment" phase of investment), and would employ a negative list approach in identifying exceptions.

The United States has repeatedly raised concerns with China about its restrictive investment regime. To date, this sustained bilateral engagement has not led to a significant relaxation of China's investment restrictions, nor has it appeared to curtail *ad hoc* actions by Chinese government officials.

Trade Remedies

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

SERVICES BARRIERS

Overview

As in past years, Chinese regulators continued to use discriminatory regulatory processes, informal bans on entry and expansion, overly burdensome licensing and operating requirements, and other means to frustrate the efforts of U.S. suppliers of services, including banking services, insurance services, telecommunication services, Internet-related services (including cloud services), audiovisual services, express delivery services, legal services and other services to achieve their full market potential in China. Some sectors, including electronic payment services and theatrical film distribution, have been the subject of WTO dispute settlement. While China declared an intent to further liberalize a number of services sectors in its Third Plenum Decision, no meaningful concrete steps have been taken.

Electronic Payment Services

China continued to place unwarranted restrictions on foreign companies, including the major U.S. credit card and processing companies, which supply electronic payment services to banks and other businesses that issue or accept credit and debit cards. The United States prevailed in a WTO case challenging those restrictions, and China agreed to comply with the WTO's rulings by July 2013, but China has not yet taken needed steps to authorize access by foreign suppliers to this market. The United States is actively pressing China to comply with the WTO's rulings and is also considering appropriate next steps at the WTO.

Theatrical Films

In February 2012, the United States and China reached an alternative solution 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 foreign film producers. Significantly more U.S. films have been imported and distributed in China since the signing of the MOU, and the revenue received by U.S. film producers has increased significantly. However, China has not yet fully implemented its MOU commitments, including with regard to critical commitments to open up film distribution opportunities for imported films. As a result, the United States has been pressing China for full implementation of the MOU, particularly with regard to films that are distributed in China on a flat-fee basis rather than a revenue-sharing basis. At the June 2015 S&ED meeting, China committed to ensure that any Chinese enterprise licensed to distribute films in China can distribute imported flat-fee films on their own and without having to contract with or otherwise partner with China Film Group or any other state-owned enterprise. China further committed that the State Administration of Press, Publication, Radio, Film and Television (SAPPRFT), China Film Group or any other state-owned enterprise would not directly or indirectly influence the negotiation, terms, amount of compensation or execution of any distribution contract between a licensed Chinese distributor and a U.S. flat-fee film producer. In 2017, under the terms of the MOU, the two sides are scheduled to hold discussions regarding the provision of further meaningful compensation to the United States.

Banking Services

China has exercised significant caution in opening up the banking sector to foreign competition. In particular, China has imposed working capital requirements and other requirements that have made it more difficult for foreign banks to establish and expand their market presence in China. Many of these requirements, moreover, have not applied equally to foreign and domestic banks. For example, China has limited the sale of equity stakes in existing state-owned banks to a single foreign investor to 20 percent, while the total equity share of all foreign investors is limited to 25 percent. Another problematic area involves the ability of U.S. and other foreign banks to participate in the domestic currency business in China. This is a market segment that foreign banks are most eager to pursue in China, particularly with regard to Chinese individuals. Under existing governing regulations, only foreign-funded banks that have had a representative office in China for two years and that have total assets exceeding $10 billion can apply to incorporate in China. After incorporating, banks only become eligible to offer full domestic currency services to Chinese individuals if they can demonstrate that they have operated in China for one year. The regulations also restrict the scope of activities that can be conducted by foreign banks seeking to operate in China through branches instead of through subsidiaries. In addition, Chinese authorities' opaque licensing processes have limited the ability of foreign bank entry or expansion in particular business lines. Partly as a result of these restrictions, foreign banks continue to hold only a small portion (less than 2 percent) of total banking assets in China.

Insurance Services

China's regulation of the insurance sector has resulted in market access barriers for foreign insurers, whose share of China's market remains very low: approximately 5 percent in the life sector and approximately 2 percent in the non-life (property and casualty) sector. In the life insurance sector, China only permits foreign companies to participate in Chinese-foreign joint ventures, with foreign equity capped at 50 percent. For the health and pension insurance sectors, China also caps foreign equity at 50 percent. China's market for political risk insurance is closed to foreign participation, and China restricts the scope of foreign participation in insurance brokerage services. Meanwhile, some U.S. insurance companies established in China sometimes encounter difficulties in getting the Chinese regulatory authorities to issue timely approvals of their requests to open up new internal branches to expand their operations.

Securities, Asset Management and Other Financial Services

China caps foreign ownership in securities joint ventures and asset management companies at 49 percent foreign equity. Foreign investors also are only permitted to own up to 49 percent of mutual fund companies, futures brokerages and credit rating agencies. Bilateral engagements with China have helped achieve some progress in securities and fund management sectors over the years, including China increasing the permitted foreign ownership stake in joint ventures in securities firms from 33 to 49 percent after 2012. In addition, at the June 2016 S&ED meeting, China committed to gradually raise the percentage of equity that qualified foreign financial institutions can hold in securities and fund management companies. Recently, China also has allowed wholly owned asset managers to engage in private securities fund management business.

Telecommunications Services

Restrictions maintained by China on both basic and value-added telecommunication services have created serious barriers to market entry for foreign suppliers. Restrictions on basic telecommunication services have blocked foreign suppliers from accessing a sector in China that has witnessed explosive growth. China has informally banned on new entry – only a handful of Chinese and no foreign-invested suppliers have been licensed as basic suppliers since China's entry into the WTO, almost two decades ago. There is also a requirement that foreign suppliers enter the China market only through joint ventures with state-owned enterprises, and capital requirements exceeding $100 million, although entry requirements for value-added services are less onerous, only a handful of foreign firms have been granted licenses, and stakeholders report non-transparent requirements and procedures. For example, in a recently revised telecommunication services catalogue, the licensing authority restricts foreign entry to the narrow list of services China set forth in its WTO GATS commitments, instead of embracing a broad and flexible definition of value-added services that would allow for innovation. In addition, China has not formally articulated how its WTO GATS commitments correspond to its domestic catalogue. In May 2013, in a positive but very modest move toward liberalization, China introduced rules establishing a pilot program for the resale of mobile services, which can increase competitive opportunities in China's heavily concentrated market. However, China continues to exclude foreign firms from the pilot program, and there are indications that China may be backing off from this initiative altogether, despite promises to create a resale license category available to all firms, irrespective of nationality. The United States continues to press for progress in institutionalizing resale access on the same basis as provided to domestic companies.

Audio-visual Services

Despite boasting the world's fastest-growing movie theater market, China's 49 percent foreign equity limit for entities supplying theater services and onerous requirements for screening domestic films have

discouraged U.S. investment. In addition, China's restrictions on services associated with television, radio and film production and distribution prohibit or greatly limit participation by foreign suppliers.

Express Delivery Services

The United States continues to raise concerns with China regarding implementation of the 2009 Postal Law and related regulations. China has blocked foreign companies' access to the document segment of China's domestic express delivery market, and it does not have a strong track record of providing non-discriminatory treatment in awarding foreign companies business permits for access to the package segment of China's domestic express delivery market, where it also applies overly burdensome regulatory approaches.

Legal Services

China has issued measures intended to implement the legal services commitments that it made upon joining the WTO. However, these measures restrict the types of legal services that can be provided by foreign law firms, including through a prohibition on foreign law firms hiring lawyers qualified to practice Chinese law, and impose lengthy delays for the establishment of new offices.

BARRIERS TO DIGITAL TRADE

Overview

China's Internet regulatory regime is restrictive and non-transparent, affecting a broad range of commercial services activities conducted via the Internet. In addition, China's treatment of foreign companies seeking to participate in the development of cloud computing services, including computer data and storage services provided over the Internet, raises concerns.

Cloud Computing Restrictions

In major markets, including China, cloud computing services are typically offered through commercial presence in one of two ways: as an integrated service in which the owner and operator of a telecommunication network also offers computing services, including data storage and processing function, over that network; or as a stand-alone computer service, with the customer responsible for arranging connectivity to the computing service site. Although China's GATS commitments cover both options, neither is currently open to foreign-invested companies.

China is seeking to similarly restrict the ability of foreign enterprises to offer cloud computing services into China on a cross-border basis. Late in 2016, China's regulator issued a draft notice on regulating cloud computing, elements of which also appeared in a recently issued measure entitled "On Cleaning up and Regulating Internet Access Services Market" that prohibits Chinese telecommunication operators from offering consumers leased lines or virtual private network connections reach to overseas data centers. The United States has raised this issue with China and continues to evaluate it in the context of China's WTO GATS obligation to ensure access to and use of leased lines for cross-border data processing services. The United States will work to ensure that legitimate cross-border services can continue to be offered into China.

Web Filtering and Blocking

China continues to engage in extensive blocking of legitimate websites, imposing significant costs on both suppliers and users of web-based services and products. According to the latest data, China currently blocks 11 of the top 25 global sites, and U.S. industry research has calculated that up to 3,000 sites in total are blocked, affecting billions of dollars in business, including communications, networking, news and other sites. While becoming more sophisticated over time, the technical means of blocking, dubbed the Great Firewall, still often appears to affect sites that may not be the intended target, but that may share the same Internet Protocol address. In addition, there have been reports that simply having to pass all Internet traffic through a national firewall adds delays to transmission that can significantly degrade the quality of the service, in some cases to a commercially unacceptable level, thereby inhibiting or precluding the cross-border supply of certain services.

Voice-over-Internet Protocol (VOIP) Services

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

Domain Name Rules

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

Cybersecurity Law and Sector-specific Laws Implementing Data and Facilities Localization

A number of elements of China's new Cybersecurity Law, issued in November 2016, authorize Chinese agencies to further restrict market access for cloud computing and other Internet-enabled related services, based on data and facilities localization policies applicable to services deemed critical. China is likely to issue additional sector-specific measures to implement this law, including by identifying services deemed critical. These developments have generated serious concerns in the United States and among U.S. and other foreign companies. The United States will continue to closely monitor developments in this area.

Restrictions on Online Video and Entertainment Software

China restricts the online supply of foreign video and entertainment software through measures affecting both content and distribution platforms. With respect to content, the most burdensome restrictions are implemented through exhaustive content review requirements, based on vague and otherwise non-transparent criteria. In addition, with respect to online video, SAPPRFT has required Chinese online platform suppliers to spend no more than 30 percent of their acquisition budget on foreign content. With respect to distribution platforms, SAPPRFT has instituted numerous measures, such as requirements that video platforms all be state-owned, that prevent foreign suppliers from qualifying for a license. SAPPRFT and other Chinese regulatory authorities have also taken actions to prevent the cross-border supply of online

video services. The United States is carefully evaluating whether measures governing the distribution of both online videos and entertainment software comport with China's WTO GATS commitments, which include both the investment in and cross-border supply of video and entertainment software services. The United States will continue to seek to engage with China to address these restrictions.

Encryption

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

Restrictions on Internet-enabled Payment Services

The People's Bank of China (PBOC) first issued regulations for non-bank suppliers of online payment services in 2010, and it subsequently began processing applications for licensees in a sector that previously had been unregulated. Regulations were further strengthened in 2015, with additional provisions aimed at increasing security and traceability of transactions. According to a recent U.S. industry report, of over 200 such licenses issued as of June 2014, only two were issued to foreign-invested suppliers, and those two were for limited services. This report provides clear evidence supporting stakeholder concerns about the difficulties they have faced entering the market and the slow process foreign firms face in getting licensed. In addition, as with other ICT sectors, PBOC has required suppliers to localize data and facilities in China. The United States will continue to seek to engage with China to address these restrictions.

AGRICULTURE

Overview

China is the largest agricultural export market for the United States, with more than $21 billion in U.S. agricultural exports in 2016, up from $20 billion in 2015. Much of this success resulted from intensive engagement by the United States with China's regulatory authorities. Notwithstanding this success, China remains among the least transparent and predictable of the world's major markets for agricultural products, largely because of uneven enforcement of regulations and selective intervention in the market by China's regulatory authorities. Seemingly capricious practices by Chinese customs and quarantine agencies delay or halt shipments of agricultural products into China. Sanitary and phytosanitary (SPS) measures with questionable scientific bases or a generally opaque regulatory regime frequently have created difficulties and uncertainty for traders in agricultural commodities, who require as much certainty and transparency as possible. With China moving forward with implementation of its 2015 *Food Safety Law*, new regulations – and new concerns such as burdensome and unnecessary requirements for official certification of low-risk food exports – are on the increase. In addition, market access promised through the TRQ system set up pursuant to China's WTO accession agreement still has yet to be fully realized. At the same time, China has been steadily increasing domestic support for key commodities, and reports commissioned by certain U.S. farm groups have concluded that China may be exceeding its WTO limits.

Beef, Poultry and Pork

In 2016, beef, poultry and pork products were affected by questionable SPS measures implemented by China's regulatory authorities. For example, China continued to block the importation of U.S. beef and beef products, more than nine years after these products had been declared safe to trade under international scientific guidelines established by the World Organization for Animal Health (known by its historical acronym OIE), and despite the further fact that in 2013 the United States received the lowest risk status from the OIE, *i.e.*, negligible risk. China also continued to impose an unwarranted and unscientific Avian Influenza-related import suspension on U.S. poultry due to an outbreak of high-pathogenic Avian Influenza (AI), which has now been eliminated in the United States. Specifically, China has been unwilling to follow OIE guidelines and accept poultry from regions in the United States unaffected by this disease. Additionally, China continued to maintain overly restrictive pathogen and residue requirements for raw meat and poultry. Consequently, anticipated growth in U.S. exports of these products was again not realized.

Biotechnology Approvals

Overall delays in China's approval process for agricultural products derived from biotechnology worsened in 2016, creating increased uncertainty among traders and resulting in adverse trade impact, particularly for U.S. exports of corn. In addition, the asynchrony between China's product approvals and the product approvals made by other countries widened.

In February 2016, China issued safety certificates for three of the 11 products of agricultural biotechnology under review. However, China continued to delay approvals for eight other products, with applications dating as far back as 2011, even though more than a dozen other countries have deemed them to be safe. At the JCCT meeting in November 2016, China indicated that it would have the opportunity to review the status of its safety evaluation for these products in December 2016, but it gave no indication as to whether it would issue safety certificates for them.

At the June 2016 S&ED meeting, the United States agreed to provide China's regulators with a study addressing the impact of asynchronous approvals on sustainability, innovation and trade. The United States subsequently commissioned a study, which has been provided to China's regulators.

Domestic Support

For several years, China has been significantly increasing domestic subsidies and other support measures for its agricultural sector. China has established a direct payment program, instituted minimum support prices for basic commodities and sharply increased input subsidies. China has implemented a cotton reserve system, based on minimum purchase prices, and cotton target price programs. It also has begun several new support schemes for hogs and pork, along with a purchasing reserve system for pork. China submitted its most recent notification concerning domestic support measures to the WTO in May 2015, but it only provided information up to 2010. The United States has remained concerned that the methodologies used by China to calculate support levels, particularly with regard to its price support policies and direct payments, result in underestimates. Certain U.S. farm groups have commissioned reports to calculate support levels for certain commodities, including corn, wheat and soybeans, and these reports have concluded that China may be substantially exceeding its WTO-agreed domestic support spending limits. In September 2016, the United States launched a WTO case challenging China's government support for the production of rice, wheat and corn as being in excess of China's commitments.

Tariff-rate Quota Administration

In December 2016, the United States launched a WTO case challenging China's administration of tariff-rate quotas for rice, wheat and corn.

TRANSPARENCY

Overview

One of the core principles reflected throughout China's WTO accession agreement is transparency. China's WTO transparency commitments in many ways required a profound historical shift in Chinese policies. Although China has made strides to improve transparency following its accession to the WTO, there remains a lot more for China to do in this area.

Publication of Trade-related Laws, Regulations and Other Measures

In its WTO accession agreement, China committed to adopt a single official journal for the publication of all trade-related laws, regulations and other measures, and China adopted a single official journal, to be administered by MOFCOM, in 2006. To date, 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. As a result, while trade-related administrative regulations and departmental rules are more commonly (but still not regularly) published in the journal, it is less common for other measures such as opinions, circulars, orders, directives and notices to be published, even though they are in fact all binding legal measures. In addition, China does not normally publish in the journal certain types of trade-related measures, such as subsidy measures, nor does it normally publish 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. China has taken several steps related to this commitment. In 2008, the National People's Congress (NPC) instituted notice-and-comment procedures for draft laws, and shortly thereafter China indicated that it would also publish proposed trade and economic related administrative regulations and departmental rules for public comment. Subsequently, the NPC began regularly publishing draft laws for public comment, and China's State Council often (but not regularly) published draft administrative regulations for public comment. In addition, many of China's ministries were not consistent in publishing draft departmental rules for public comment. At the May 2011 S&ED meeting, China committed to issue a measure implementing the requirement to publish all proposed trade and economic related administrative regulations and departmental rules on the website of the State Council's Legislative Affairs Office (SCLAO) for a public comment period of not less than 30 days. In April 2012, the SCLAO issued two measures that appear to address this requirement. Since then, despite continuing U.S. engagement, little noticeable improvement in the publication of departmental rules for public comment appears to have taken place, even though China confirmed that those two SCLAO measures are binding on central government ministries.

Translations

In its WTO accession agreement, China committed to make available translations of all of its trade-related laws, regulations and other measures at all levels of government in one or more of the WTO languages, *i.e.*,

English, French and Spanish. Prior to 2014, China had only compiled translations of trade-related laws and administrative regulations (into English), but not other types of measures, and China was years behind in publishing these translations. At the July 2014 S&ED meeting, China committed that it would extend its translation efforts to include not only trade-related laws and administrative regulations but also trade-related departmental rules. Subsequently, in March 2015, China issued a measure requiring trade-related departmental rules to be translated into English. This measure also provides that the translation of a departmental rule normally must be published before implementation. The United States is pressing China to ensure that it similarly publishes translations of trade-related laws and administrative regulations before implementation, as required by China's WTO accession agreement.

LEGAL FRAMEWORK

Overview

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

Administrative Licensing

Despite numerous changes made by the Chinese government since the issuance of the Third Plenum Decision in November 2013, 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 U.S. companies are encouraged by the overall reduction in license approval requirements and the focus on decentralizing licensing approval processes, U.S. companies report that these efforts have only had a marginal impact on their licensing experiences so far.

Competition Policy

Chinese regulatory authorities' implementation of China's *Anti-monopoly Law* poses multiple challenges. One key concern relates to how the *Anti-monopoly Law* will be applied to state-owned enterprises, given that a provision in the *Anti-monopoly Law* protects the lawful operations of state-owned enterprises and government monopolies in industries deemed nationally important. To date, China has enforced the *Anti-monopoly Law* against state-owned enterprises, and it has stated that this law applies to state-owned enterprises, but some U.S. companies have expressed concern that enforcement against state-owned enterprises is more limited.

Another concern relates to the procedural fairness of *Anti-monopoly Law* investigations. U.S. industry has expressed concern about insufficient predictability, fairness and transparency in the investigative processes of the National Development and Reform Commission (NDRC), including NDRC pressure to "cooperate" in the face of unspecified allegations or face steep fines and limitations imposed by NDRC on the ability of foreign companies to bring counsel to meetings. U.S. industry has also conveyed that AML agencies can occasionally only reluctantly accept the presence of counsel at meetings, particularly foreign counsel. Through the S&ED and JCCT processes over the past few years, the United States was able to secure commitments from China designed to help address most of these matters, and Chinese agencies have taken

steps to implement these commitments, although some concerns remain. The United States continues to work closely with affected U.S. parties as it seeks to ensure that China's anti-monopoly enforcement agencies fully implemented these commitments.

In 2015, the United States secured additional commitments from China relating to *Anti-monopoly Law* enforcement proceedings. These commitments addressed the protection of confidential business information, the independence of *Anti-monopoly Law* decision making, the jurisdiction of courts reviewing administrative *Anti-monopoly Law* decisions and anti-monopoly enforcement agencies' processes for reconsidering decisions. China also recognized the importance of maintaining coherent rules relating to intellectual property rights in the *Anti-monopoly Law* context, including by taking into account the pro-competitive effects of intellectual property licensing.

In 2016, the United States used all platforms available to encourage China to pursue *Anti-monopoly Law* measures and enforcement policies that are consistent with its 2015 commitments. In addition, in June 2016, China's State Council established a "Fair Competition Review System" designed to prevent unjustified restrictions on competition through government regulations and activities, an initiative for which the United States has expressed support.

COLOMBIA

TRADE SUMMARY

The U.S. trade balance with Colombia shifted from a goods trade surplus of $2.2 billion in 2015 to a goods trade deficit of $696 million in 2016. U.S. goods exports to Colombia were $13.1 billion, down 19.6 percent ($3.2 billion) from the previous year. Corresponding U.S. imports from Colombia were $13.8 billion, down 2.0 percent. Colombia was the United States' 22nd largest goods export market in 2016.

U.S. exports of services to Colombia were an estimated $6.5 billion in 2015 (latest data available) and U.S. imports were $3.2 billion. Sales of services in Colombia by majority U.S.-owned affiliates were $6.2 billion in 2014 (latest data available), while sales of services in the United States by majority Colombia-owned firms were $82 million.

U.S. foreign direct investment (FDI) in Colombia (stock) was $6.2 billion in 2015 (latest data available), a 13.3 percent decrease from 2014. U.S. direct investment in Colombia is led by mining, manufacturing, and finance/insurance.

The United States – Colombia Trade Promotion Agreement

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

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Local Certification Requirements

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

Sanitary and Phytosanitary Barriers

Live Cattle

Colombia is now accepting imports of U.S. live cattle. In June 2010, Colombia nominally allowed live cattle imports from the United States, but at the same time imposed restrictive requirements due to concerns over bluetongue and leucosis that effectively prevented any such imports. Live cattle imports began in August 2016, following an agreement between USDA's Animal and Plant Health Inspection Service and Colombian sanitary authorities on testing procedures.

Rice

In an exchange of letters dated April 15, 2012, Colombia and the United States agreed that Colombia would provide access to U.S. rough rice through the Port of Barranquilla, subject to certification that the shipments were free of *Tilletia horrida* (a rice smut) and the pre-export fumigation of shipments. Following a December 2013 report that indicated that *Tilletia horrida* had been detected in rice production areas in Colombia, Colombian authorities initiated an epidemiologic survey, stating that the results of the survey are expected to be released in early 2017. Regarding pre-fumigation, in September 2016 Colombia agreed to a U.S. request to reduce the mandatory minimum grain moisture content of U.S. rough rice from 12.5 percent to 11 percent. The United States will continue to engage Colombia with the objectives of expanding the list of eligible ports of entry for U.S. rough rice beyond Barranquilla and securing the eventual elimination of the pre-export fumigation requirement on a scientific basis.

Risk Categorization and Associated Import Requirements

Through INVIMA Resolution 719 of 2015, Colombia has assigned risk categories to foods with a view to imposing new requirements on foods depending on the category of risk. While Colombia has indicated it intends to apply the envisioned categories to both imported and domestic products, the United States is concerned, in light of international guidelines, about the criteria that Colombia uses to assign risk. Ministry of Health Decree 539 of March 12, 2014, included numerous new requirements for high risk foods, including plant registration with INVIMA and the inspection of facilities intending to export to Colombia. The United States and Colombia exchanged information and views on these issues at the September 2015 meeting of the CTPA Standing Committee on Sanitary and Phytosanitary Matters. On January 7, 2017, Colombia notified a regulation to the WTO that amends Decree 539 by introducing provisions that allows for the recognition of trading partners' food safety systems as equivalent to Colombia's, and thereby exempts exporting establishments in those trading partners from individual inspection and approval requirements. The United States will continue to engage with the Colombian government and affected stakeholders regarding the impact of these requirements, as well as the process for potential recognition of the U.S. food safety system.

IMPORT POLICIES

Tariffs

About 80 percent of U.S. exports of consumer and industrial products to Colombia became duty free immediately upon the CTPA's entry into force on May 15, 2012. The remaining consumer and industrial product tariffs are to be phased out within 10 years of entry into force, that is, by January 1, 2021. While Colombia generally applies variable tariffs to imports of certain agricultural products pursuant to the Andean Community's price band system, upon entry into force of the CTPA, Colombia stopped imposing such tariffs on U.S. agricultural exports. Almost 70 percent of U.S. agricultural exports (by value) became duty free at entry into force, and duties on most other U.S. agricultural goods will be phased out over a

period of five to 12 years. Tariffs on the most sensitive products for Colombia, such as certain poultry products, certain dairy products, sugar, and rice will be phased out over 15 years to 19 years from entry into force. U.S. agricultural exporters also currently benefit from zero-duty tariff rate quotas on corn, rice, poultry parts, dairy products, sorghum, dried beans, standard grade beef, animal feeds, and soybean oil. As quotas are increased and over-quota duties are phased out, access to the Colombian market for those products will increase.

Nontariff Measures

Truck Scrappage

Prior to March 2013, new freight trucks over 10.5 metric tons (mt) could be legally registered in Colombia either by paying a "scrappage fee" to the government, or by demonstrating that an old freight truck of equivalent capacity ("1x1") had been scrapped and its registration cancelled. In March 2013, without public consultation or a transition period, Colombia issued Decree 486, which eliminated the option to pay the "scrappage fee." As a result, scrapping an old truck of equivalent cargo capacity is now a condition for the registration of new freight trucks over 10.5 mt. This change in policy has significantly affected previously robust sales of imported trucks (which are generally over 10.5 mt). In the first year of this policy, such imports reportedly fell 65 percent, and sales-related administration costs rose by $60 million for all importers. In the first two years, U.S. exporters lost a reported $600 million in sales, according to industry officials.

In September 2016, Colombia issued Decree 1517, which indicates that the "1x1" scrappage policy will be terminated by December 31, 2018. Colombia will maintain the "1x1" system in the interim, but the decree contemplates the establishment of a new government-administered process for the distribution of the scrapping certificates required to register a new truck to truck importers and buyers. According to the decree, the interim system will be maintained until either the government incentive funds used to encourage scrappage are expended, or "balancing of the market's supply and demand conditions," but in any case no later than December 31, 2018. Importers have raised concerns about the delay in issuing implementing regulations for this decree, as well as the long timeframe for transition to a free market. Colombia published the final implementing regulations in February 2017. Under this interim system, importers can apply to receive the scrapping certificate required to import a new truck via a government-administered process. They will pay a fee equivalent to 15 percent of the value of the new truck to access the certificate, and Colombia will continue to link the number of available certificates to vehicles scrapped. The United States will continue to monitor developments.

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

Internal Taxes on Distilled Spirits and Alcohol Monopolies

On December 19, 2016, President Santos signed into law a bill reforming tax treatment of distilled spirits and oversight of monopolies at the department (provincial government) level. Under the previous tax regime (Law 788 of 2002, Chapter V, as amended by Law 1393 of 2010), Colombia assessed a consumption tax on distilled spirits with a system of specific rates per degree (half percentage point) of alcohol strength, and arbitrary breakpoints based on alcohol content appeared to result in a lower tax rate on spirits produced locally. While the CTPA provides certain exceptions for Colombia's measures relating to the taxation of

alcoholic beverages, those exceptions expired May 15, 2016. The EU sought consultations with Colombia regarding taxation and departmental practices with respect to imported spirits under the WTO dispute settlement mechanism in January 2016. The United States participated in those consultations, held in March 2016, as a third party.

The new law, effective January 1, 2017, replaces the previous tax structure (including the breakpoints) with a combination of a "specific tax" based on alcohol content and an *ad valorem* tax on the retail price. The law also includes provisions that are aimed at disciplining practices of the department level alcohol monopolies. However, the United States remains concerned regarding a provision that would appear to allow for special protections for a distilled spirit called "aguardiente," and continues to have questions on the process for aligning department-level practices with the new law. Importers are also seeking greater clarity on technical provisions that, depending on how they are implemented, could impact market access, including with respect to price certifications, labeling requirements, and certificates of good manufacturing processes. The United States will continue to monitor the implementation of the new legislation and engage with Colombia regarding U.S. concerns.

Mobile Phones Decree

On October 16, 2015, Colombia's trade ministry published Decree 2025, which "establishes measures to control the import and export of smart phones and their parts" as part of its strategy to address phone theft. The decree established extensive administrative requirements for trade in mobile phones and created barriers to export them even for legitimate purposes, such as warranty repairs or recycling. In particular, the decree mandates that each mobile phone have a government-issued International Mobile Equipment Identity (IMEI) verification certificate at the time of import and requires all importers and exporters to pre-register with the National Police in order to trade in mobile phones. Additionally, the decree prohibited all imports and exports of mobile devices and parts via mail or express delivery (often the method of shipment for purchases by private individuals), and travelers entering Colombia were limited to carrying no more than three devices as personal items. Both phone manufacturers and express mail companies have raised concerns about the decree.

On December 23, 2016, the trade ministry published Decree 2142, which modifies a number of Decree 2025's provisions. In particular, Decree 2142 reverses the prohibition on imports of mobile devices and parts via mail or express delivery, with some limitations as to the number of devices that can be shipped by those means, and allows more flexibility with respect to the documentary requirements for the export of used phones, *e.g.,* for servicing and repair, or recycling and safe disposal of electronic waste. (The limit on how many devices travelers can carry into the country remains in place, as do the requirements with respect to IMEI verification and registration of importers and exporters with the National Police.) However, concerns remain regarding the government of Colombia's operational capacity to implement the system established in Decree 2025 of 2015, as amended. The United States will continue to monitor the implementation of these decrees and engage with Colombia as appropriate to facilitate legitimate trade in cell phones.

Biologic and Biosimilar Medicines Regulations

In September 2014, Colombia issued a decree establishing a framework for marketing approval of biological and biosimilar medicines. It established three approval pathways. The third pathway, the "abbreviated comparability" pathway, appears to be incompatible with international norms for biosimilars pathways. It remains unclear what data, clinical trials, or other information will be required to demonstrate biosimilarity with the reference products. The decree takes effect upon the entry into force of implementing guidelines. The stability guideline (Resolution 3690 of August 2016) enters into force in August 2017. It establishes that INVIMA, Colombia's sanitary authority, will accept stability studies of biologic medicines

in accordance with international standards. However, the immunogenicity guideline (Resolution 4490 of September 2016, which was originally to enter into force in September 2017, was reopened for public comment early in 2017) may not require clinical trials for assessing the potential for unwanted immune responses (immunogenicity) of biosimilars. The United States will continue to monitor the implementation of the Decree to assess its impact on fair competition in the Colombian market.

Marketing Approval Dependent on Price Review

The National Development Plan 2014-2018 law gives the health ministry the authority to require two additional assessments before medicines and medical devices can receive or renew a sanitary registration, which is required before a product can be sold in Colombia: (1) a health technology assessment by the Institute for Health Technological Evaluation; and (2) a price determination by the health ministry. Stakeholders report that Colombia's process for granting and renewing sanitary registrations for innovative pharmaceutical products has slowed since the National Development Plan became law in May 2015. The Ministry of Health is currently developing implementing regulations for the relevant provisions.

"Luxury Tax" on Vehicles Valued at $30,000 and Above

Colombia charges a 16 percent consumption tax for vehicles with a Free on Board (FOB) value of $30,000 and above. Vehicles below this value are subject to a tax of eight percent. The $30,000 value has not been adjusted for inflation in two decades. As a result, an increasing number of vehicles, particularly imported vehicles, fall into the higher tax bracket. (Generally, cars containing above three liter engines have an FOB value over $30,000.) The majority of vehicles assembled in Colombia typically fall below the $30,000 level. Importers reportedly frequently choose to strip vehicles of the latest safety and technology advances to keep the value under $30,000 and avoid paying at a higher tax rate.

Ethanol

In April 2014, Colombia's Ministry of Mines and Energy published a resolution that allowed Colombia to set import quantity limits on ethanol and establish a licensing mechanism to allow for imports in cases of domestic shortfall. Following U.S. engagement on this issue, in November 2016, Colombia issued a new resolution that reverses the earlier measure, effective May 2017. At that time, Colombia had indicated that it would be publishing regulations on carbon footprint requirements for ethanol, which could affect market access for U.S. corn-based ethanol. In late January 2017, Colombia published a draft decree for public comment. The United States will continue to monitor developments closely and engage with Colombia regarding any concerns.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Colombia remained on the Watch List in the 2016 Special 301 Report, and an Out-of-Cycle Review was initiated to assess Colombia's commitment to the intellectual property provisions of the CTPA and to monitor the implementation of the National Development Plan. Colombia's implementation of certain intellectual property rights (IPR) provisions of the CTPA was interrupted in 2013 when the Colombian Constitutional Court invalidated on procedural grounds the law enacting those obligations. While Colombia has made progress on implementing some of the remaining IPR provisions in the CTPA, including on accession to the Budapest Treaty and the drafting of copyright amendments, certain other obligations remain outstanding. Colombia has not yet introduced or passed into law the copyright amendments mentioned above, acceded to the 1991 Act of the International Convention for the Protection of New Varieties of Plants, or developed Internet service provider liability limitations and notice and takedown procedures. The United States will continue to engage with Colombia at political and technical levels to complete implementation as soon as possible.

Companies remain concerned with widespread intellectual property infringement, including unauthorized camcording in movie theaters, physical counterfeiting and piracy at the border and in the San Andresitos market, online and mobile piracy, and the use of micro-chipped Free-to-Air (FTA) boxes, used exclusively for pirating broadcasting signals. The National Development Plan included a requirement to develop an IPR enforcement policy to help guide, coordinate, and raise awareness of IPR enforcement. Other provisions of the National Development Plan, depending on how they are interpreted and implemented, may structurally undermine innovation and intellectual property rights, such as by establishing a role for the Ministry of Health in the examination of pharmaceutical patent applications. The United States will continue to engage bilaterally to resolve these issues.

SERVICES BARRIERS

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

Telecommunications

Roaming

In Section 1377 Reports, USTR has expressed concerns with Colombia's enforcement of roaming arrangements, particularly with regard to arrangements between dominant providers and their smaller competitors. Roaming arrangements are critical for new entrants because they rely on roaming to supplement their network in their build-out phase, in order to offer a commercially viable service. A U.S. invested operator that recently entered the mobile services market in Colombia has expressed concern that the technical and financial aspects of its roaming arrangements over the past several years impede its ability to compete in the market. In February 2017, the Communication Regulation Commission (CRC) proposed a regulation on wholesale voice and data roaming services in Colombia. The United States will look to Colombia to ensure the decisions of the CRC with respect to roaming are consistent with Colombia's obligations under the GATS and the CTPA, including that such services are provided on reasonable and non-discriminatory terms and conditions.

Spectrum

In May 2015, the Ministry of Information Technologies and Communication (MinTIC) issued a Request for Proposal (RFP) for allocation of the 700 MHz spectrum band. This band is particularly useful for new entrants because of technical characteristics that support coverage of larger geographic areas with less infrastructure, enabling a new entrant to more quickly and more economically build up its customer base, particularly where population density is lower. Given the importance of this band to new entrants, the OECD in its 2014 review of Colombia's Telecommunications Policy and Regulation recommended that the expected auction of this band should include conditions that specifically allow small operators to have access to it. Despite clear interest on the part of some mobile operators, MinTIC has not yet proceeded with the auction, a delay that could negatively affect the competitive dynamics of the mobile market. In February 2017, MinTIC published draft auction rules for public comment. The United States will continue to monitor these developments, with a view to ensuring that Colombia implements its trade commitments with respect to spectrum allocation, including that procedures be both timely and non-discriminatory.

Distribution Services

Commercial Agency

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

COSTA RICA

TRADE SUMMARY

The U.S. goods trade surplus with Costa Rica was $1.6 billion in 2016, a 1.7 percent decrease ($26 million) over 2015. U.S. goods exports to Costa Rica were $5.9 billion, down 3.0 percent ($182 million) from the previous year. Corresponding U.S. imports from Costa Rica were $4.3 billion, down 3.5 percent. Costa Rica was the United States' 37th largest goods export market in 2016.

U.S. exports of services to Costa Rica were an estimated $1.8 billion in 2015 (latest data available) and U.S. imports were $2.6 billion. Sales of services in Costa Rica by majority U.S.-owned affiliates were $1.6 billion in 2014 (latest data available), while sales of services in the United States by majority Costa Rica-owned firms were $63 million.

U.S. foreign direct investment (FDI) in Costa Rica (stock) was $1.5 billion in 2015 (latest data available), a 1.6 percent increase from 2014. U.S. direct investment in Costa Rica is led by manufacturing, professsional, scientific, and technical services, and information.

Free Trade Agreement

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

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Cosmetics, Nutritional and Dietary Supplements

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

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

Beginning in 2014, U.S. producers of dietary supplements have expressed concerns regarding Costa Rican product registration and technical regulations related for nutritional and dietary supplements.

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

Costa Rica's telecommunications regulator (SUTEL) imposes a requirement for retesting and recertification of telecommunications hardware, following what can be frequent software updates. Stakeholders have raised concerns that Costa Rica does not follow international procedures for testing and certification mobile handsets and other ICT products; that these country-specific requirements can lead to redundant testing, particularly when products are required to undergo testing in both exporting and importing countries; and that these requirements are burdensome on U.S. software developers, posing an obstacle to international trade.

Sanitary and Phytosanitary Barriers

In September 2013, Costa Rica banned the import of fresh potatoes from the United States, allegedly due to excess soil in some shipments and the presence of "zebra chip," a disease that causes striping of potatoes. Costa Rica reopened the market to U.S. chipping potatoes in February 2016 after the negotiation of new import requirements. Imports resumed in September 2016, but according to U.S. industry sources, there are problems with the implementation of the import protocol by the Costa Rican government. Import permit issuance takes significantly longer than is reasonable, preventing full market normalization. Costa Rican importers are also in discussions with U.S. potato exporters concerning the packing methods used to ship potatoes, which has led some importers to switch to Canadian potatoes which are being shipped using the preferred packing material.

During the first half of 2016, importers complained that the Ministry of Agriculture (MAG) used phytosanitary import permits as a tool for stopping or delaying imports of onions from the United States without clear phytosanitary concerns, and that MAG's failure to issue permits in a timely manner resulted in the loss of market access for onions this year. Although Costa Rica eventually issued all pending permits, the untimely release of the permits during local harvest time caused a temporary (and unnecessary) glut of onions in the market.

Another phytosanitary issue that began to impede agricultural imports from the United States in 2016 resulted from a 2012 MAG Executive Decree (No. 36999), which created an importer registry as a traceability measure for imports of plant origin. Local producers are not subject to these requirements. The Decree also requires importers to prove that they have adequate warehouse space for the quantity of product to be imported before import permits will be issued. The availability of free storage space must be corroborated by officials from the State Phytosanitary Service (SFE). Companies reported in 2016 that SFE was not conducting required warehouse inspections in the timeframe stated in the Decree leading to major financial losses. In addition, several small importers informed that they would lose tariff-rate quota (TRQ) allocations in 2016 because of the delays in having their warehouses inspected in time, and as a result, they would be penalized for not having filled their allocations and may lose access to the TRQ allocation for 2017.

IMPORT POLICIES

Tariffs

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

Under the CAFTA-DR, however, 100 percent of originating U.S. consumer and industrial goods have entered Costa Rica duty free since January 1, 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin also enter Costa Rica duty free and quota free. In addition, more than half of U.S. agricultural exports currently enter Costa Rica duty free under the Agreement. Costa Rica will eliminate its remaining tariffs on virtually all U.S. agricultural products by 2020, on chicken leg quarters by 2022, on rice by 2025, and on dairy products by 2028. For certain agricultural products (rice, pork, dairy, and poultry), 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.

Nontariff Measures

Customs and Trade Facilitation

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

Costa Rica's Information Technology Customs Control (TICA) system is designed to allow for a single automated customs declaration process, with a centralized database, including electronic payment, integrated risk analysis, and connectivity with public and private institutions. Some have characterized TICA as one of the best customs systems in Central America. However, the system has suffered breakdowns as the volume of entries has increased since its implementation in 2006, and upgrades have been needed to facilitate the import and export of goods without undue delays. In March 2016, Costa Rican Customs announced the implementation of improvements to the TICA system to automate all customs operations (previously about 80 percent of operations were automated). The new version completes a two-year improvement process to customs' technology platform.

Costa Rica is in the process of ratifying the WTO Trade Facilitation Agreement (TFA), which must be approved by the Costa Rican Legislative Assembly and the Costa Rican Constitutional Court. The bill that the Government of Costa Rica submitted for ratification includes provisions to assist with TFA implementation, including the establishment of a trade facilitation council, which would include private sector representatives and have the authority to make binding decisions. Opposition parties have criticized the inclusion of the private sector on this council, delaying ratification of the bill.

Internal Taxes on Distilled Spirits

Costa Rica currently assesses a specific excise tax on distilled spirits that is calculated as a percentage of alcohol per liter, based on three specific rates (Law 7972). The highest rate applies to spirits bottled at a rate above 30 percent alcohol-by-volume (abv). While the locally produced spirit (produced in the largest volume by the state-owned alcohol company) is bottled at 30 percent abv, the vast majority of internationally traded spirits are bottled at 40 percent. Breakpoints for the tax rates based on alcohol content

appear to result in a lower tax rate on spirits produced locally. Furthermore, local producers pay the tax within the first 15 days of each month on sales made during the prior month, while importers must pay the tax prior to release of their product from customs.

GOVERNMENT PROCUREMENT

Some U.S. company representatives have commented that they find it difficult to compete with domestic suppliers in Costa Rican government procurement because bids are often due within three to six weeks of the procurement announcement. U.S. companies view the short deadlines as reflecting Costa Rica's reluctance to attract foreign bidders to its government procurement processes. The United States will continue to monitor Costa Rica's government procurement practices to ensure they are applied consistent with CAFTA-DR obligations. U.S. companies also have indicated that the private sector (foreign and domestic) appears to be increasingly disadvantaged in public bids when competing against Costa Rican state owned enterprises. Leading business associations filed administrative complaints in 2016, claiming the Finance Ministry awarded an electronic billing contract to a public entity at well above the costs offered by private sector players.

The electronic procurement platform "Mer-link," now known as "SICOP," provides a single purchasing platform for all participating ministries with an entirely paperless procurement process based on a secure database, allowing enhanced levels of transparency and competition in the procurement process. More than 70 government entities have adopted the program to date. However, implementation has been slow; 2016 reports noted just small fraction of transactions are done through the SICOP/Mer-link system.

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

EXPORT SUBSIDIES

Under the CAFTA-DR, Costa Rica may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). Costa Rica has modified its free trade zone regime in order to conform to this requirement. Tax holidays are available for investors in free trade zones. The Free Trade Zone Regime is defined in Costa Rica as a set of incentives and benefits granted by the country to companies making new investments and complying with local requirements and obligations. This regime is governed by the Free Zone Regime Law, Number 7210, and its regulations. Costa Rica's tax incentives and benefits are standardized. They apply to any and all companies equally, so there is no need for individual negotiations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Costa Rica was again on the Watch List in the 2016 Special 301 report. Costa Rican officials engaged in discussions with USTR during 2016 to identify details for a possible intellectual property rights (IPR) work plan, an effort that remains in process. The United States continues to urge Costa Rica to place a higher priority on IPR protection and enforcement, including impose deterrent penalties where appropriate. Other concerns include Costa Rica's failure to follow through on long-stated plans to end government use of unlicensed software, to modernize its notice and takedown regime available for use by online service providers, to provide greater clarity and transparency in the protection of geographical indications, to help ensure that no party is awarded exclusive rights to use generic terms, and to preserve market openness and access for U.S. products. The United States will continue to monitor Costa Rica's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Insurance

Foreign companies operate in most segments of the market. However, mandatory insurance categories such as worker's compensation and basic automobile liability are still serviced only by the National Insurance Institute (INS), despite being open to new entrants. New market entrants (private insurance companies) continue to face challenges in light of the market power INS derives from its former monopoly position. Specific concerns relate to deceptive advertising by the former monopoly, a cumbersome and nontransparent product approval process, and the extension of exclusivity contracts between INS and insurance retailers designated as agents.

Telecommunications

Under CAFTA-DR, Costa Rica has progressively opened important segments of its telecommunications market, including private network services, Internet services, and mobile wireless services, which are now formally open for competition as a matter of law or regulation. While this market opening is a notable achievement, Costa Rica's new wireless service providers continue to face obstacles, including reluctance by some municipal governments to approve cell tower construction necessary to support new providers and expand coverage areas.

On December 9, 2016, the Telecommunications Superintendence (SUTEL) published in the Official Gazette a tender for the auction of 70 Megahertz (MHZ) of radio spectrum starting in February 2017 with the main objective of improving the quality of telecommunications services and avoiding concentration of spectrum in the hands of specific suppliers. After an analysis of 11 telecommunication markets, SUTEL determined that four markets (international telephony, fixed Internet, international roaming, and telecommunications transit) were sufficiently competitive to obviate economic regulation, pursuant to Article 73 of the Law No. 7593 on the Regulatory Authority of Public Services.

INVESTMENT BARRIERS

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

OTHER BARRIERS

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a concern and a constraint to successful investment in Costa Rica. Administrative and judicial decision-making appear at times to be inconsistent, nontransparent, and very time consuming.

In July 2009, Costa Rica notified levels of agricultural domestic support to the WTO for 2007 that were above its $15.9 million Total Aggregate Measurement of Support (TAMS) ceiling on trade-distorting domestic support. Costa Rica's subsequent notifications to the WTO for the years 2008 through 2012 listed domestic support expenditures at ever increasing levels, reaching $109.7 million in 2010. Notifications for 2014 and 2015 listed domestic support expenditures of $60.4 million and $4 million, respectively. Between 2009 and 2015, Costa Rica's price support for rice accounted for most of its notified TAMS, and rice accounted for a majority of its notified TAMS prior to 2009. In May 2013, the government of Costa Rica issued Decree #37699-MEIC, which reduced the price support by a modest amount and stated that the then

current price support mechanism for rice would be eliminated starting in March 2014. However, in January 2014, Costa Rica delayed that deadline by a year until March 2015. In January 2015, Costa Rica announced a four-year safeguard, imposing an additional 24.88 percent tariff on pounded rice. The safeguard amount will decline annually to a final tariff of 6.22 percent for the last year. The safeguard affected out-of-quota rice imports from the United States. On February 27, 2015 the government of Costa Rica published Executive Decree #38884-MEIC which established producer prices for dry and clean paddy rice and also set the minimum and maximum price for different presentations and qualities of milled rice, either locally produced or imported. Those prices took effect on June 8, 2015. The overarching issue of excessive domestic support for rice remains, as the reference price system does nothing to change the effective level of the support, but only changes its classification.

In a separate rice issue, in 2015 Costa Rican customs authorities initiated an origin verification process for rice imported during 2013 from the United States. The authorities questioned the origin of rice (primarily imported under the CAFTA-DR tariff rate quota) imported by at least 15 different importers. The importers, many of which are small importers who took advantage of the TRQs, faced steep fines if they could not provide all the information the Customs Department required to prove the country of origin as the United States. Importers were asked to provide an exhaustive amount of information, unrelated to the question of whether the rice is of U.S. origin, and official USDA documents, such as APHIS' phytosanitary export certificates and FGIS' rice grading certificates, that are not proof of origin. In October 2016, after a visit to U.S. rice production regions by Costa Rican government officials, the Customs Department issued a resolution confirming that the rice was U.S. origin rice.

As the Costa Rican government has increased tax collection efforts in recent years, several U.S. companies have found themselves facing what they consider to be novel or inconsistent interpretations of tax regulations and principles. Adoption of a new set of transfer-pricing regulations in September 2013 represented a significant advance by the Costa Rican government in the area of transparency and predictability. The measure, Decree 37898-H, protects the principle of free competition. In June 2016, the Costa Rican General Direction of Taxation released for public consultation draft rules concerning annual transfer pricing. The United States will continue to monitor implementation of the regulations and other tax measures.

DOMINICAN REPUBLIC

TRADE SUMMARY

The U.S. goods trade surplus with the Dominican Republic was $3.1 billion in 2016, a 26.7 percent increase ($653 million) over 2015. U.S. goods exports to the Dominican Republic were $7.8 billion, up 9.4 percent ($672 million) from the previous year. Corresponding U.S. imports from the Dominican Republic were $4.7 billion, up 0.4 percent. The Dominican Republic was the United States' 33rd largest goods export market in 2016.

U.S. exports of services to the Dominican Republic were an estimated $1.6 billion in 2015 (latest data available) and U.S. imports were $4.4 billion. Sales of services in the Dominican Republic by majority U.S.-owned affiliates were $1.3 billion in 2014 (latest data available).

U.S. foreign direct investment (FDI) in the Dominican Republic (stock) was $1.4 billion in 2015 (latest data available), a 11.9 percent increase from 2014. U.S. direct investment in the Dominican Republic is led by manufacturing, information, and wholesale trade.

Free Trade Agreement

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

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Regulation of Steel Rebar

Multiple U.S. exporters of steel rebar used for construction have complained that a Dominican technical regulation (RTD 458) administered by the Ministry of Industry and Commerce's (MIC) Dominican Institute for Quality (INDOCAL) constitutes a barrier to trade. Since 2012, RTD 458 has required that all imported steel rebar be subject to conformity assessment procedures in the form of sampling at the discharge port and testing by third party laboratories. Although U.S. steel rebar is produced by certified mills in the United States, Dominican authorities require every heat of imported rebar to be sampled and tested by third party laboratories. Because no suitable third party laboratories are present in the Dominican Republic, samples have had to be sent back to the United States for testing. These conformity assessment procedures appear to present unnecessary obstacles to international trade, deviate from international standards, lack transparency in their application, and have unduly increased the cost and time required for commercialization of rebar in the Dominican Republic.

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

The United States has repeatedly engaged the Dominican government on this issue and raised the issue on the margins of the WTO Technical Barriers to Trade Committee meeting in November 2016. However, Dominican authorities have yet to reform its practices to eliminate obstacles to international trade and ensure imported rebar from the United States is treated no less favorably than domestically manufactured rebar.

On July 12, 2016, the Dominican government issued a statement announcing the enforcement of NORDOM 53, a local regulation for labeling prepackaged foods. Beginning January 1, 2017, the Spanish language label on prepackaged products must be applied at the point of origin, instead of in the destination country as is the usual practice. Enforcement of the regulation will initially focus on dairy products, but the Dominican government has indicated it will extend enforcement to other products. The United States will continue to encourage the Dominican government to eliminate the requirement to label at point of origin or delay its enforcement so as to provide more time for clarification and proper implementation.

IMPORT POLICIES

Tariffs

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

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

Also under the CAFTA-DR, as of 2016, 83 percent of U.S. agricultural products qualify for duty-free treatment when exported to the Dominican Republic. The Dominican Republic will eliminate remaining tariffs on nearly all agricultural goods by 2020, and on chicken leg quarters, some dairy products, and rice by 2025. Tariff-rate quotas (TRQs) permit duty-free access during the tariff-phase out period for specified quantities of 47 different agricultural products, including ice cream, selected cuts of beef, cheddar cheese, and yogurt, with the duty-free quantity progressively increasing during the tariff phase-out period.

Nontariff Measures

The Dominican Ministry of Agriculture continues to administer the issuance of sanitary and phytosanitary import licenses as a means to manage trade in sensitive commodities. The United States continues to raise concerns regarding this matter with Dominican authorities and is working to eliminate this practice. This is a regular concern with respect to trade in some sensitive products (*e.g.*, dry beans, potatoes, onions, garlic, and recently hatching eggs), but intermittently with respect to other products as well.

Under the CAFTA-DR, TRQs for agricultural products are to be made available for the entire calendar year, beginning on January 1. However, the Dominican Republic often has not issued quota allocations until several months into the year. In addition, both the issuance of quotas for sensitive products and the distribution of import licenses, which allow importers to exercise their quota rights, have frequently been delayed. While the Ministry of Agriculture made substantial improvements to its administration of TRQs in 2013 and 2014, 2015 CAFTA-DR quotas were not issued until March, while 2016 quotas were issued on February 5. The United States will continue to engage on these issues with the Dominican Republic and will monitor its performance with regard to the timely opening of the TRQs, the timely distribution of

import licenses, and the distribution of appropriate quota volumes, to allow TRQ products to enter the Dominican Republic as of January 1 of each year.

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

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Dominican government entities, including key ministries and state-owned enterprises, on the same basis as Dominican suppliers. The anticorruption provisions in the CAFTA-DR apply *inter alia* to government procurement. Nevertheless, U.S. suppliers have complained that Dominican government procurement is not always conducted in a transparent manner and that corruption is a problem. The U.S. Government has engaged with the Dominican government on this issue and transparency has increased in its procurement system over the last few years. The United States will continue to monitor the Dominican Republic's government procurement practices to ensure they are applied in a manner consistent with CAFTA-DR obligations.

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

SUBSIDIES

The Dominican Republic does not have export promotion schemes other than tariff waivers for inputs imported by firms in the free trade zones. Under Law 139 of 2011, the Dominican Republic levies a 2.5 percent tax on goods sold from free trade zones into the local market.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2016, the Dominican Republic remained on the Watch List in the Special 301 Report. Positive developments include a successful enforcement action against the manufacture and distribution of counterfeit medicines and a modest reduction in the large backlog of pending patent applications. Nevertheless, ongoing concerns include unaddressed satellite signal piracy, the widespread availability of pirated and counterfeit goods, government and private sector use of unlicensed software, and blanket administrative denials of requests for patent term adjustment. The United States will continue to work with the Dominican Republic to address these and other issues.

SERVICES BARRIERS

Telecommunications

The United States has expressed a number of concerns with the timeliness and effectiveness of the telecommunications regulator in the Dominican Republic, INDOTEL, in carrying out its obligations under CAFTA-DR and the WTO General Agreement on Trade in Services, including ensuring that its major

suppliers offer a cost-based termination rate, timely allocation of spectrum in an objective and transparent manner, facilitation of roaming arrangements, and prompt decisions on the renewal of operators' concession agreements. The United States continues to work with the Dominican Republic to ensure that it fulfils its obligations to an open and competitive telecommunications sector.

OTHER BARRIERS

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

ECUADOR

TRADE SUMMARY

The U.S. goods trade deficit with Ecuador was $1.9 billion in 2016, a 14.1 percent increase ($236 million) over 2015. U.S. goods exports to Ecuador were $4.2 billion, down 28.3 percent ($1.6 billion) from the previous year. Corresponding U.S. imports from Ecuador were $6.1 billion, down 18.8 percent. Ecuador was the United States' 43rd largest goods export market in 2016.

Sales of services in Ecuador by majority U.S.-owned affiliates were $1.2 billion in 2014 (latest data available), while sales of services in the United States by majority Ecuador-owned firms were $2 million.

U.S. foreign direct investment in Ecuador (stock) was $429 million in 2015 (latest data available), a 25.5 percent decrease from 2014. U.S. direct investment in Ecuador is led by mining, wholesale trade, and manufacturing.

Trade Agreements

The accession of Ecuador to the European Union's Multiparty Trade Agreement with Colombia and Peru became effective January 1, 2017. Many EU products exported to Ecuador will be charged lower tariffs than products manufactured in the United States. Most import tariffs on EU manufactured products were eliminated upon the agreement's entry into force or will be phased out gradually, depending on the product.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Batteries and Secondary Cells

U.S. companies expressed concerns that technical regulation RTE INEN 105 disrupts trade in secondary cells and batteries. On July 1, 2016, the Ministry of Industries and Productivity issued Resolution 16-227 mandating compliance with RTE INEN 105, which makes compulsory international standards regarding secondary cells and batteries that are normally voluntary. Exporters report they have not been able to identify a qualified laboratory to certify that batteries subject to the regulation comply with the standards. As of December 2016, Ecuadorian authorities are in discussions with industry representatives to seek a solution.

Processed Foods – Quality Compliance Requirements

Ecuador requires a variety of certificates depending on the type of processed food. Executive Decree No. 4522, issued in November 2013 by the Ministry of Health of Ecuador's National Agency for Regulation, Control, and Sanitary Surveillance, requires that all processed and packaged food products include a label with a set of colored bars indicating low, medium, or high content of salt, sugar, and fat. Ecuador requires a certificate demonstrating compliance with the labeling provisions pursuant to Committee of Foreign Trade (COMEX) Resolution 116 issued December 4, 2013. A separate certificate of recognition is required for food products for which the Ecuadorian Standards Institute (INEN) has issued a standard. The list of products requiring this separate certificate includes all U.S. and third-country processed food product imports. Implementation of this requirement reduced the imports of dozens of high value added food products from the United States, including preserved meat and vegetable products, jams, sauces, and other food products. In addition, processed food products of animal origin require prior authorization of

Ecuador's animal and plant health authority, the Ecuadorian Agency for Agricultural Quality Assurance (AGROCALIDAD).

The United States continues to work with Ecuadorian authorities to explore alternatives to the certificates, including the use of State or Federal Certificates of Free Sale, a Supplier's Declaration of Conformity, or a determination of equivalence with INEN's requirements.

Sanitary and Phytosanitary Barriers

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

In addition to prior authorization, COMEX Resolution 019 mandates that AGROCALIDAD, Ecuador's national sanitary and phytosanitary authority, require an SPS certificate for imported agricultural products, including low-risk products of animal origin.

AGROCALIDAD banned all U.S. origin poultry products on April 16, 2015, due to highly pathogenic avian influenza. AGROCALIDAD then lifted the ban in part by allowing the import of U.S. live poultry and day-old chicks. USDA is currently working with AGROCALIDAD to finalize the protocol requirements to resume imports of U.S. fresh and frozen poultry meat.

AGROCALIDAD issued Resolution 217 on September 9, 2016, which requires plant registration of foreign facilities that export animals or animal products to Ecuador. Although Ecuador notified this resolution to other trade partners through the WTO notification process, the country did not allow any time for comments. This resolution is problematic for U.S. exporters, as much of the information required by AGROCALIDAD will be difficult to gather. In all cases, AGROCALIDAD reserves the right to request a site inspection with costs covered by the party interested in exporting to Ecuador.

IMPORT POLICIES

Tariff and nontariff barriers remain a challenge, but there are signs of gradual improvement. Ecuador has imposed a broad range of tariff and nontariff restrictions on trade in goods, services, and investment, as well as weakening protection of intellectual property rights. This trend began several years ago, but accelerated in 2014 and 2015 as Ecuador's balance of payments circumstances worsened and economic growth declined. These measures, such as tariff surcharges implemented in March 2015 that remain in effect, contributed to sharply reduced U.S. exports to Ecuador in 2015 and 2016. The measures also created uncertainty in Ecuador's market, which can discourage investment, penalize Ecuadorian workers and businesses, and limit consumer choices of competitively priced, high quality goods and services. However, Ecuador eliminated quotas beginning January 1, 2017, that improved the competitive environment for automobiles and cell phones.

As part of its import policies, Ecuadorian officials sought commitments from companies to increase local production and decrease imports. According to Ecuador's Coordinating Minister for Production, Employment, and Competitiveness, over 900 companies signed import substitution agreements with the government in 2014 and 2015. Some of these companies complained that the government coerced them into the agreements by citing Resolution 116 technical requirements as a reason to block their imports until they agreed to sign. According to local importers, this policy of coercing companies into signing import

substitution agreements with the government was discontinued beginning in mid-2015, but many of the agreements remain in effect.

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

Tariffs

Since 2015, Ecuador has levied tariff surcharges on imported products. COMEX Resolution 011-2015 placed tariff surcharges of 5 percent to 45 percent on about 3,000 tariff lines beginning in March 2015. In June 2015, Ecuador informed other WTO Members that it would phase out all tariff surcharges by June 2016. In April 2016, Ecuador postponed the elimination of the surcharges until June 2017. Ecuador began easing the surcharges in January 2016. Since October 2016, surcharges have been applied on about 2,200 products at either 35 percent or 15 percent.

When Ecuador joined the WTO in January 1996, it bound most of its tariff rates at 30 percent *ad valorem* or less, except for agricultural products covered by the Andean Price Band System (APBS). Ecuador agreed to phase out its participation in the APBS when it joined the WTO; however, to date, Ecuador has taken no steps to phase out use of the APBS. The most recent WTO Trade Policy Review (TPR) of Ecuador in 2011 reported that Ecuador's tariff structure had become more complex "with the increase in the number of *ad valorem* rates and the adoption of compound duties." The TPR indicated that Ecuador's applied simple average most favored nation (MFN) tariff rate was 9.3 percent in 2011. With the additional trade restrictions imposed since 2011, the actual average applied MFN tariff rate for agricultural products was 18.3 percent in 2015.

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

Consumer goods

COMEX Resolution 023, issued July 17, 2014, created a $42 tariff on packages shipped via international courier. Consumers may receive no more than five packages per year, and each package must weigh less than four kilograms and be valued at less than $400, with a total value for all five packages not to exceed $1,200. COMEX Resolution 033, issued September 19, 2014, modified Resolution 023 to provide a waiver of the $42 tariff for packages sent by Ecuadorian residents abroad, up to a limit of 12 packages or $2,400 dollars.

Agricultural products

Ecuador's continued use of the APBS affects many U.S. agricultural exports. Because world prices for agricultural commodities were comparably low in 2016, U.S. exports such as wheat, barley, malt barley, soybeans, and soybean meal faced significantly higher total duties than in previous years. These duties consist of an *ad valorem* tariff plus a variable levy or surcharge, which increases as world prices decrease. For example, total duties can be as high as 45 percent for pork and 86 percent for chicken parts. The APBS has had a particularly adverse impact on soybean meal. Although Ecuador granted a renewable tariff exemption period for imports of soybean meal, this preference expired on December 31, 2016. As a result, many importers in the domestic livestock and aquaculture industries suspended purchases of soybean meal of U.S. origin because of uncertainty regarding tariff levels in 2017. South American trading partners will likely increase market share in 2017 because they enjoy preferential market access with Ecuador.

Nontariff Measures

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

Agriculture

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

For a number of agricultural products, MAGAP established consultative committees. These committees are composed of private sector representatives and government officials. Originally conceived as an advisory body for recommending production and agricultural development policies, these committees now seek to block imports to encourage domestic production.

Automotive

The Ministry of Foreign Trade announced on September 30, 2016, the elimination of quotas for automobile imports beginning on January 1, 2017. This action removed a major restriction on U.S. automobile exports to Ecuador.

MIPRO Resolution 14-453 provided that as of October 6, 2015, Ecuador would no longer accept U.S. Federal Motor Vehicle Safety Standards (FMVSS) and would require all automobiles sold in Ecuador to meet the safety standards established by the UN Economic Commission for Europe. U.S. companies reported that this regulation could impact $150 million of U.S. car and truck exports to Ecuador annually. Following substantial engagement by the U.S. Government, the Ministry of Industries and Productivity (MIPRO) issued Resolution 16-122 on April 6, 2016, which reversed Resolution 14-453 by allowing for continued imports and sale of automobiles manufactured to FMVSS. On October 5, 2016, MIPRO issued Resolution 16-410 accepting the Blue Ribbon Letter, issued by the U.S. Department of Transportation's National Highway Transportation Safety Administration, as proof of compliance with FMVSS for automobiles manufactured in the United States.

Cellular Telephones

Quotas on imports of cellular telephones that had been in effect since 2012 were eliminated effective in January 2017. The elimination of the quotas was announced in bulletin number 38-2017 published by Ecuador's customs authority.

Consumer Goods

Ecuador applies a special consumption tax (ICE) on a number of products, including alcohol, perfumes, video games, firearms, airplanes, helicopters, boats, and cable television service. Many of the products to which the ICE applies are imported, while many products that are domestically produced are excluded. In October 2016, reportedly in order to facilitate approval by the EU of Ecuador's accession to the Multiparty

Trade Agreement, Ecuador modified the calculation of the ICE on alcoholic beverages to the equalize the treatment of imported and domestic beverages.

Footwear

Ecuadorian law (INEN 013) requires U.S. footwear companies to make a special label on every pair of shoes imported to Ecuador, including content information and an Ecuadorian tax ID number. U.S. footwear companies need to make special production runs, specifically for Ecuador, to attach labels to the shoe upper during manufacture or attach a label after manufacture in a labor intensive manner. These requirements far exceed typical local language labeling requirements.

GOVERNMENT PROCUREMENT

Ecuador is not a signatory to the WTO Agreement on Government Procurement, but is subject to government procurement disciplines in its trade agreement with the EU.

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

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

Foreign bidders are required to register and submit bids for government procurement through an online system (http://www.compraspublicas.gob.ec). Foreign bidders must have a local legal representative in order to participate in government procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Ecuador was moved to the Special 301 Watch List from the Priority Watch List in 2016 in recognition of the passage in August 2015 of an amendment that reinstated some criminal procedures and penalties for intellectual property crimes.

Enforcement of IPR against widespread counterfeiting and piracy remains weak (including in marketplaces such as La Bahia Market in Guayaquil), and with respect to the pharmaceutical and agricultural chemical industries, Ecuador does not appear to adequately protect against the unfair commercial use or the unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. The Code of the Social Economy of Knowledge, Creativity, and Innovation, legislation covering wide ranging intellectual property matters, entered into force on December 9, 2016. U.S. stakeholders have expressed concerns that the legislation could negatively affect intellectual property protections and foreign investment in Ecuador.

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

On August 22, 2016, Ecuador issued a Presidential Decree (1159) to amend Presidential Decree 522, which affects the labeling of off-patent medicines. Some stakeholders continue to express concerns that the Decree may prejudice the legitimate interests of affected trademark holders. Also during 2016, Ecuador reevaluated and suspended several compulsory licenses of pharmaceutical related patents that it had issued in previous years.

The United States will continue to engage Ecuador on these issues in 2017, including through the Special 301 process.

SERVICES BARRIERS

Credit Bureaus

In September 2014, Ecuador enacted the Monetary and Financial Code, which regulates the financial, insurance, and capital markets. Article 357 of the law established the National Data Registry as the only depository of credit information to be allowed in Ecuador. No date has been established for when Article 357 will take effect. Once the government determines the National Data Registry is operational, the law as written would force U.S. and other foreign credit agencies to close upon 90 days' notice from the government. At least one U.S. bureau remained operational as of December 2016.

Telecommunications

On February 10, 2015, the National Assembly passed a law that requires telecommunications companies with at least a 30 percent market share to pay 0.5 percent of their revenue to the government. The law increases the required payments on a progressive basis up to nine percent of revenue for companies with market share of 75 percent or more. The requirement applies to mobile telephone, subscription television, Internet, and fixed-line telephone service providers. Corporación Nacional de Telecomunicaciones (CNT), owned by the government of Ecuador, is the dominant provider of fixed telecommunications services and a major supplier of subscription television services. The government of Ecuador maintains policies that favor CNT over other competitors, including exemptions from paying certain license fees and taxes.

INVESTMENT BARRIERS

Ecuador's investment climate remains marked by uncertainty, owing to the government's unpredictable and frequently restrictive economic policies.

Regulations and laws since 2007 limit private sector participation in sectors deemed "strategic," most notably in the extractive industries. In 2010, the Ecuadorian government enacted a hydrocarbons law that required all contracts in the extractive industries to be in the form of service, or "for fee" contracts, rather than production sharing agreements. Beginning in 2014, the government signed petroleum services contracts that allowed some flexibility in the requirement that all contracts be "for fee." Since 2014, the Ecuadorian government has attempted to encourage private investment in mining through changes to tax regulations affecting mining operations.

Ecuador withdrew from the Convention on the Settlement of Investment Disputes (ICSID Convention), effective January 7, 2010.

Ecuador's National Assembly approved a public-private partnership law on December 15, 2015, intended to attract investment. The law allows increased private participation in some sectors and offers incentives, including the reduction of income tax, value added tax, and capital exit tax for investors in certain projects.

We are aware of no U.S. firms that have signed a public-private partnership agreement with the Ecuadorian government since passage of the law.

OTHER BARRIERS

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

EGYPT

TRADE SUMMARY

The U.S. goods trade surplus with Egypt was $2.0 billion in 2016, a 39.9 percent decrease ($1.3 billion) over 2015. U.S. goods exports to Egypt were $3.5 billion, down 26.2 percent ($1.2 billion) from the previous year. Corresponding U.S. imports from Egypt were $1.5 billion, up 6.2 percent. Egypt was the United States' 49th largest goods export market in 2016.

Sales of services in Egypt by majority U.S.-owned affiliates were $1.2 billion in 2014 (latest data available), while sales of services in the United States by majority Egypt-owned firms were $2 million.

U.S. foreign direct investment (FDI) in Egypt (stock) was $23.3 billion in 2015 (latest data available), a 3.4 percent decrease from 2014.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Vehicles

U.S. vehicle and automobile parts exports face significant barriers in Egypt, and U.S. exports declined by 30.6 percent in 2016. Since June 2014, Egypt has applied EU-based emissions and safety regulatory standards for vehicles and replacement parts. This has made it difficult to export U.S. standard vehicles and parts to the market, in part because it is impossible to substitute parts built in conformity with EU standards to service vehicles built to U.S. regulatory requirements. Further, Egypt is only enforcing these standards for imports. Another restrictive element of Egypt's law prohibits the importation of used vehicles for commercial purposes.

The United States is seeking to address the decline in U.S. exports by encouraging Egypt also to accept U.S.-based emissions and safety regulatory standards for vehicles. After persistent engagement by the U.S. Government, Egypt finally agreed to accept U.S.-based emissions and safety regulatory standards for vehicles in 2016. Egypt has not yet implemented this change, but the U.S. Government will continue to press Egypt to do so in 2017.

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

Poultry Parts and Poultry Offal

Since 2003, Egypt has maintained a ban on poultry parts and poultry offal from all origins, only permitting imports of whole, frozen birds. Although Egypt cites halal slaughter concerns as the reason for the ban, Egypt's General Organization for Veterinary Services (GOVS) inspected and approved 22 U.S. poultry establishments for export to Egypt in September 2013, certifying that U.S. slaughtering processes and food safety measures are in accordance with Islamic halal practices.

Foreign Manufacturers Registration

Decree 43/2016, in effect since March 16, 2016, requires foreign entities that export finished consumer products to Egypt, *e.g.*, dairy products, furniture, fruits, textiles, confectioneries, and home appliances, to register with Egypt's General Organization for Exports and Imports Control (GOEIC). Goods from nonregistered entities are not cleared through customs. The burden of securing access to the list adds costs and uncertainty to the export process, and over time, may discourage exports to Egypt. In June and November 2016, the United States and other WTO Members raised these concerns with Egypt during meetings of the WTO Technical Barriers to Trade (TBT) Committee.

Sanitary and Phytosanitary Barriers

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

Agricultural Biotechnology

In March 2012, Egypt's Ministry of Agriculture and Land Reclamation issued a decree suspending the cultivation of corn seeds developed through agricultural biotechnology. This suspension followed media reports critical of agricultural biotechnology products.

Feather Meal

The Ministry of Agriculture and Land Reclamation's Decree 448 (March 19, 2012) bans the importation of heat-treated feather meal. Egypt cites concerns about avian influenza and nutritional value as a justification for the ban. Egypt's ban on heat-treated feather meal does not appear to be consistent with OIE guidelines on avian influenza.

Seed Potatoes

The United States remains unable to export seed potatoes to Egypt because it has not granted import permits for required field trials to address sanitary concerns.

IMPORT POLICIES

Tariffs

On January 26, 2016, Egypt issued Presidential Decree 26, which increased already high tariffs on approximately 100 "non-essential" items, including sunglasses, nuts, cut flowers, fireworks, grapes, strawberries, apples, pineapples, video games, chewing gum, watches, and seafood (including shrimp and caviar). On December 1, 2016, Egypt issued a second Presidential Decree, further increasing tariffs from 40 to 60 percent on certain luxury items, some of which were included in the earlier decree.

Egypt also has maintained high tariffs on a number of other products. Egypt's tariff on passenger cars with engines of less than 1,600 cubic centimeters (cc) is 40 percent, and the tariff on cars with engines of more than 1,600 cc is 135 percent. Tariffs on a number of processed and high-value food products, including poultry meat, range from 20 percent to 30 percent. There is a 300 percent tariff on alcoholic beverages for use in the tourism sector, including for hotels, plus a 40 percent sales tax. The tariff on alcoholic beverages for use outside the tourism sector ranges from 1,200 percent on beer, 1,800 percent on wine, and 3,000 percent on sparkling wine and spirits, effectively ensuring that these beverages are comprised of foreign

unrefined inputs that are reconstituted and bottled in Egypt. Foreign movies are subject to tariffs amounting to 46 percent. They are also subject to sales taxes and box office taxes higher than those for domestic films.

Customs Procedures

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

Import Bans and Barriers

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

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

GOVERNMENT PROCUREMENT

A 1998 law regulating government procurement requires procuring entities to consider technical factors, along with price, in awarding contracts. A preference is granted to Egyptian companies whose bids are within 15 percent of the price of other bids. Also, in the 2004 Small and Medium Sized Enterprises (SMEs) Development Law, Egyptian SMEs were given the right to supply 10 percent of the goods and services in every government procurement contract. Moreover, the Prime Minister retains the authority to determine the terms, conditions, and rules for procurement by specific entities and may grant authorities the right to use sole-source contracting for a project. Egypt is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Egypt remained on the Watch List in the 2016 Special 301 Report. The United States applauds Egypt's 2016 public awareness campaign emphasizing the importance of trademarks. However, the United States remains concerned about the lack of enforcement of intellectual property rights, particularly with respect to the usage of pirated and counterfeit goods, including software, music, unlicensed satellite TV broadcasts,

and videos, which represent barriers to U.S. exports and investment. Further, the lack of clarity, speed, and effectiveness in processing trademark and patent applications remain obstacles for growth. The U.S. Government continues to recommend that Egypt provide customs officials with *ex officio* authority to seize counterfeit and pirated goods at the border and establish a specialized body responsible for IPR protection.

SERVICES BARRIERS

Egypt restricts foreign equity in construction and transport services to 49 percent. Egypt also limits the employment of non-nationals to 10 percent of an enterprise's general workforce, although the Ministry of Manpower and Migration can waive this limitation. In computer related industries, Egypt requires that 60 percent of senior executives be Egyptian citizens within three years of the startup date of the venture. A decree published in September 2015 obliges freight forwarding companies to be at minimum 51 percent Egyptian-owned to be eligible for a license from the Civil Aviation Authority (CAA) to operate in Egyptian airports. Licenses are issued every two years. The terms of this decree affects approximately 20 foreign companies, including several American firms, providing over 80 percent of the airfreight services in Egypt. Despite this decree, however, at least one 100 percent-owned foreign company had its license renewed in 2016 without problem. The United States will continue to engage Egypt on these issues.

Banking

Foreign banks are able to buy shares in existing banks, but are not able to secure a license to establish a new bank in Egypt, as new commercial banking licenses have not been issued 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. Egyptian banks have since revived inter-bank transfers, and withdraw and deposit caps for foreign currency have been lifted for retail and corporate clients. However, importers of "non-essential goods" are still bound by the $50,000 monthly limit for deposits and a $30,000 daily limit for withdrawals.

Telecommunications

The state-owned telephone company, Telecom Egypt, lost its legal monopoly on the local, long-distance, and international telecommunication sectors in 2005. Nevertheless, Telecom Egypt continues to hold a *de facto* monopoly in the fixed line sector, primarily because the National Telecommunications Regulatory Authority (NTRA) has not approved additional licenses to compete in these sectors. The lack of competition among Internet service and fixed landline providers has contributed to high prices, low Internet speeds, and poor service quality. There is competition in mobile networks at the local level.

NTRA has been working on a unified license regime that would allow a company to offer both fixed line and mobile networks, but it has not been finalized. Adoption of a unified license regime would allow Telecom Egypt, currently operating in the fixed line market, to enter the mobile market and the three mobile providers to enter the fixed market. In November 2016, Etisalat, Orange, and Vodafone signed license deals with the NTRA to launch 4G services, alongside Telecom Egypt.

Courier and Express Delivery Services

The Egyptian National Post Organization (ENPO) must grant special authorization to foreign-owned private courier and express delivery service suppliers seeking to operate in Egypt. In addition, although express delivery services constitute a separate, for-profit, premium delivery market, ENPO requires private express operators to pay a postal agency fee of 10 percent of annual revenue on shipments of less than 20 kilograms. ENPO imposes an additional fee on private couriers and express delivery services of £E5 ($0.30) on all shipments under 5 kilograms.

INVESTMENT BARRIERS

Labor rules require that companies employ at least 90 percent Egyptian citizens (75 percent in Free Zones) and foreigners are not allowed to operate sole proprietorships or partnerships. Egypt's trade regulations allow foreigners to act as commercial agents with respect to the import of goods for trading purposes, but prohibit foreigners from acting as importers themselves. A foreign company wishing to import for trading purposes must do so through an Egyptian importer. U.S. investors have complained that Egyptian courts are not consistent in their approach to the recognition of foreign arbitral awards. In their view, enforcing arbitration awards in Egypt can in some cases require re-litigating the dispute in court. For foreign court judgments, only a few foreign states' judgments are enforceable in Egypt. There is also a perception that, in some cases, the domestic judicial system is subject to political influence.

EL SALVADOR

TRADE SUMMARY

The U.S. goods trade surplus with El Salvador was $466 million in 2016, a 34.3 percent decrease ($243 million) over 2015. U.S. goods exports to El Salvador were $3.0 billion, down 8.6 percent ($278 million) from the previous year. Corresponding U.S. imports from El Salvador were $2.5 billion, down 1.4 percent. El Salvador was the United States' 51st largest goods export market in 2016.

U.S. exports of services to El Salvador were an estimated $1.0 billion in 2015 (latest data available) and U.S. imports were $770 million.

U.S. foreign direct investment (FDI) in El Salvador (stock) was $2.6 billion in 2015 (latest data available), a 8.8 percent decrease from 2014.

Free Trade Agreement

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

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Since 2013, U.S. companies have been disadvantaged by onerous labeling regulations issued by the Ministry of Health. El Salvador requires a "Certificate of Free Sale" to register food products, cosmetics, and hygienic products in El Salvador. As no such equivalent certificate exists in the United States for these products, companies located in El Salvador seeking to import and sell U.S. products at times have difficulty complying with this requirement. USDA has negotiated with the Ministry of Health the acceptance of the Food Safety Inspection Service (FSIS) 9060-5 certificate for meat and meat products in lieu of the Certificate of Free Sale. However, the Ministry of Agriculture (MAG) requires an original FSIS 9060-5 certificate for U.S. meat and meat products. USDA is currently in discussions with MAG to accept a notarized copy of the original and allow importers to use the original certificate to meet Ministry of Health requirements.

The Ministry of Health has drafted regulations without adhering to its domestic procedures for consultation and notification, and then attempted to enforce such regulations via unofficial notifications. Labeling requirements that are not contemplated by laws have been inserted into these implementing regulations.

In June 2015, El Salvador issued the implementing regulation for the Act for the Promotion, Protection and Support of Breast Feeding, which defines requirements for sanitary registration, restricts marketing and advertising, and sets out labeling requirements for breast milk substitutes. This measure was published and entered into force also during June 2015, without notification to the WTO, and still lacks certainty as to what information must appear on the label. The United States is monitoring the implementation of the

measure and has requested El Salvador notify it to the WTO to allow WTO Members a comment period and reasonable interval for implementation.

Internal Taxes on Distilled Spirits

El Salvador, under its general alcoholic beverage law, currently assesses a specific excise tax on distilled spirits that is applied on a per-liter of alcohol basis, with four specific rates (currently $0.0325, $0.5, $0.9 and $0.16). The lowest rate applies only to *Aguardientes*, a locally bottled spirit made from cane sugar. Whiskey, which is exclusively imported, is assessed at the highest rate. Arbitrary breakpoints based on type of distilled spirit or tariff classification appear to result in a significantly lower tax rate on spirits produced locally.

Sanitary and Phytosanitary Barriers

In November 2015, the MAG issued a requirement for animal product imports that requires MAG personnel to inspect and certify, every 3 years, any exporting facility. Under CAFTA-DR, El Salvador grants equivalence to the U.S. beef, pork, and poultry inspection systems. Therefore, the new requirement only applies to U.S. animal origin products not covered by the equivalence agreement. The MAG has extended exporters' compliance deadline for this measure to November 17, 2017. Other products, such as animal feed and pet food additives/probiotics, also are affected by this requirement. USDA is in discussion with the MAG to allow U.S. products to be imported based on recognition of the U.S. inspection rather than a plant-by-plant inspection by MAG.

The MAG requires on-site inspections in the United States by Salvadoran officials for U.S. seafood imports into El Salvador. A Memorandum of Understanding is currently under review by MAG to recognize U.S. National Oceanic and Atmospheric Administration (NOAA) inspections as sufficient for meeting MAG's requirement.

Food product testing requirements often are redundant and increase the cost of introducing a product to the Salvadoran market. El Salvador does not distinguish between low- and high-risk products. Therefore, extensive laboratory tests are mandatory for all food products, even for those products that would be considered low-risk in other markets. This requirement applies when importing samples (products that companies may or may not actually end up importing). To register product samples, the Ministry of Health requires large quantities of the product for testing, including samples of different flavors of the same product.

IMPORT POLICIES

Tariffs

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

Eighty-four percent of U.S. agricultural product exports by product line are eligible for duty-free treatment in El Salvador under the CAFTA-DR as of 2015. El Salvador will eliminate its remaining tariffs on nearly all agricultural products by 2020, on rice and chicken leg quarters by 2023, and on dairy products by 2025. For certain agricultural products, tariff-rate quotas (TRQs) permit duty-free access for specified quantities

during the tariff phase-out period, with the duty-free amount expanding during that period. El Salvador will liberalize trade in yellow corn through a 5 percent continual expansion of the initial 350,000 metric ton TRQ for 15 years, after which unlimited quantities will be permitted.

Nontariff Measures

Under the CAFTA-DR, all CAFTA-DR countries, including El Salvador, committed to improve transparency and efficiency in administering customs procedures. The CAFTA-DR countries also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and agreed to share information to combat illegal transshipment of goods. In 2013, Salvadoran Customs implemented nonintrusive inspections with x-rays at border crossings. These inspections have resulted in detection of over 2,000 cases of anomalies, such as trafficking of drugs or false declarations of goods. At the same time, while designed to facilitate cross-border movements, the procedures have resulted in considerable delays that cause losses to exporters and importers. Customs also has increased incidence of penalties for differences between a shipment's weight and that presented on the accompanying paperwork, without taking account of shipping losses or providing an opportunity to amend the documentation. The private and public sector Inter-union Commission for Trade Facilitation (Cifacil) has been promoting the implementation of measures to streamline trade, but has not made progress despite years of engagement with the government. The Central American customs integration process is advancing between El Salvador and Guatemala, but the process is still pending with other countries in the region.

In October 2015, El Salvador's Legislative Assembly approved a new amendment to the Customs Simplification Law, including a required $18 per shipment processing fee for incoming packages and cargo. Although the private sector submitted comments and met with Salvadoran Customs to discuss the amendment before it was implemented, the private sector is concerned that certain language in the amended Customs Simplification Law might be interpreted as authorizing the Ministry of Finance to impose additional fees without consulting with the private sector.

GOVERNMENT PROCUREMENT

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

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

EXPORT SUBSIDIES

El Salvador has eliminated its Export Processing Zones and Marketing Act, an export subsidy program with permanent tax exemptions based on export performance, and instituted El Salvador's Free Trade Zone Law, which grants tax credits based on the number of workers employed and investment levels.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To implement its CAFTA-DR intellectual property rights (IPR) obligations, El Salvador undertook legislative reforms providing for stronger IPR protection and enforcement. Despite these efforts, trafficking in counterfeit products remains high, as does music and video piracy. The United States has also expressed concern about insufficient enforcement efforts against the unlicensed use of software as well as inadequate enforcement efforts against cable and satellite signal piracy. The United States remains concerned about the adequacy of implementation of regulations to protect against the unfair commercial use, as well as unauthorized disclosure, of test and other data generated for pharmaceutical products and the effectiveness of the system to address patent issues expeditiously in connection with applications to market pharmaceutical products is unclear. The United States is also engaging El Salvador to ensure geographical indication (GI) protections do not negatively impact US stakeholder prior rights and market access. The United States will continue to monitor El Salvador's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Telecommunications

In 2015, El Salvador eliminated its discriminatory $0.04 per minute tax on international calls. On October 29, 2015, however, the Legislative Assembly passed a special tax of five percent on fixed and mobile telecommunications services, pay television services, fixed and wireless Internet access services, and the transfer and import of telecommunications equipment. The proceeds of the tax will be used to fund government security initiatives. The tax has been challenged in Salvadoran court as unconstitutional "double taxation," and is still pending review by the Supreme Court.

INVESTMENT BARRIERS

The Millennium Challenge Corporation is working with the Salvadoran government to systematically improve the ease and cost of doing business in El Salvador. A new government entity was created to improve regulations and processes in areas such as public administration, foreign trade and public-private infrastructure investment. The first reforms package will be presented to executive entities and the Legislative Assembly in December 2017. As these reforms are pursued, investment in El Salvador continues to be impeded by non-transparent and duplicative regulations, and by licensing and regulatory decision-making processes that appear to be inconsistent and contradictory. Such barriers have affected sectors including energy, mining, and retail sales, while foreign direct investment inflows are low compared to other countries in the region.

OTHER BARRIERS

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in El Salvador. Administrative and judicial decision-making appear at times to be inconsistent, nontransparent, and very time consuming. Bureaucratic requirements have at times reportedly been excessive and unnecessarily complex. A proposed Sovereignty and Food and Nutrition Security Law may include trade protectionist measures; the National Association of Private Enterprise (ANEP) is also concerned that this law may impose onerous advertising restrictions under the guise of protecting public nutritional health.

On November 26, 2015, the Legislative Assembly approved reforms to the Law on Credit History, which, among other changes, reduced from three years to one the maximum period that credit rating agencies could retain negative credit information in their databases, once a debt was paid in full. When the original debt

is less than half of the monthly minimum wage in the trade/services sector (at this time, a debt of $120), the negative information cannot be retained for more than six months. Credit rating agencies state that the reforms will increase their costs, raise interest rates, and hinder access to credit. There is also concern in some quarters that the Office of the Superintendent of the Financial System, which regulates credit rating agencies and can access their data, is not subject to these maximums. On July 27, 2016, the Legislature amended the Law to establish objective criteria for the imposition of fines on rating agencies.

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

ETHIOPIA

TRADE SUMMARY

The U.S. goods trade surplus with Ethiopia was $591 million in 2016, a 52.5 percent decrease ($654 million) over 2015. U.S. goods exports to Ethiopia were $827 million, down 46.8 percent ($728 million) from the previous year. Corresponding U.S. imports from Ethiopia were $236 million, down 23.9 percent. Ethiopia was the United States' 82nd largest goods export market in 2016.

SANITARY AND PHYTOSANITARY BARRIERS

In August 2015, the president of Ethiopia signed into law an amendment to the Biosafety Proclamation that establishes a legal framework to support the cultivation of biotechnology cotton in the country. The government has subsequently revised the proclamation's underlying implementing directives to spell out the specific requirements for introducing genetically engineered (GE) cotton and is in the process of conducting field trials. Commercialization of GE cotton is expected within the next couple of years. Meanwhile, the U.S. Foreign Agricultural Service and business contacts have reported that the approval process for imports of biotechnology 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 exempt from these requirements. Imports of GE cotton and food aid shipments are also exempt.

IMPORT POLICIES

Tariffs

According to WTO estimates for 2016, Ethiopia's average applied tariff rate is 17.4 percent. The accumulation of foreign exchange reserves by the Central Bank of Ethiopia, and not necessarily the protection of local industry, appears to be the best explanation for Ethiopia's tariff levels. However, high tariffs limit participation in the market and insulate priority sectors of the economy, such as textiles and leather, from outside competition.

Nontariff Measures

An importer must obtain a letter of credit for the total value of an import transaction and apply for an import permit before an order can be placed. Even with a letter of credit, however, import permits are not always granted, and there can be delays for several months before acquiring foreign exchange.

Foreign Exchange Controls

The Central Bank of Ethiopia administers a strict foreign currency control regime, and the local currency (birr) is not freely convertible. Larger firms, state-owned enterprises, enterprises owned by the ruling party, and businesses that import goods prioritized by the government's development plan, and priority manufacturing export sectors (textiles, leather, and agro-processing) or emergency food importation generally have not faced major delays in obtaining foreign exchange. However, non-priority sector investors and less well-connected importers, particularly smaller, new-to-market firms, face delays in arranging trade-related payments. Since the early October 2016 imposition of the State of Emergency (SOE) due to political unrest, foreign exchange supplies have become even tighter, and the unreliability of supply in Ethiopia's banks hampers the ability of all manufacturers to import and restricts repatriation of profits.

GOVERNMENT PROCUREMENT

A high proportion of Ethiopian imports are for government capital investment in infrastructure or for price stabilization of commodities such as wheat and cooking oil, reflecting the heavy government involvement in the economy. Tender announcements are usually public, but a number of major procurements, including for the commodities noted above, have not gone through an open tendering process. Complicated procedures, delays in decision-making, lack of transparency, and the need for personal connections can challenge foreign participation in government procurement. U.S. firms have complained about the abrupt cancellation of procurement awards, and a widespread perception of favoritism toward Chinese competitors with access to financing packages at terms unavailable on the free market. Another obstacle is the frequent requirement for potential suppliers to appear in-person to collect solicitation packages, which business associations complain creates am advantage for state-owned enterprises. U.S. firms have expressed concerns about the transparency of the tendering process and the failure of procurement agencies to respect tender terms, suggesting possible corruption. However, progress has been made in this area, and at least one U.S. firm has successfully utilized the government appeals process to reverse an unfair tendering decision. U.S. businesses have also reported increasing corruption when clearing goods through customs and during tendering of infrastructure projects.

Ethiopia is neither a party nor an observer to the WTO Agreement on Government Procurement. However, Ethiopia has joined the U.S. Trade and Development Agency's Global Procurement Initiative which provides support for public officials in emerging economies to better understand the total cost of ownership for procurement of goods and services related to infrastructure projects, and for establishing procurement practices and policies that integrate life-cycle cost analysis and best-value determination in a fair and transparent manner.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Ethiopia was not listed in the 2016 Special 301 Report. While Ethiopia is a member of the World Intellectual Property Organization and has demonstrated an interest in strengthening its intellectual property rights (IPR) regime, it has not joined most of the major IPR treaties, including TRIPS. Trademark infringement and misuse, especially in the hospitality sector, continues to be a growing problem. Given the lack of enforcement capacity and coordination amongst Ethiopian government agencies, IPR enforcement is unpredictable. It appears the Ethiopian government only responds to IPR challenges brought to the attention of Ethiopia's Competition Commission or through the Federal Court. Further, while the Ethiopian Intellectual Property Office is responsible for the administration and arbitration of IPR cases in Ethiopia, it focuses mainly on protecting domestic content and has taken little action to confiscate or impede the sale of pirated foreign works.

SERVICES BARRIERS

Banking and Financial Services

Ethiopia's investment code prohibits foreign investment in banking, insurance, and financial services. Foreign nationals of Ethiopian origin that own bank shares, even if purchased while they were Ethiopian citizens, have been required to surrender their shares at par value. This is part of a continued effort by the government of Ethiopia to maintain a closed financial sector. The sector is composed of 16 private commercial banks and 2 public banks. Financial transactions are predominately in cash. However, Ethiopia's Automatic Teller Machine (ATM) network has expanded rapidly and has become accessible to customers of all banks and credit card holders. In addition, agent-banking services tied to mobile phones have been introduced by several providers, and more than a million users of agent-banking services have

been registered. Few international banks maintain representative offices, and all trade financing must go through an Ethiopian bank. This creates significant challenges for foreign investors with offshore accounts.

Telecommunications

The state-owned Ethio-Telecom maintains a monopoly on wired and wireless telecommunications services. Ethiopia ranks 169th of 175 countries in intensity of mobile phone, Internet use and information and communication technologies skills according to the Information and Communication Technology Development Report issued by the International Telecommunications Union in 2016. The sector is closed to private investment, although the Value Added Service Directive No. 3/2011 of August 2011 allows private companies to provide services such as short messaging, payment transaction, entertainment and information, call center, and virtual Internet services, as well as location based services, through the government infrastructure. These services grew rapidly in 2016, notably in agent-banking services, bill-paying services, GPS-based taxi services, mobile medical advice, and employment platforms. However, with Internet penetration still under 10 percent, most consumers are unable to access these services.

The Ministry of Communication and Information Technology allows companies and organizations whose operations are Internet-dependent or located in remote areas of the country to use Very Small Aperture Terminals (VSATs), but it does not allow the general public to use VSATs. Many multinational companies assert that the current quality of service impedes information transfer and general business operations.

In October 2016, the government of Ethiopia imposed state of emergency laws in response to protests and political unrest. At that time, Ethio-Telecom initially shut down Internet service to mobile telephones and blocked access to social media and websites, including U.S. Government, business, scientific, academic, and news sites. Although the government later restored mobile data services, some sites remain blocked. Ethiopia scored 83 out of 100 (0=Most Free, 100=Less Free) on the 2016 Freedom House Internet Freedom Report.

Logistics

Logistics backlogs occur regularly, in part because the customs process remains paper-based, and also because of structural inefficiencies and alleged corruption at Ethiopian customs. Private sector contacts reported that logistics costs comprise approximately 22 to 27 percent of the product cost. Equally important, 95 percent of the country's foreign trade passes through a single port, Djibouti, which is experiencing incomplete infrastructure projects that delay movement of goods from the container, dry-goods, and oil terminals to the newly completed railhead. In addition, most goods are transported by trucks; Ethiopia's government-owned trucking companies dominate the market, and the overall number of trucks is insufficient to meet demand. The beginning of operations of the Addis Ababa – Djibouti railway, possibly in 2017, could partially alleviate transportation delays. Plans to dramatically expand Ethiopia's rail systems beyond the Djibouti – Addis Ababa link have been finalized but other rail systems are still under construction due to a lack of financing. The government announced a new Ethiopian National Logistics Strategy in 2015 that may open opportunities for private enterprise and provide greater efficiencies overall, but improvements have not appeared to materialize to date.

INVESTMENT BARRIERS

A number of formal and informal barriers impede foreign investment in Ethiopia. Investment in the telecommunications services and defense industries is permitted only in partnership with the Ethiopian government. The banking, insurance, and micro-finance industries are restricted to domestic investors. Foreign investors also are barred from investing in a wide range of retail and wholesale enterprises (*e.g.*,

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

All land in Ethiopia belongs to the state; there is no private land ownership, and land cannot be collateralized. Land may be leased from local and regional authorities for up to 99 years. However, current land-lease regulations may 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; or, restrict the transfer of leasehold rights.

OTHER BARRIERS

State of Emergency

Ethiopia has experienced sporadic but often violent political unrest and protests since October 2015 and, in July 2016, the situation deteriorated further. According to the Development Bank of Ethiopia (DBE), 68 large-scale investments, plus an unknown number of smaller investments, were vandalized. Reportedly, in response to demands for protection from the business community, the government of Ethiopia enacted a state of emergency (SOE) effective October 8, 2016, to re-establish law and order. The SOE extended extraordinary powers to the army and police, and implementation provisions, among other things, for authorized detention without a warrant; limiting mobile data and blocking access to a wide range of Internet sites including social media, news outlets, YouTube, and Skype; and prohibiting public gatherings and demonstrations. The SOE, and the unrest that preceded it, are expected to slow economic growth due to factors such as capital flight and reduced foreign investment, tourism, exports, and business confidence. The restrictions on Internet access, although eased weeks after the imposing the SOE, impacted businesses and demonstrated that access could be cut at any time, for undetermined periods and without notice.

Parastatal and Party-affiliated Companies

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

Judiciary

Companies that operate businesses in Ethiopia assert that the judicial system remains inexperienced and inadequately staffed, particularly with respect to commercial disputes. While property and contractual rights are recognized, and there are commercial and bankruptcy laws, judges often lack understanding of commercial matters and the scheduling of cases often face extended delays. Contract enforcement remains weak, though Ethiopian courts will at times reject spurious litigation aimed at contesting legitimate tenders. Ethiopia has not yet ratified key international arbitration agreements such as the New York Convention, although the government stated that the ratification is under consideration. Ethiopia is in the process of reforming the country's Commercial Code to bring it in line with international best practices. The draft legislation appears to address many concerns raised by the business community, including by proposing to introduce a commercial court under the regular court system to improve resolution of commercial disputes.

EUROPEAN UNION

TRADE SUMMARY AND OVERVIEW

The U.S. goods trade deficit with European Union was $146.3 billion in 2016, a 5.9 percent decrease ($9.2 billion) over 2015. U.S. goods exports to European Union were $270.3 billion, down 0.6 percent ($270.3 billion) from the previous year. Corresponding U.S. imports from European Union were $416.7 billion, down 2.5 percent.

U.S. exports of services to European Union were an estimated $226.8 billion in 2015 (latest data available) and U.S. imports were $172.8 billion. Sales of services in European Union by majority U.S.-owned affiliates were $651.1 billion in 2014 (latest data available), while sales of services in the United States by majority European Union-owned firms were $479.9 billion.

U.S. foreign direct investment in European Union (stock) was $2.7 trillion in 2015 (latest data available), a 6.5 percent decrease from 2014. U.S. direct investment in European Union is led by nonbank holding companies, manufacturing, and finance/insurance.

The United States and the 28 Member States of the EU share the largest economic relationship in the world. Trade and investment flows between the United States and the EU are a key pillar of prosperity on both sides of the Atlantic. Transatlantic trade flows (goods and services trade plus earnings and payments on investment) averaged $4.7 billion each day of 2015, and the total stock of transatlantic investment was $4.5 trillion in 2015.

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

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

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, even though international standards may meet or exceed the objectives set forth in EU legislation. U.S. producers and exporters thus face additional burdens in accessing the EU market not faced by EU exporters and producers in accessing the U.S. market.

In 1985, the EU adopted what is known as the "New Approach" to the use of standards for products.[1] Product requirements in a variety of sectors (toys, machinery, medical devices, etc.) are regulated through New Approach legislation. Under the New Approach, 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

[1] OJ C 136, 4.6.1985, p. 1.

EU. Products that conform to European regional standards (called European harmonized standards, or ENs) under the New Approach are presumed to be in conformity with the essential requirements.[2] ENs, however, can only be developed through the European Standards Organizations (CEN,[3] CENELEC,[4] and ETSI[5]) as directed by the European Commission through a standardization request. These products can bear what is known as a "CE mark" and can be sold throughout the EU.

While the New Approach does not explicitly prohibit other standards to be used to meet the EU's essential requirements, the practical effect of the EU system discourages the use of other standards. Specifically, the costs and uncertainty associated with not using an EN and attempting to demonstrate that use of an alternative standard will fulfill essential requirements is often prohibitive. For example, if a manufacturer chooses not to use an EN, it needs to assemble a technical file through a costly and burdensome process demonstrating how the product meets the essential requirements. Even if a manufacturer assembles such a file, there is no certainty that EU or Member State authorities will treat the product as conforming with the EU's essential requirements. As a result, U.S. producers often feel compelled to use the relevant EN developed by the European Standards Organizations for the products they seek to sell on the EU market. This is the case even if the U.S. products are produced according to relevant international standards providing similar or higher safety levels.

Moreover, non-EU nationals are generally excluded from the CEN or CENELEC technical committees that draft the European standards.[6] In the limited instances where non-EU nationals are allowed to participate, they are not allowed to vote. Accordingly, when a U.S. producer uses an EN, it is typically using a standard that has been developed through a process in which it had no meaningful opportunity to participate. This is particularly the case for small and medium sized enterprises and other companies that do not have a European presence. The opportunity for U.S. stakeholders to influence the technical content of EU directives setting out essential requirements (*i.e.*, technical regulations) is also limited. This is because when the EU notifies proposed directives 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 directives after the Commission has transmitted them 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 directives, nor the standards that may be used to fulfill directives' essential requirements. In other words, they are left out from participating in what requirements will be set and the means by which the requirements will be fulfilled.

Additionally, the United States has serious concerns regarding the EU's conformity assessment framework, as set out in Regulation (EC) No 765/2008 and Decision 768/2008. Regulation 765 requires each Member State to appoint a single national accreditation body and prohibits competition among Member States' national accreditation bodies. Under the EU system, an accreditation certificate from one Member State accreditation body suffices throughout the EU. The regulation further specifies that national accreditation bodies shall operate as public, not-for-profit entities. This regulation effectively bars use of trade-facilitative international accreditation schemes and precludes U.S. accreditation bodies from offering their services in the EU with respect to any mandatory third party conformity assessment requirements.

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[2] Moreover, an EN must be implemented at the national level by an EU Member State, including through the withdrawal of any conflicting national standard.
[3] Committee for Standardization.
[4] European Committee for Electrotechnical Standardization.
[5] European Telecommunications Standards Institute.
[6] For example, CEN/TC 438 is the technical committee for CEN that develops and publishes standards for additive manufacturing.

Decision 768 sets out reference provisions to be used in EU Directives establishing conformity assessment requirements for products falling within the New Approach. Directives applying Decision 768 require that any mandatory third party conformity assessment be performed by a body that has been designated as a "Notified Body" and permit only bodies "established under national law" to become Notified Bodies. In practice, the EU interprets "established under national law" as a requirement that anybody seeking designation as a Notified Body must be established in the EU and, in particular, in the Member State from which it is seeking such designation. This raises serious market access concerns for U.S. producers, whose products may have been tested or certified by conformity assessment bodies located outside the EU, and denies U.S.-domiciled conformity assessment bodies the opportunity to test and certify products for the EU market. This lack of reciprocal treatment of U.S. conformity assessment bodies, in contrast to the U.S. approach to conformity assessment, which provides national treatment to EU bodies, adds increased time to market, increases costs for manufacturers, and requires U.S. testing and certification bodies to establish operations in the EU to remain competitive.

The EU also promotes adoption of European regional standards in other markets and often requires the elimination 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. The withdrawn standards can be international standards that U.S. producers use, which may be of equal or superior quality to the European regional standards that replaced them. U.S. producers thus must choose between the cost of redesigning or reconfiguring the product or exiting the market.

Civil Nuclear Technologies:

U.S. stakeholders argue that the development of civil nuclear sector technology regulations, standards, or conformity assessment should not require the use of certain EU technologies when U.S. technologies, which meet U.S. civil nuclear safety standards, are equally safe. In the nuclear industry, local standards in the EU may not always conform to international nuclear safety norms, placing U.S. exporters at a disadvantage in markets where they must compete with firms using substandard parts. EU Member States are also under pressure to adopt French civil nuclear regulatory standards, which could potentially create a bias against U.S. firms that adhere to international standards developed by U.S.-domiciled standards developing organizations (*e.g.*, ASME[7]) and want to enter the European market. Furthermore, the EU's approach of explicitly referencing particular standards potentially undermines innovation and eschews more effective means of addressing potential regulatory objectives.

Chemicals: Registration, Evaluation, Authorization, and Restriction of Chemicals

The EU regulation concerning the use of chemicals known as REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) entered into force on June 1, 2007, and will be fully implemented by 2018. REACH impacts virtually every industrial sector because it regulates chemicals as a substance, in preparations, and in products. It imposes extensive registration, testing, and data requirements on tens of thousands of chemicals. REACH also subjects certain identified hazardous chemicals to an authorization process that would prohibit them from being placed on the EU market unless a manufacturer or user has obtained permission from the Commission.

The United States agrees on the importance of regulating chemicals to ensure public safety. The United States is concerned, however, that REACH appears to impose requirements that are either more onerous on foreign producers than EU producers or simply unnecessary. For example, stakeholders have raised concerns that they must provide data as part of the registration process under REACH that is irrelevant to

[7] American Society of Mechanical Engineers.

health and environmental concerns. Additionally, there appears to be inconsistent and insufficiently transparent application of REACH by EU Member States. The United States and many other WTO Members have raised concerns regarding various aspects of REACH have been raised at nearly every WTO TBT Committee meeting for years. WTO Members have emphasized the need for greater transparency in the development and implementation of REACH requirements and frequently cite the need for further information and clarification, as well as problems producers have in understanding and complying with REACH's extensive registration and safety data information requirements.

Nanomaterials

Among the substances subject to REACH are nanomaterials, or chemical substances or materials that are manufactured and used at a very small scale (down to 10,000 times smaller than the diameter of a human hair), which are used in products ranging from batteries to antibacterial clothing. The Commission is working to adopt implementing regulations to adapt the data requirements for nanomaterials in REACH registration dossiers. The Commission published an impact assessment regarding the regulations in March 2014. At this time, it is unclear when the Commission will adopt this legislation.

Community Rolling Action Plan

The United States and stakeholders also have concerns about a lack of transparency and associated with the Community Rolling Action Plan (CoRAP). CoRAP is part of the REACH substance evaluation process and is updated every March. Its purpose is to allow Member States and the European Chemicals Authority (ECHA) to prioritize substances they suspect of being hazardous to human health or the environment. Depending on the outcome of the evaluation, a substance evaluated under CoRAP may be considered for classification as a substance of very high concern and become subject to authorization and restriction procedures. It is also possible that after evaluation, a substance will be found to pose no such risk. ECHA has established criteria for selecting substances for placement on the list. These criteria address concerns about hazard, exposure, and tonnage. Member States are encouraged, but not obliged, to use the ECHA criteria. ECHA published the most recent CoRAP list on November 10, 2016. It contains 319 substances, which either have been evaluated or will be evaluated through 2018. CoRAP preliminary reports should be made available to interested U.S. companies, even if they have not yet registered the particular substance, but the reports are currently made available only to registrants. The EU should undertake greater transparency concerning the CoRAP process, which would both facilitate the EU's objectives and help reduce costs and address U.S. stakeholders' concerns.

Substances of Very High Concern (SVHC) Roadmap

The United States has also continued to raise concerns bilaterally with the EU on the lack of public notice and comment associated with the "Risk Management Options" (RMO) analysis phase of the SVHC Roadmap. Under the Commission's Roadmap for evaluation of individual SVHCs, at the request of the Commission, a Member State competent authority or ECHA will conduct an RMO analysis to determine whether regulatory risk management is required for a given substance and to identify the most appropriate regulatory instrument to address a concern. The regulatory decision may be to pursue authorization or restriction, address the concern via other legislation, or take no action. The Commission's SVHC Roadmap identifies five minimum criteria for the RMO analysis and states that the RMO is not meant to be public. Beyond this, the Member State authority drafting the RMO has discretion with respect to the level of detail provided in its analysis and whether or not stakeholder consultation is appropriate. ECHA has said that documenting the RMO analysis and sharing it with other Member States and the Commission promotes early discussion and should ultimately lead to a common understanding on the regulatory action pursued. The United States supports the EU's efforts to conduct RMO analyses and believes the RMO analysis should be implemented in a harmonized and consistent manner by Member States. To prevent or minimize

unnecessary potential adverse effects on trade, the RMO analysis should be subject to public notice and comment, with the views expressed by commenters taken into account by the Member State or ECHA irrespective of the domicile of the commenter.

Court of Justice of the European Union, Judgment in the Case C-106/14

On September 10, 2015, in case C-106/14, the Court of Justice of the European Union (CJEU) released an important ruling on the notification and information duties applicable to the producers and importers of articles under REACH. The CJEU held that the notification and information duties apply to each individual component "article" and not just to the whole assembled or finished "article", for producers and importers that deal with more than one ton per year of any SVHC present in articles over 0.1 percent by weight.

The court's conclusion is contrary then to existing ECHA guidance, which only requires notification for SHVCs on the article-level. The United States is currently investigating the trade impact to manufactured products such as vehicles, ICT equipment, and medical devices.

In light of the 2015 CJEU decision, ECHA will need to revise its regulation. It has begun implementing a two-step process to update the applicable 2011 "Guidance on Requirements for Substances in Articles."

- The first step consisted of the December 2015 publication of a "fast track" update to the guidance document. The update was intended to bring about the immediate correction of existing documents in order to bring them in line with the CJEU ruling.

- The second step to be undertaken is to conduct a more comprehensive restructuring and review of the guidance document, which is to include examples aligned with the CJEU ruling and address the questions received by ECHA since the publication of the "fast track" guidelines. The United States understands that this comprehensive review will follow a three-step consultation process, including consultation of accredited stakeholders.

The United States is concerned that requiring notification of components rather than the final good will increase burdens on both producers and importers.

Cosmetics: Scientific Committee on Consumer Safety (SCCS) Ingredient Reviews & Amendments to the EU Cosmetics Regulation

Regulation (EC) No 1223/2009 of the European Parliament and of the Council on cosmetic products (EU Cosmetics Regulation) provides that the SCCS conduct risk assessments for all ingredients approved for use in cosmetics in the EU market. Based on SCCS assessments, the European Commission rules on whether the use of the ingredient should be restricted and, if so, in which Annex within the EU Cosmetics Regulation it should be listed.

The United States and stakeholders have concerns as to the transparency of the process under which the SCCS defines the scope of its risk assessments. While the initial request for stakeholder participation and input into SCCS reviews is public, once an assessment starts, if there is a change in scope or the information being considered in the assessment, this may not be publically notified. According to SCCS Rules of Procedure, the Committee solicits additional information on an invitation-only basis. This process can translate into assessment determinations that are made on the basis of risk assessments that do not fully consider available scientific evidence or relevant uses of a particular cosmetics ingredient. Furthermore, the process of petitioning an opinion from SCCS can often entail significant and unexplained delays, with the overall process often taking two or more years for completion.

Renewable Fuels: Renewable Energy Directive

In April 2009, the EU adopted the Renewable Energy Directive (RED) (2009/28/EC), with the objective of helping to lower its greenhouse gas emissions (GHG), reducing its dependence on foreign oil, natural gas, and coal, and increasing rural development. RED establishes mandatory national targets for the share of energy from renewable sources by 2020. While the United States supports the emission reduction objectives of the EU's measure, concerns remain that its informational and verification requirements are overly-burdensome and constitute an unnecessary barrier to trade. Furthermore, the United States maintains that procedures for determining compliance with RED sustainability criteria are unnecessarily rigid and opaque.

RED also establishes a methodology and accounting system by which Member States may record and calculate GHG savings as compared to a baseline for fossil fuels. According to the Commission, this comparison quantifies the total amount of GHG savings in the EU and progresses toward the EU's overall goal of a 20 percent reduction in GHG emissions from 1990 levels by 2020. In order to count toward Member State specific renewable energy use targets, or benefit from incentives, RED requires that biofuels and feedstocks for biofuels meet certain sustainability criteria, as featured in the RED and Fuel Quality Directive (FQD) as amended by the Indirect Land Use Change (ILUC) certifications. RED also sets the reporting and verification requirements for obtaining sustainability certifications. The ILUC Directive, which entered into force on October 5, 2015, includes a seven percent cap to the contribution of first generation biofuels (made from crops such as palm oil, soy and rapeseed) to the 10 percent target for renewable energy in transport by 2020. Further, biofuel suppliers will be obligated to report the estimated level of greenhouse gas emissions caused by ILUC.

The Commission presented a new Renewable Energy Directive (RED II) for the period 2020-2030 as part of a comprehensive "Winter Energy Package" of legislative proposals which includes initiatives on bioenergy sustainability (liquid biofuels and biomass). RED II was adopted by the Commission on November 30, 2016, and the Commission debriefed the Member States on the content of the full "Winter Energy Package" at the Energy Council meeting on December 5, 2016. The Commission also debriefed the European Parliament during the plenary session on December 13, 2016, and already sent its legislative proposal to the Industry, Energy and Research (ITRE) Committee of the European Parliament and to the Energy Council for further examination. It is expected to take at least 18 months for the entire legislative process to be completed.

Under Article 18(4) of RED, which provides for bilateral agreements, the Commission and the United States jointly established the U.S.-EU Technical Working Group on the RED (TWG) to examine how long-standing U.S. conservation programs address RED sustainability criteria and to create the framework for a bilateral agreement to accept U.S. exports of biofuel feedstock as compliant with the sustainability goals of RED. During the final meetings of the TWG, the Commission stated that U.S. conservation laws and programs must correspond exactly to those outlined in the RED sustainability criteria if the EU is to consider U.S. exports of biofuel feedstock as compliant with RED sustainability criteria.

One method to meet the sustainability and GHG savings requirements of RED is to certify biofuel production through a voluntary certification system. In April 2015, the U.S. Soybean Export Council (USSEC) submitted an application to the Commission to recognize the U.S. Soybean Sustainability Assurance Protocol (SSAP) as a voluntary certification scheme. In March 2015, the SSAP was positively benchmarked against the European Feed Manufacturers' Federation (FEFAC) Soy Sourcing Guidelines through the independent International Trade Center (ITC) customized benchmark. SSAP has also met the Dutch Feed Industry Association's requirements for sustainable feedstuffs, but the Commission has indicated it requires additional information and analysis by the U.S. soybean industry before it would be able to determine whether SSAP meets the RED sustainability criteria. As recently as October 2016, the

Commission continued to raise issues with USSEC's voluntary scheme application regarding traceability and GHG calculations.[8]

Transport Fuel: Fuel Quality Directive

The EU's revised Fuel Quality Directive (FQD), adopted in 2009 as part of the EU's Climate and Energy package, requires fossil fuel suppliers to reduce the lifecycle greenhouse gas intensity of transport fuel by six percent by 2020. The directive granted the Commission the power to develop a methodology for calculating GHG life-cycle emissions for transport fuels. The United States strongly supports the goal of FQD for reducing GHG emissions. The United States, however, has raised concerns with the Commission about the lack of transparency and opportunity for public comment in the development of the Commission proposal for the methodology for calculating GHG life-cycle emissions for transport fuels.

Trucks: Maximum Authorized Dimensions

U.S. stakeholders have long raised concerns that the EU's truck length requirements were too prescriptive and unnecessarily restricted U.S. exports of aerodynamic and fuel efficient trucks to Europe. On April 15, 2013, the EU issued a "Proposal for a Directive of the European Parliament and of the Council amending Directive 96/53/EC laying down for certain road vehicles circulating within the Community the maximum authorized dimensions in national and international traffic and the maximum authorized weights in international traffic." The United States engaged in extensive discussions with the EU at the WTO TBT Committee and bilaterally in other fora on the overly restrictive nature of this Directive. On April 29, 2015, the EU adopted the proposed Directive 2015/719/EU amending Directive 96/53/EC that included several elements to promote greater energy efficiency, including revisions that would allow truck tractor-semitrailer combinations to exceed 16.5 meters in length and to add flaps to the rear of the vehicle. In particular, Article 9a allows vehicle combinations to "exceed the maximum lengths laid down in point 1.1 of Annex I to this Directive provided that their cabs deliver improved aerodynamic performance, energy efficiency and safety performance."

Country of Origin Labeling (COOL)

Eight European Member States – Finland, France, Greece, Italy, Lithuania, Portugal, Romania, and Spain – are in the process of developing and implementing a variety of country of origin labeling (COOL) schemes that would require an indication of the origin of milk products as well as the origin of milk, meat, and wheat used as ingredients in certain processed foods. The measures are not being implemented consistently across EU Member States; they apply to different types of ingredients and finished products, have varying implementation times, and require different wording on labels. The information required on packaging varies according to each individual Member State and can include the country of birth, fattening, and slaughter of animals; country of milking, packaging, or processing for dairy products; and country of cultivation and processing for wheat.

Affected industries have raised concerns that the new COOL requirements in EU Member States could impede market access for imported ingredients. In addition, some of the measures could favor goods produced in certain countries by selectively eliminating the requirements for processed foods produced in EU Member States, Turkey, or EFTA countries that are part of the European Economic Area.

The United States raised concerns about these measures at the November 2016 TBT Committee. In particular, the United States noted a number of concerns, including, the treatment of EU versus non-EU origin products, the amount of recordkeeping that may be required to comply with the measures, the

[8] USDA FAS, EU Biofuels Annual 2016.

apparent favoring of select countries, the impact on U.S. exports, and the failure of the EU or the Member States to notify the measures under the TBT Agreement, solicit and take into account feedback from interested stakeholders, and allow a reasonable interval of time between publication and entry into force of the various measures.

Nutritional Labeling

EU framework regulation 1169/2011 on the provision of food information to consumers went into effect on December 13, 2014, except for the provision on mandatory nutrition labeling, which became effective December 13, 2016. The measure regulates the display of product information on product packaging and online stores ostensibly to provide consumers with information related to nutrition, ingredients, and allergens.

The United States has concerns that Regulation 1169/2011 appears to provide wide latitude for Member States to adopt non-uniform and potentially inconsistent implementing regulations. U.S. stakeholders are thus concerned about the burden of meeting multiple labeling requirements, particularly if those requirements cannot be met through stickering or supplemental labeling. During the consultative process, the United States has sought assurances that imported products will be subject to harmonized EU requirements, regardless of port of entry, and that compliance with national schemes (such as the United Kingdom's and Ireland's traffic light requirements) would remain voluntary. The United States will continue to closely monitor this issue.

Fishery and Aquaculture Labeling

Commission Regulation 1379/2013 identifies specific requirements for the labeling of fishery and aquaculture products intended for the retail sector. This regulation only concerns products from Chapter 3 of the Tariff Harmonized System and not products from Chapter 16 (*e.g.*, not canned products). Since December 13, 2014, all fishery and aquaculture products for sale at retailers and mass caterers must provide the following information: the commercial name of the species; the production method (*e.g.*, aquaculture or fishery product); the fishing gear; and the catch area (products caught at sea must identify the area of capture, which is taken from the FAO list).

The United States is working bilaterally to better understand the rationale and basis for mandatory labeling requirements that appear more stringent than those found in the Codex General Standard. The United States is also seeking assurances that only harmonized EU requirements will be mandatory and that national labeling requirements remain voluntary.

Agriculture Quality Schemes

In 2012, the EU adopted Regulation 1151/2012 "on quality schemes for agricultural products and foodstuffs." Regulation 1151/2012 combines into one regulation rules for two different EU schemes and adds new rules on optional terms. The regulation applies to a range of agricultural products and covers: Protected Designations of Origin (PDO) and Protected Geographical Indications (PGI); "Traditional Specialties Guaranteed" (TSG); and optional quality terms. Optional quality terms are intended to provide additional information about product characteristics such as "first cold-pressed extra virgin olive oil" and "virgin olive oil." A separate measure addressing the marketing standards for wine and spirits was notified to the WTO on September 11, 2011.

The schemes covered by the regulation are: (1) certification schemes for which detailed specifications have been laid down and are checked periodically by a competent body; (2) labeling schemes, which are subject to official controls and communicate the characteristics of a product to the consumer. Schemes can indicate

that a product meets baseline requirements but can also be used to show "value-adding qualities," such as specific product characteristics or farming attributes (*e.g.*, production method, place of farming, mountain product, environmental protection, animal welfare, organoleptic qualities, Fair Trade, etc.).

The United States remains concerned that "place of farming" requirements are unclear, difficult to comply with, and lack a basis in international standards. International standards promulgated by the Codex Alimentarius Commission (Codex), for instance, maintain no recommendation for place of farming designations and has rejected proposals that would have expanded country of origin designations to foods with multiple ingredients, because such labeling caused consumer confusion.

Further, the United States remains concerned over certain aspects of the TSG requirements, including whether "prior use of a name" includes a trademark or prior geographical indication (GIs). The United States is also seeking clarification of the manner of precedence used in determining TSG requirements relative to trademarks. Despite assurances from the EU that the provisions of EU 1151/2012 "ensure that a prior trademark is not affected by the registration of a TSG," it remains unclear whether prior use of a trademark will be grounds for opposing registration of a TSG. Finally, U.S. stakeholders have expressed concern about the EU's decision to shorten the comment period to oppose a registration from six months to two months.

The United States continues to stress to the Commission that common usage names of products should not be absorbed into quality schemes, whether for wine or other products. If a Codex standard exists, or if a name is used in a tariff schedule or by the World Customs Organization, the United States believes that the name should be excluded from the quality schemes. The United States has further argued that new certification and labeling quality schemes not be required for market access; however, where the EU implements such schemes, efforts should be made to acknowledge voluntary U.S. industry definitions. Similarly, U.S. processes and procedures should be acceptable for labeling requirements and system and process comparability with industry definitions should be sought in order to minimize any negative market access impact for U.S. exports.

Wine Traditional Terms

Separate from its regulation on agricultural quality schemes, the EU continues to aggressively seek exclusive use for EU producers of "traditional terms," such as "tawny," "ruby," and "chateau," on wine labels. Such exclusive use of traditional terms impedes U.S. wine exports to the EU, including U.S. wines that include these traditional terms within their trademarks. U.S. wines sold under a trademark before 2005 can continue to use the terms, but products sold more recently cannot. In June 2010, U.S. stakeholders submitted applications to be able to use the terms in connection with products sold within the EU. In 2012, the EU approved the applications for use of two terms, "cream" and "classic," but the EU's delayed application approval process for other terms continues to be a significant concern. The United States has repeatedly raised this issue in the WTO TBT Committee in recent years and has also pursued bilateral discussions. Beyond approving the two terms, the EU has not taken any visible steps to address U.S. concerns.

The Commission has started discussions with the Member States on a possible simplification of wine labelling set out in Regulation 607/2009, but appears to be facing resistance to any changes that would lessen the protection of traditional terms.

Distilled Spirits Aging Requirements

The EU requires that for a product to be labeled "whiskey" (or "whisky"), it must be aged a minimum of three years. The EU considers this a quality requirement. U.S. whiskey products that are aged for a shorter

period cannot be marketed as "whiskey" in the EU market or other markets that adopt EU standards, such as Israel and Russia. The United States 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. In 2016 the United States continued to urge the EU and other trading partners to end whiskey aging requirements that are restricting U.S. exports of whiskey from being labeled as such.

Certification of Animal Welfare

The EU is requiring animal welfare statements on official sanitary certificates. Although the United States supports efforts to promote animal welfare, the EU's certification requirements do not appear to advance any food safety or animal health objectives, and thus do not belong on sanitary certificates. The U.S. position is that official sanitary and phytosanitary certificates – the purpose of which is broadly limited to prevent harm to animal, plant, or human health and life from diseases, pests, or contaminants – should only include statements related to animal, plant, or human health, such as those recommended by Codex, OIE, and the International Plant Protection Convention, or have scientific justification.

Sanitary and Phytosanitary Barriers

The United States remains concerned about a number of measures the EU maintains ostensibly for the purposes of food safety and protecting human, animal, or plant life or health. Specifically, the United States is concerned that these measures unnecessarily restrict trade without furthering their safety objectives because they are not based on scientific principles, maintained with sufficient scientific evidence, or applied only to the extent necessary. Moreover, the United States believes there are instances where the EU should recognize current U.S. food safety measures as equivalent to those maintained by the EU, because they achieve the same level of protection. If the EU recognized the equivalence of U.S. measures, trade could be facilitated considerably.

Hormones and Beta Agonists

The EU maintains various measures that impose bans and restrictions on meat produced using hormones, beta agonists, and other growth promotants, despite scientific evidence demonstrating that such meat is safe for consumers. U.S. producers cannot export meat or meat products to the EU unless they participate in a costly and burdensome process verification program to ensure that hormones, beta agonists, or other growth promotants have not been used in their production.

For example, the EU continues to ban the use of the beta agonist ractopamine, which promotes leanness in animals raised for meat. The EU maintains this ban even though international standards promulgated by the Codex have established a maximum residue level (MRL) for the safe trade in products produced with ractopamine. The Codex MRL was established following scientific study by the Joint FAO/WHO Expert Committee on Food Additives (JECFA) that found ractopamine at the specified MRL does not have an adverse impact on human health.

The EU's ban on growth promotant hormones in beef has been found to be inconsistent with its WTO obligations. Specifically, in 1996, the United States brought a WTO dispute settlement proceeding against the European Communities (the EU predecessor entity) over its ban on beef treated with any of six growth promotant hormones. A WTO dispute settlement panel concluded – and a subsequent report of the WTO Appellate Body affirmed – that the ban was maintained in breach of the EU's obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). Following the failure by the EU to implement the recommendations of the WTO Dispute Settlement Body (DSB) to bring itself into compliance with its WTO obligations, the United States was granted permission by the WTO in 1999 to suspend concessions. Accordingly, the United States levied *ad valorem* tariffs of 100 percent on

imports of certain EU products. The value of the suspended concessions, $116.8 million, reflected the damage that the hormone ban caused to U.S. beef sales to the EU.

In September 2009, the United States and the Commission signed a Memorandum of Understanding (MOU), which established a new EU duty-free import quota for grain-fed, high quality beef (HQB) as part of a compromise solution to the U.S.-EU hormone beef dispute. Since 2009, Argentina, Australia, Canada, New Zealand, and Uruguay have also begun to ship under the HQB quota. As a result, the market share of U.S. beef in the HQB quota has decreased and accounted for only 32 percent of the quota in the 2015/2016 quota year. Since 2014, the United States has engaged in discussions with the EU on the future operation of the MOU to ensure that U.S. producers are compensated through increased export benefits in the EU market in exchange for the continued suspension of WTO-sanctioned trade action. In December 2016, the United States announced that it is seeking public comments and will hold a public hearing in connection with the request of representatives of the U.S. beef industry to reinstate trade action against the EU. The hearing took place on February 15-16, 2017. The United States is carefully considering the submissions made.

The United States will continue to engage the EU regarding the unscientific ban on meat and animal products produced using hormones, beta agonists, and other growth promotants.

Animal Cloning

Currently, the EU Novel Foods and Novel Food Ingredients Regulation (Novel Foods Regulation) issued in 1997 is the only EU measure that potentially addresses the use of animal cloning for food production.[9] The Novel Foods Regulation would appear to encompass food products derived directly from cloned animals, but not food products derived from the offspring of clones.[10] Food products subject to the Novel Foods Regulation require a pre-market authorization by the EU Member State decision and potentially the Commission in order to be imported or sold in the EU.

In January 2008, the Commission proposed a revision of the Novel Foods Regulation to simplify the authorization procedure for placing new food products on the market. The proposed revision failed in significant part due to a disagreement among the Commission, the Parliament, and the Council regarding the need for specific rules on food from cloned animals.

In December 2013, the Commission published two new proposals[11] on animal cloning, in conjunction with a new proposal for a novel foods regulation. One of the proposed directives (the Cloning Technique Proposal) would ban animal cloning for food purposes in the EU and the import of cloned animals or embryos, while the other (the Cloning Food Proposal) would ban the marketing of food, both meat and dairy, from cloned animals, but not from their offspring. However, both of these proposals appear to be inconsistent with risk assessments done by competent authorities in the EU and other countries that show no differences in terms of food safety between food products produced from cloned animals or their offspring and those produced from conventionally-bred animals.

[9] Regulation (EC) No 258/97.

[10] The Novel Foods Regulation covers certain types of "foods and food ingredients which have not hitherto been used for human consumption to a significant degree within the Community..." *Id*.

[11] (1) Proposal for a Directive of The European Parliament and of The Council on the cloning of animals of the bovine, porcine, ovine, caprine and equine species kept and reproduced for farming purposes (Cloning Technique Proposal) and (2) Proposal for a Council Directive on the placing on the market of food from clones (Cloning Food Proposal).

In June 2015, the European Parliament's Agriculture and Rural Development (AGRI) Committee and Environment, Public Health and Food Safety (ENVI) Committee, adopted a joint report proposing amendments to the Commission's aforementioned proposals that would vastly extend their scope and impact and change the measure from a directive into a regulation. The substance of these proposed amendments included permanent bans on clones and their descendants for all farmed animals, including fish and poultry, as well as bans on all agricultural products derived from them, including food, semen, and embryos. The proposed amendments also included a ban on cloning of animals for sports. In September 2015, the full Parliament, or Plenary, approved the AGRI/ENVI report and amendments. A new EU framework regulation 2015/2283 on Novel Foods was adopted in November 2015 and published in Official Journal L 327 on December 11, 2015. Most provisions of the new Novel Foods Regulation will become applicable on January 1, 2018. Food from clones but not offspring will continue to fall within the scope of the Novel Foods Regulation until separate legislation on cloning is adopted. Although the EU proposal on animal cloning was approved by the EU Parliament in September 2015, the file is still at the technical level in the Council and has reportedly seen no progress. The United States believes the use of cloning technologies are beneficial for herd improvement and that no differences have been demonstrated in terms of food safety between food products produced from cloned animals or their offspring and those produced from conventionally-bred animals.

Agricultural Biotechnology

Delays in the EU's approval process for genetically engineered (GE) crops has prevented GE crops from being placed on the EU market even though the events have been approved (and grown) in the United States. Moreover, the length of time taken for EU approvals of new GE crops appears to be increasing. As of October 2016, 30 GE events are in the pipeline and the European Food Safety Authority (EFSA) has issued a further five inconclusive opinions (implying that those events receiving such an opinion are effectively out of risk analysis procedure until the applicant responds to the point raised by EFSA).

The EU's own legally prescribed approval time for biotechnology imports is approximately 12 months (six months for the review with the EFSA and six months for the political committee process (comitology)). However, in practice, at the end of 2016 total approval times were taking an average of 47 months. In April 2015, the Commission adopted 10 new authorizations for GE crops for food or feed use, seven renewals of existing authorizations for food or feed imports, and two new authorizations for the import of GE cut flowers.[12] While welcomed, these approvals took 17 months in the comitology process. Since April 2015, three soy and two corn applications for food and feed imports have completed the comitology process. On December 4, 2015, the EU authorized the import of the two genetically engineered corn products for food/feed use. At the time, it was expected that three glyphosate resistant GE soy traits would also be approved. However, it appears the reauthorization became tied to a separate political debate. Specifically, some NGOs attempted to link the authorization of these traits and the reauthorization of the herbicide glyphosate. The risk assessment undertaken by EFSA and published in November 2015 found that glyphosate was unlikely to pose a carcinogenic threat to humans. On June 29, 2016, after much debate and public exposure, the European Commission agreed to temporarily extend the authorization for glyphosate for 18 months pending a review by the ECHA. With the glyphosate issue at least temporarily resolved, the Commission authorized the three GE soybeans for food/feed uses in July 2016.

Between 1998 and 2003, the EU failed to approve any GE products for sale in the EU. In 2003, the United States initiated a WTO dispute settlement proceeding against the EU. A WTO dispute settlement panel concluded that the EU applied a general *de facto* moratorium on the approval of GE products. The WTO panel found this moratorium was inconsistent with the EU's obligations under the SPS Agreement because

[12] Source: USDA FAS, GAIN Report: EU Agricultural Biotechnology Annual 2015.

it led to undue delays in the completion of EU approval procedures. The WTO panel also found that various EC Member State safeguard measures were inconsistent with WTO obligations as they were not based on a risk assessment.

Exports of U.S. corn have been adversely impacted because of extensive delays in EU approvals of GE corn products, including stacked products, leading to concerns that the exports may contain a low-level presence (LLP) of unapproved GE crops that results in the entire shipment being rejected. This possibility of LLP exists precisely because the United States has approved products that the EU has yet to approve. U.S. exports of distillers' dried grains and corn gluten feed continue but could be disrupted by the detection of content from an unapproved GE corn trait. U.S. rice exports remain well below the levels seen before the discovery of an unapproved event (LL 601 and 62) in the U.S. rice crop. Concerns regarding the possible detection of LLP, and subsequent rejection that would likely ensue, has curtailed U.S. exports. Although no agricultural biotechnology rice varieties are currently grown in the United States, EU approval of this single rice event (LL62), which was originally requested in the EU in 2004, could reduce commercial uncertainty associated with LLP concerns. The United States continues to work with the EU to support trade in corn byproducts and rice, but success will depend on the EU addressing the larger issue of delays in the biotechnology approval process. The United States continues to urge the EU to participate in discussions of a practical approach to LLP under the Global Low-Level Presence Initiative.

Pathogen Reduction Treatments

The EU maintains measures that prohibit the use of any substance other than water to remove contamination from animal products unless the substance has been approved by the Commission. U.S. exports of beef, pork, and poultry to the EU have been significantly hurt as a result, because the Commission has failed to approve various pathogen reduction treatments (PRTs). PRTs are antimicrobial rinses used to kill pathogens that commonly exist on meat after slaughter. The PRTs at issue have been approved by the U.S. Department of Agriculture (USDA), after establishing their safety on the basis of scientific evidence.

In 1997, the EU began blocking imports of U.S. products that had been processed with PRTs, which have been safely used by U.S. meat producers for decades. After many years of consideration and delay, in May 2008 the Commission prepared a proposal to authorize the use of the four PRTs during the processing of poultry, but imposed unscientific highly trade restrictive conditions with respect to their use. Member States rejected the Commission's proposal in December 2008. In February 2013, the EU approved the use of lactic acid as a PRT for beef.

In June 2013, USDA submitted an application dossier for the approval of peroxyacetic acid (PAA) as a PRT for poultry. In March 2014, EFSA published a favorable Scientific Opinion on the safety and efficacy of PAA solutions for reduction of pathogens on poultry carcasses and meat. After a long period of inaction, the Commission eventually put forward the authorization of PAA as one part of a three-pronged strategy to mitigate campylobacter in poultry. However, it later withdrew the proposal from the Standing Committee agenda in December 2015, citing lack of evidence of PAA's efficacy against campylobacter. The Commission has no plans to put forward the proposal for approval at the Standing Committee at this time.

The United States believes the use of PRTs are 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.

Export Certification

EU certification requirements are limiting U.S. agricultural exports such as fish, meat, dairy, eggs, processed products, and animal byproducts, adding unnecessary costs to the movement of exports in Europe, irrespective of whether these goods are destined for commercial sale in the EU, transiting through the EU, or even intended for cruise ships or U.S. military installations located in the EU. These requirements often appear inconsistent with international standards and to have been implemented without scientific evidence or a risk assessment. Moreover, the certificates are often very complex and burdensome to the point that it is very difficult to verify the applicable certification requirements. For example, the level of detail required on the certificate (*e.g.*, the specific attestation language) necessitates a multitude of forms being required for each product containing references to multiple levels of EU legislation that in turn cites other legislation. This creates enormous confusion and burden for manufacturers and exporters, as well as U.S. regulatory agencies, EU Member State authorities, and EU importers. Codex guidance and ongoing work in APEC seek to limit certification to the minimum amount of information necessary to ensure the safety of the product being traded. The United States continues to engage the EU in various international fora and bilaterally to find a resolution of these concerns regarding the EU's certification requirements.

Somatic Cell Count

Somatic cell count (SCC) refers to the number of white blood cells in milk. The count is used as a measure of milk quality and an indicator of overall udder health; however, it does not have any bearing on the safety of the milk itself. Since April 1, 2012, the EU has required imports of dairy products that require EU health certificates to also comply with EU SCC requirements. Specifically, the EU requires certification to establish that the SCC does not exceed 400,000 cells per milliliter, a threshold that is significantly lower than the U.S. requirement for Grade A milk at 750,000 cells per milliliter. The certification necessary to meet the EU requirement is burdensome, requiring farm level sampling and a Certificate of Conformance. Accordingly, while U.S. dairy products can continue to be shipped to the EU, the EU's SCC requirements hinder trade by adding unnecessary costs. The United States continues to engage the EU regarding their SCC requirement in the appropriate technical working groups.

EU Flavorings

In the EU, the food industry can only use flavoring substances that are on the EU flavoring list.[13] On July 29, 2015, five substances (1-methylnaphthalene, furfuryl methyl ether, difurfuryl sulphide, difurfuryl ether, and ethyl furfuryl ether) were deleted from the list. These five substances are generally recognized as safe (GRAS) by the Flavor and Extract Manufacturers Association (FEMA) for their intended use as flavoring substances. FEMA makes a GRAS determination following an expert panel's evaluation of the substance. The expert panel includes experts in toxicology, organic chemistry, biochemistry, metabolism, and pathology. Accordingly, the United States and other countries, including China, Japan, Brazil, and Mexico, accept the use of flavorings deemed by FEMA to be GRAS. In addition, these five substances have already been evaluated, or are under consideration by, other safety assessment bodies such as JECFA. The United States will continue to raise this issue with the EU.

Citrus Canker

In 2010, the United States petitioned the EU to remove a requirement that citrus fruit exports to the EU be sourced from groves displaying no symptoms of the disease citrus canker. This EU requirement has effectively eliminated EU market access for a majority of Florida citrus groves. The United States provided the EU with a substantive, peer-reviewed risk analysis that concluded citrus fruit, including symptomatic

[13] See Annex I of Regulation 1334/2008) & Regulation 872/2012.

fruit, was highly unlikely to be a vector of citrus canker. In February 2017, the EU published an implementing directive to amend import regulations, which will allow greater flexibility in shipping citrus to Europe.

Proposal for Categorization of Compounds as Endocrine Disruptors

The EU is considering measures that would proscribe the use of various pesticides by the agriculture industry on the basis that they may be classified as endocrine disruptors (EDs). EDs are naturally occurring compounds or man-made substances that may mimic or interfere with the function of hormones in the body. While the United States shares public health concerns with respect to EDs, the United States is concerned that the EU appears to be contemplating approaches to regulating these compounds that are not based on scientific principles and evidence, thereby restricting trade without improving public health.

On June 15, 2016, the European Commission presented two draft legal acts outlining scientific criteria to identify endocrine disruptors in agricultural products. The two acts fall under Biocidal Products legislation and Plant Protection Products legislation, respectively. 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.

The two proposals are expected to progress concurrently through discussions with Member States and Parliament. The non-objection of Council and Parliament will be required before the Commission can enforce both. The Standing Committee on Plants, Animals, Food and Feed (SCoPAFF) discussed the proposals on September 21, 2016, after which the Commission produced a revised proposal that split the issue into two components: establishing criteria to classify a substance as an endocrine disruptor; and a proposal to amend the derogation to allow for substances classified as endocrine disruptors to be used under limited circumstances. There was no consensus among Member States at the December meeting on the EC proposal. For the February 2017 SCoPAFF meeting, the Commission chose to put only the proposal for the criteria up for discussion, likely in the hope that it could be approved more quickly without the proposal for the derogation. However, the Committee again failed to reach a qualified majority on the criteria proposal. Many of the Member States asked for the re-introduction of the derogation that would allow for maximum residue levels and import tolerances to be set if a critical plant protection product is banned under the criteria. At this time, the Commission has given no indication when they will again hold a discussion about the proposal on how to move forward. The United States continues to monitor this issue and raise concerns in international and bilateral fora.

Animal Byproducts, Including Tallow

The EU considers all animal byproducts sourced from animals raised under conditions not essentially identical to those in the EU to be hazardous materials (category 1 and 2 materials). Between 2002 and the present, the EU has made modifications to its regulations and implementation practices governing animal byproducts that have resulted in the treatment of U.S. products as being considered hazardous. The current EU interpretation of the animal byproducts regulations could potentially prevent most exports of U.S. animal byproducts. Several Member State border inspection posts have already begun to block consignments of various technical blood products.

Tallow exported to the EU must meet criteria that are not scientifically justified and significantly exceed the recommendations of the World Animal Health Organization (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 guidelines. 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 – guidelines.

Used cooking oil (UCO) is used for the production of biodiesel. Currently, individual EU Member States implement national measures for the importation of UCO. However, in 2016 the EU circulated a draft regulation to harmonize requirements EU wide. The draft requirements follow the EU's non-science based approach regarding importation of tallow and would curtail U.S. exports of UCO to the EU. The United States provided feedback in writing to the EU on their proposed measure and is working with the EU to resolve these concerns.

Live Cattle

Live cattle from the United States are not authorized to be exported to the EU, or transited through the EU on route to third countries, due to EU certification requirements for several bovine diseases. Although the U.S. Animal and Health Inspection Service (APHIS) successfully resolved issues related to bovine leucosis and bluetongue in 2003, the EU subsequently established certification requirements for BSE that precluded U.S. exports. Since then, the EU model certificate has been amended to align the BSE requirements with the OIE Code. Although the United States can now meet the BSE certification requirements, U.S. exporters remain frustrated 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 Animal Health Technical Working Group.

Certification Requirements for Marinated Pork

The EU meat preparations certificate for marinated pork includes the condition that the product must be frozen. The United States is concerned that this condition has resulted in a *de facto* ban on shipments of chilled marinated pork, which by definition is not frozen. The United States will continue to engage with the EU on this issue.

Specified Risk Materials Certification Requirement

The EU has a different definition of specified risk materials (SRM) than the United States for the animal tissues most at risk of harboring the transmissible spongiform encephalopathies. The EU requires that materials exported to the EU meet the EU's SRM definition and be derived from carcasses of animals that can be confirmed as never having been outside of regions that the EU considers to be of negligible risk for BSE. Although the United States has been recognized by OIE as having negligible risk, the source cattle for U.S. ruminant origin animal byproduct exports may not necessarily come from negligible risk countries. The SRM requirement thus unnecessarily impedes U.S. exports of ruminant origin animal byproducts and would potentially limit the market for ovine/caprine meat were other market impediments removed.

This requirement otherwise has not been an issue for bovine meat for human consumption, because the special EU required production controls in the non-hormone treated cattle (NHTC) program already provides the necessary verifications regarding the history of the animal. The United States has requested the removal of the EU's "born and raised" requirement for all U.S. commodities. Consistent with the recommendations of OIE, it is the BSE status of the country of export that should determine whether SRMs have to be removed. The United States continues to raise this issue in the appropriate bilateral technical working groups and the WTO SPS Committee.

Pesticides and Maximum Residue Limits

Regulation (EC) No. 1107/2009, which governs the registration of crop protection products, establishes several hazard-based "cut-off" criteria that exclude certain categories of products from consideration for normal authorization for use in the EU. For such products, the EU will not perform a risk assessment. Rather, it will discontinue EU authorization for a particular product at the time of re-approval, as has already happened for some substances, or, in the case of new products, declare them to be ineligible for authorization, based solely on their intrinsic properties, without taking into account important risk factors such as level of exposure or dosage. The United States is concerned that increasing numbers of safe and widely-used substances will not be reapproved or not have reasonable import tolerances set for their use due to these arbitrary cut-off criteria when current registrations expire.

MRLs and import tolerances are established under separate legislation, Regulation (EC) No. 396/2005, which is risk-based rather than hazard-based. The United States is concerned that for substances not approved under Regulation 1107/2009 due to the cut-off criteria, the EU has the authority and mandate to ignore the risk assessment process established under Regulation 396/2005 and automatically reset MRLs and import tolerances to the default level of 0.01 mg/kg, which is not commercially viable.

As the number of substances ineligible for reauthorization by the EU increases, and as the EU resets the corresponding MRLs and import tolerances to the default level, the significant negative effect on agricultural production and trade is likely to increase. U.S. stakeholders have estimated the potential damage to U.S. exports at over $5 billion and global trade damage at over $75 billion. Discontinuing the use of critical substances without a proper science-based risk assessment is not a realistic option for the EU, since doing so would have serious adverse effects on agricultural productivity and global markets.

Fosetyl-al

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

On November 9, 2015, the PAFF approved the draft Commission Regulation to extend the temporary MRL of 75 mg/kg for almonds, cashew nuts, hazelnuts, macadamias, pistachios, and walnuts until March 1, 2019. Under the higher MRL, U.S. trade is able to continue. The draft act was formally adopted by the Commission on January 25, 2016, but made retroactive to January 1, 2016, to minimize trade disruptions. The Commission instructed Member States to follow this guidance for import checks and sampling. An import tolerance application to replace the temporary MRL for tree nuts is under currently under review in the EU.

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

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

Diphenylamine

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

Agriculture Biotechnology Cultivation Opt-Out

In March 2015, the EU adopted a directive that allows Member States to ban the cultivation of genetically engineered (GE) plants in their respective territories for non-scientific reasons. Under the transitional measures, the Member States had until October 3, 2015, to request to be excluded from the geographical scope of the authorizations already granted or in the pipeline. Nineteen Member States have "opted-out" of GE crop cultivation for all or part of their territories. These decisions will not lead to a change in the field, since none of the five Member States (Spain, Portugal, Czech Republic, Slovakia, and Romania) that currently grow GE corn are opting out.[14]

Seventeen Member States and four regions in two countries have opted-out of cultivation using biotechnology seeds. The 17 Member States that requested their entire territory to be excluded from the geographical scope of biotechnology applications are Austria, Bulgaria, Croatia, Cyprus, Denmark, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Slovenia, and Poland. The four regions are Wallonia in Belgium and Northern Ireland, Scotland, and Wales in the United Kingdom. All of these Member States and regions have decided to ban the cultivation of Monsanto 810 corn (MON810) and the seven varieties of corn that were in the pipeline in 2015, apart from Denmark and Luxembourg that have only banned MON810 and three of the seven varieties of corn in the pipeline.

Member State SPS Measures:

Austria: After the release of EU Directive 2015/412, which allows Member States to restrict or ban the cultivation of GE plants in their territory, the Austrian government issued the Biotechnology Cultivation Framework Law on August 3, 2015. This law streamlines the requirements for Austrian states to continue banning the cultivation of biotechnology crops. The specific federal bans are for the cultivation of MON810 and the import and processing of Monsanto's GT73 rapeseed, Monsanto's 863 corn, and other non-U.S varieties.

[14] Source: USDA FAS, GAIN Report: 19 European countries restrict the cultivation of GE crops.

Bulgaria: In 2015, Bulgaria decided to ban entirely the cultivation of Monsanto 810 corn (MON810), seven varieties of corn, soybeans 40-3-2, and carnation Moonshadow 1. The ban also extended to field research.

Poland: Poland's 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 suspended the ban until January 1, 2017. The Parliament is currently working on prolonging this suspension, with the lower house voting in early November to extend the suspension until January 1, 2019. The senate must now vote on the measure.

French Ban on Food Packaging Containing Bisphenol A

The production or import of food containers containing Bisphenol A (BPA) has been banned in France since January 1, 2015. The law applies to all products manufactured using BPA, where the BPA is "intentionally" used to manufacture part or all of the final product, or where the BPA comes from an environmental or adventitious source. The French law contradicts an EFSA opinion of January 21, 2015, which stated that BPA does not present any risk to consumers. On September 17, 2015, France's Constitutional Commission issued a ruling on the legality of the BPA as presented by the European and International Plastics industry. The Constitutional Commission overturned the ban on BPA in food containers produced in France for export, but upheld the prohibition of BPA in the sale and import of substances in France on the basis of the precautionary principle. In parallel to this action, the Commission initiated an infringement procedure against France for violation of the EU single market. On November 20, 2015, a roadmap was released with five different possible outcomes from the Commission, ranging from accepting the BPA ban for the entire EU to overturning France's ban partially or completely.

MARKET ACCESS

Tariffs

The EU's average applied MFN tariff rate is 4.8 percent. The average agricultural tariff rate is 10.9 percent, and the average non-agricultural rate is 3.9 percent. All of the EU's tariffs are bound at the WTO.

Although the EU's tariffs are generally low for non-agricultural goods, there are also some high tariffs that affect U.S. exports, such as rates up to 26 percent for fish and seafood, 14 percent for audio-visual equipment, 10 percent for passenger vehicles, 22 percent for trucks, 6.5 percent for fertilizers and plastics, 10 percent for processed wood products, and 14 percent for bicycles.

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 nontransparent procedures and a lack of meaningful stakeholder input into policies related to pricing and reimbursement, such as therapeutic reference pricing and other price controls. Such policies reportedly create uncertainty and unpredictability for investment in these markets and can undermine incentives to market and innovate further. These policies have been identified in several Member States, including Austria, Belgium, Cyprus, Czech Republic, France, Hungary, Italy, Lithuania, Poland, Portugal, Romania, and Slovakia. Additional detail on some of these Member State policies is set out below. Pharmaceutical firms have also expressed concern regarding recent changes to European Medicines Agency (EMA) policy regarding disclosures of clinical trial data, including potential disclosure of confidential commercial information submitted to EMA by

pharmaceutical firms seeking marketing authorization. The United States continues to engage with the EU and individual Member States on these matters.

Austria: U.S. companies have expressed concern regarding the degree of transparency, and opportunity for meaningful stakeholder input, relating to the reimbursement rules and determinations for biosimilar pharmaceutical products and relating to the process, rules and determinations for providing rebates for drugs. U.S. companies also criticize as excessive the "solidarity contribution" for the sector ($137 million in 2016 plus a growth-related contribution of up to $88 million in 2017 and again in 2018). This required contribution by the sector, which is part of Austria's deficit reduction policy, is reportedly a prerequisite to receiving reimbursement for prescribed drugs.

Belgium: Over the past 15 years, U.S. pharmaceutical companies have repeatedly expressed concern about the Belgian government's lack of adequate transparency in the decision-making process related to cost-containment measures in the pharmaceutical sector. These companies have identified several tax-related measures, such as a 6.73 percent turnover tax, a 1.0 percent crisis tax, a 0.13 percent marketing tax, an orphan drug tax, and the claw-back tax (an additional 3.28 percent of turnover in 2016), as examples of such concerns. In 2016, taxes under these measures totaled €370 million, and constituted about half of the budget cuts in the Belgian healthcare system in 2017. The United States continues to highlight the need for closer dialogue with the Belgian government and meaningful opportunities for stakeholder input into budget and pricing decisions.

Czech Republic: While pharmaceutical approvals in the Czech Republic often exceed the EU timetables, U.S. stakeholders report that the time required for such approvals has decreased incrementally in recent years. Regarding the Czech Republic's system for determining pricing and reimbursement levels for pharmaceutical products, U.S. stakeholders continue to express concerns about such determinations. For example, U.S. stakeholders continue to raise questions regarding the Czech government's practice of setting maximum medicine prices based on the average of the three lowest prices in a basket of countries (currently a group of 18 Member States). Such determinations should be made transparently and with meaningful opportunities for stakeholder input, as well as engagement by Czech authorities with stakeholders regarding concerns about whether such determinations reflect market circumstances in the Czech Republic or adequately incentivize innovation in research and development of pharmaceutical products. Additionally, the United States urges the Czech Republic to engage meaningfully with stakeholders regarding their concerns that such policies incentivize third parties to re-export pharmaceuticals to third-country markets, where they are sold at a profit.

France: Pharmaceutical industry stakeholders continue to raise concerns about the French pharmaceutical market, including with respect to the significant tax burden on the industry and the constraints facing the sales of reimbursable medicines, sales of which have dropped by two percent for the fourth consecutive year. As an example of such constraints, U.S. stakeholders have expressed concern that market access for drugs in France is slower than elsewhere in Europe, resulting from delays in reimbursement approvals of as much as 440 days after marketing authorization, compared to the 180 days required by EU law.

Hungary: Pharmaceutical manufacturers have expressed concerns regarding delays in reimbursement approvals and the lack of transparency and stakeholder engagement in Hungarian government volume and pricing determinations. Stakeholders are also concerned with a series of tax measures, including high sector-specific taxes, high taxes levied on pharmaceutical companies of roughly $50,000 per year for each sales representative that the company employs, and a claw-back tax that requires pharmaceutical companies to pay for any government spending on drugs that exceeds the pharmaceutical budget. U.S. stakeholders express concern about the Hungarian government's pricing and reimbursement policies, which include extended delays in decision-making and reimbursement and frequent changes to the list of drugs approved for reimbursement. The delays in decision-making, and especially the claw-back tax, cause considerable

unpredictability in the Hungarian market. The United States urges the Hungary to engage meaningfully with stakeholders regarding their concerns.

Italy: U.S. healthcare companies face an unpredictable business environment in Italy, which includes highly-variable implementation of complex budget policies. One such policy is the "pay-back system," for hospital pharmaceutical purchases, which was first applied in 2013. It requires that pharmaceutical companies pay back 50 percent of the amount spent over budgetary limits for pharmaceutical spending. The pharmaceutical companies pay back the overspending to the national government through the Italian Drug Agency (AIFA), which is the organization in charge of calculating the overspending and collecting return payments. The central government determines the overall annual budget for pharmaceutical products, which is transferred to each region responsible for managing the healthcare system locally. Industry estimates that the Italian government has asked for roughly $1.6 billion from pharmaceutical companies between 2013 and 2016 as part of this policy. U.S. pharmaceutical firms account for 30 percent of the market but are asked to contribute 50 percent of the pay-back amount. While several U.S. and European companies have prevailed on appeal to the Regional Administrative Court when challenging the 2013 pay-back calculations, legal challenges to some of the 2014 and 2015 calculations are still pending. Furthermore, in August 2015 the Italian government published a law (D.L. 78/2015) applying the pay-back system to hospital purchases of medical equipment. That same law authorized hospitals to renegotiate signed agreements with medical device suppliers in order to reduce the unit price or purchase volume as previously defined in the contract. This law has been approved but a mechanism or plan for implementation has not yet been put forward. Since this law was introduced, the government has not provided further guidance or legislation on its implementation, creating significant uncertainty among U.S. medical device companies operating in Italy.

Stakeholders have also raised concerns regarding delays in Italy related to reimbursement determinations. While reimbursement delays have decreased in recent years, the average time between marketing authorization and reimbursement approval in Italy continues to exceed the EU average as well as the maximum period permitted by EU law.

Lithuania: The United States continues to engage with the government of Lithuania regarding pharmaceutical market access issues. Discussions between the Health Ministry and U.S. stakeholders have made little progress to add innovative drugs to the government's reimbursement list. Stakeholders remain concerned about the lack of transparency in the pricing and reimbursement process for innovative drugs.

Poland: U.S. stakeholders report improved engagement with the Ministry of Health regarding the development and implementation of cost-containment measures affecting pharmaceutical reimbursement and pricing policies. However, U.S. companies have expressed concern regarding the tendering processes and the transparency of, and opportunity for meaningful stakeholder input in, reimbursement rules and determinations for biosimilar pharmaceutical products. Poland is in the process of drafting a new Reimbursement Law that would move from a cost recovery pricing model to a price justification pricing model for so-called orphan drugs. The United States urges Poland to engage meaningfully with stakeholders regarding their concerns that the new Law could potentially put confidential commercial information at risk of disclosure.

Portugal: Pharmaceutical companies have raised concerns in the past regarding the patent dispute resolution mechanism established under Portuguese Law No. 62/2011, which has been in effect since January 2012. The law does not provide for injunctive relief with respect to the marketing of pharmaceutical products that infringe patents covering pharmaceuticals already authorized to be on the market. Instead, the law provides only for damages for patent infringement. Additionally, U.S. stakeholders believe that the expedited arbitration mechanism is costly, lacks injunctive relief, and has resulted in questionable rulings.

Romania: Innovative pharmaceutical producers have identified several significant challenges in Romania resulting from the government's failure to update the lists of innovative pharmaceuticals that are eligible for reimbursement under the national health system, despite repeated requests. According to stakeholder reports, in 2016 Romania started the process of adding several new innovative drugs to the reimbursement list and concluded the process of developing treatment protocols to make twelve new drugs available to patients in January 2017. Numerous applications remain pending with no progress. This severely undermines the ability of U.S. pharmaceutical companies to introduce newer drugs in Romania because the National Health Insurance House will not pay reimbursement for drugs that are not included on the reimbursement list. Both innovative and generic pharmaceutical companies also have started to withdraw drugs from the Romanian market, as the low official prices set in Romania can fall below production costs and create parallel trade problems. The claw-back tax, equivalent to 18.89 percent of total gross sales for the fourth quarter of 2016, is another major challenge for U.S. stakeholders. This tax rate is determined on the basis of the difference between the state's budget for reimbursable drugs and the amount actually spent on the drugs. U.S. stakeholders continue to raise concerns regarding a lack of transparency, particularly in pricing and computation of the claw-back tax.

Slovakia: The process for marketing approval of new pharmaceutical products in Slovakia reportedly lacks transparency, and decision makers have been reported to miss deadlines with some frequency. Medicine prices in Slovakia are capped based on the average of the three lowest prices within the EU. Stakeholders report that this methodology incentivizes third parties to re-export pharmaceuticals to third-country markets, where they are sold at a profit.

Uranium

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

Agriculture

Bananas

In June 2010, the United States and the EU signed an agreement designed to lead to a settlement of the longstanding dispute over the EU's discriminatory bananas trading regime. In the agreement, the EU agreed not to reintroduce measures that discriminate among foreign banana distributors and to maintain a nondiscriminatory, tariff-only regime for the importation of bananas. The U.S.-EU agreement complements a parallel agreement, the Geneva Agreement on Trade in Bananas (GATB), between the EU and several Latin American banana-supplying countries (also signed in June 2010), which provides for staged EU tariff cuts to bring the EU into compliance with its WTO obligations.

The agreements marked the beginning of a process that, when completed, will culminate with the resolution of all of the various banana disputes and claims against the EU in the WTO. The GATB entered into force on May 1, 2012, and certification by the WTO of the EU's new tariffs on bananas was completed on October 27, 2012. On November 8, 2012, the EU and the Latin American signatories to the GATB announced that they had settled their disputes and claims related to bananas. On January 24, 2013, the U.S.-EU bananas

agreement entered into force. The final step called for in the U.S.-EU agreement is settlement of the U.S. bananas dispute with the EU, provided certain conditions are met.

Concerns have been expressed by U.S. stakeholders about actions taken by Italian customs authorities, and related decisions taken by Italian courts, challenging the use of certain EU banana import licenses under pre-2006 EU regulations. The United States is pressing the Commission to clarify its position on this matter.

Husked Rice Agreement

The United States has ongoing concerns regarding the operation of the U.S.-EU husked rice agreement, which has been in effect since 2005. Under the terms of this bilateral agreement, negotiated as a result of the EU's decision to modify the tariff concessions agreed to in the WTO Uruguay Round, the applied tariff for husked rice imports from the United States is determined by the total quantity of husked rice (excluding basmati) imported by the EU, and is adjusted every six months. The United States will continue to seek improvements in the access to the EU market for U.S. rice, including the reduction and elimination of rice tariffs.

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 are also paid to support certain processing sectors, including, for example, peaches for juicing in Greece. The general lack of transparency around the distribution of EU subsidies at the Member State level in the fruit and vegetable industry raises questions about whether the payments are decoupled from production, and U.S. producers remain concerned about potential hidden subsidies. The United States continues to monitor and review EU assistance in this sector, evaluating potential trade-distorting effects.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

As part of its Digital Single Market (DSM) strategy, the European Commission on September 14, 2016, issued a package of proposals aimed at updating and reforming EU rules related to copyright, with the stated goal of addressing legal uncertainty for both rights holders and users with regard to certain uses of copyright-protected works in the digital environment. This package included: (1) a proposed Directive on Copyright in the Digital Single Market (COM(2016) 593 final); (2) a draft Regulation laying down rules

regarding online broadcasting of television and radio programs (COM(2016) 594 final); (3) a draft Regulation regarding the cross-border exchange between the EU and third countries of accessible format copies of copyright-protected works for persons who are blind, visually impaired, or print-disabled (COM(2016) 595 final); (4) a draft Directive on permitted uses of copyright-protected works for the blind, visually impaired, or print-disabled (COM(2016) 596 final); and (5) a Communication on promoting a fair, efficient, and competitive European copyright-based economy in the DSM (COM(2016) 592 final).

The following provisions in this package of copyright proposals may raise concerns from a trade perspective:

- *A new right for press publishers*. According to the Commission, the contribution of publishers in producing press publications needs to be recognized and further encouraged to ensure the sustainability of the publishing industry. The Commission proposed the introduction of rights and remuneration for publishers related to copyright for the reproduction and making available to the public of press publications in the online environment.

- *"Value gap" provision*. Online service providers that store and provide access to the public to copyright-protected works uploaded by their users would be obligated to deploy means to automatically detect songs or audiovisual works that rights holders have identified and agreed with the platforms either to authorize or remove.

- *Mandatory exceptions in the field of research and education*. The proposal includes an exception for public interest research institutes regarding the use of text and data mining technologies for the purposes of scientific research, as well as exceptions for illustrations used for teaching in the online environment and for digitization of works by cultural heritage institutions.

- *Rules regarding online broadcasting*. Aimed at removing perceived obstacles to the creation of a DSM, this proposal has two main provisions, which would: (1) apply a "country of origin" principle to online services related to an initial broadcast; and (2) require rights holders to license certain retransmission rights through collective rights management societies.

As this package of proposals moves to the Parliament and Council, the United States will continue to engage with various EU entities to ensure that the equities of U.S. stakeholders are protected.

The December 2015 "Proposal for a regulation of the European Parliament and of the Council on ensuring the cross-border portability of online content services in the internal market" (COM(2015) 627 final) seeks to give EU subscribers to online content services the ability to access this content when temporarily present in another Member State. Following a vote on the proposal in the Legal Affairs Committee of the European Parliament on November 30, 2016, the Parliament and the Council initiated negotiations on a compromise text, with the aim of concluding the legislative process in the first half of 2017. A Parliament plenary vote is scheduled for April 2017, to be followed by final Council consideration.

In January 2016 a new Trademark Directive (2015/2436) entered into force. EU Member States were given three years to transpose the directive into their national laws. A Trademark Regulation (2015/2424) also entered into force in early 2016. The United States continues to work with the EU and its Member States on trademark issues and is following implementation of the trademark package closely.

Regarding trade secrets, a "Directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure" (2016/943), was adopted by the Parliament and the Council on June 8, 2016. The aim of the directive is to standardize the national laws of

EU Member States against the unlawful acquisition, disclosure, and use of trade secrets. The directive also harmonizes the definition of trade secrets. EU Member States must bring into force the laws and administrative provisions necessary to comply with the directive by June 2018.

With respect to geographical indications (GIs), the United States remains troubled with an EU system that provides overbroad protection of GIs, adversely impacting the protection of U.S. trademarks and of market access for U.S. products that use generic names. Regulation 1121/2012, for example, contains numerous problematic provisions with respect to the protection and enforcement of protected designations of origin (PDOs) and protected geographical indications (PGIs). These troubling provisions include those governing the scope of protection of PDOs and PGIs, including expansive rules addressing evocation, extension, co-existence, and translation, among others, which not only adversely affect trademark rights and the ability to use generic names, but also undermine access to the EU market for U.S. rights holders and producers. As confirmed in the recital to Regulation 1121/2012, this measure also serves as the basis for the EU's international GI agenda, which includes requiring EU trading partners to protect and enforce in their markets lists of specific EU GIs, according to EU rules, with often only very limited due process requirements to safeguard existing producers, rights holders, consumers, importers, and other interested parties.

The EU adopted its current GI regulation for food products, Council Regulation (EC) 510/06, in response to findings adopted by the WTO DSB in a successful challenge brought by the United States (and a related case brought by Australia) that asserted that the EU GI system impermissibly discriminated against non-EU products and persons. The DSB also agreed with the United States that the EU could not create broad exceptions to trademark rights guaranteed by the TRIPS Agreement. The United States continues to have concerns about this regulation and intends to monitor carefully both its implementation and current initiatives to modify it. These concerns also extend to Council Regulation (EC) 479/08, which relates to wines, and to Commission Regulation (EC) 607/09, which relates, *inter alia*, to GIs and traditional terms of wine sector products. The United States is carefully monitoring the implementation of each of these regulations.

The EU also continues to consider expanding the scope of GI protection in the EU territory to include non-agricultural products. At present, EU law only harmonizes the protection of GIs in the EU for wines, spirits, foodstuffs, and agricultural products. On July 15, 2014, the Commission issued a green paper entitled "Making the most out of Europe's traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products" (COM(2014) 469 final). This was followed by the Parliament's adoption of a resolution inviting the Commission to propose legislation providing for such extension. The United States is closely monitoring EU proposals and developments relating to the possible extension of GI protection beyond existing product categories.

Finally, the United States remains extremely concerned by the conduct and outcome of the 2015 World Intellectual Property Organization (WIPO) negotiations to expand the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration to include GIs. Of particular concern to the United States was the manner of engagement in these negotiations by the European Commission and by several EU Member States, including the Czech Republic, France, Greece, Italy, and Portugal, which took precedent-setting steps to deny the United States and the vast majority of WIPO countries full negotiating rights, and to depart from long-standing WIPO practice regarding consensus-based decision-making in this international organization. Likewise, the resulting text – the Geneva Act of the Lisbon Agreement – raises numerous and serious legal and commercial concerns, including with respect to the degree of inconsistency with the trademark systems of many WIPO countries and could have significant negative commercial consequences for trademark holders and U.S. exporters that use generic terms.

Member State Measures

Generally, EU Member States maintain high levels of intellectual property rights (IPR) protection and enforcement. While some Member States made improvements in 2016, the United States continues to have concerns with respect to the IPR practices of several countries. The United States actively engages with the relevant authorities in these countries and will continue to monitor the adequacy and effectiveness of IPR protection and enforcement, including through the annual Special 301 review process.

Austria: U.S. companies report some gaps in criminal liability, insufficient specialization of judges dealing with trade secrets, low criminal penalties, and procedural obstacles, which limit efforts to effectively combat infringement.

Bulgaria: Bulgaria continues to be listed on the Special 301 Watch List in 2016 after it was added in the 2013 Special 301 Report. U.S. stakeholders report continued concerns about IPR enforcement, including with respect to piracy over the Internet, despite alternative paid options for both music and films. Rights holders and police try to restrict new film releases on illegal sites, but illegal downloads continue.

Stakeholders have also highlighted the need for Bulgaria to enhance the effectiveness of its patent and trademark enforcement system, including with respect to prosecutions, and to address bad faith trademark registration at the Bulgarian Patent Office. Bulgaria has an established process for administrative rulings and appeals in cases of patent and trademark infringement, although decisions issued in those adjudicatory proceedings remain a source of concern.

Czech Republic: While sale of copyright-infringing media in physical form continues at a modest level in outdoor markets, the Czech Republic has not been included on a Special 301 Watch List since 2009, and no rights-holding organization proposed the country's inclusion in 2016. Due to the advance of technology, digital piracy in the Czech Republic, as elsewhere, has migrated primarily to the online realm, where rights-holders have identified several "cyberlockers" that feature pirated material for download and streaming. Rights holders have had positive outcomes in a number of instances when they have gone to court, although websites often reappear under a new name. Also commendable is the Czech government interagency IPR task force, led by the Ministry of Industry and Trade, which coordinates policy and oversees implementation of laws involving IPR.

France: The expansion of broadband Internet access, cheap data storage, and the growth of online content have contributed to digital piracy in France. Copyright stakeholders report the government's efforts to reduce online piracy have yielded some successes. Online piracy remains a serious concern, however, and while civil proceedings in French courts continue to provide the most effective channel for enforcement against piracy, non-deterrent sentencing in criminal proceedings remains a problem.

Greece: Greece remained on the Watch List in the 2016 Special 301 Report. The United States acknowledges some improvements in IPR protection and enforcement in Greece, including actions taken to address piracy over the Internet. However, inadequate IPR protection continues to pose barriers to U.S. exports and investment. Key issues cited in the 2016 Special 301 Report include widespread copyright piracy and limited and inconsistent IPR enforcement. The Greek public sector, including the Ministry of Defense, continues to be a significant consumer of pirated U.S. software. The Ministry of Culture is currently reviewing a long-anticipated bill on the collective management of intellectual property and online use of audiovisual works. The proposed legislation includes Internet piracy provisions and would be a positive step towards laying the groundwork for greater IPR enforcement.

Italy: Italy passed robust regulations to combat online piracy violations in 2014. Italy's financial police, the Guardia di Finanza, continue to dedicate resources to identify copyright-infringing content online and

has partnered with the International Anti-Counterfeiting Coalition to provide officers with training on the identification and disruption of counterfeit products being produced in or imported into Italy. While copyright protection is improving, online piracy remains a challenge.

Latvia: Although Latvia has enhanced its legal framework for IPR protection and enforcement, industry stakeholders report that police and prosecutors lack the resources to effectively investigate and prosecute cases, and they perceive that Latvian law enforcement has not actively pursued IPR cases in 2016.

Malta: Although stakeholders report that Malta's civil regime for copyright is generally adequate, they also report that Malta's criminal law is insufficient, especially with respect to the deterrence of IPR infringement. While the relevant provisions of the Maltese Criminal Code are generally viewed as satisfactory in the context of trademarks and designs, the criminal code provisions governing other infringement of IPRs remain largely unenforced and should be updated to reflect technological advances.

Poland: Stakeholders continue to identify copyright piracy over the Internet as a significant concern in Poland. Poland has largely finished updating copyright and related rights laws to EU standards, and a few additional changes took effect in November 2015. The changes were related to implementation of EU Directives 2012/28/EU on orphan works and 2006/115/EC on rental rights and lending rights.

Romania: Romania remained on the Watch List in the 2016 Special 301 Report. While some categories of infringement, such as street sales of counterfeit goods and piracy of optical discs, have continued to decline in the past years, piracy over the Internet, especially peer-to-peer file sharing, remains a serious concern. Some of the most notorious pirate file-sharing sites have connections to Romania. Criminal IPR enforcement remains generally inadequate, with questions arising regarding Romania's commitments to resolute enforcement, reflected in reduced cooperation among enforcement authorities, a small number of enforcement actions, and a lack of meaningful sanctions. Additional resources are also needed to achieve effective enforcement in Romania, such as increased training of law enforcement and prosecutors. Organized criminal networks have taken advantage of the widening gap between their ability to use technology and the ability of law enforcement and prosecutors to discover, investigate, and prosecute cases, especially when the activities cross national borders. Romania would benefit from developing a new national strategy for IPR enforcement, to reaffirm its commitment to protecting IPR.

Spain: Spain has been part of a Special 301 Out-of-Cycle Review since 2013, after Spain was removed from the Watch List in the 2012 Special 301 Report. In 2015, Spain took several positive legislative steps, including to amend its civil and criminal copyright laws. In December 2015, Spain's Prosecutor General also issued a new circular with respect to copyright piracy over the Internet. Concerns remain, however, with respect to implementation of these amendments, as well as with respect to administrative enforcement by Spain's Intellectual Property Commission. The United States will continue to carefully monitor developments in this area and work closely with Spain to address these issues.

Sweden: Sweden continues to grapple with widespread piracy on the Internet. Government enforcement efforts have shown positive results, and police and prosecutors are now working more efficiently to investigate and move cases to prosecution. Meanwhile, consistent with international trends, problems related to illegal streaming are increasing, resulting in losses for the movie, television, and live sports telecast industries. Legal sales of music and film have increased dramatically in recent years, however, in part because of Swedish enforcement efforts against illegal streaming.

SERVICES BARRIERS

Telecommunications

European Electronic Communications Code

Telecommunications in the EU are currently regulated through five directives and one regulation: the Framework Directive; the Access Directive; the Authorization Directive; the Universal Service Directive; the Directive on Privacy and Electronic Communications; and the Regulation on Roaming. Each Member State has its own independent national regulatory authority (NRA) for the telecommunications sector. The Body of European Regulators for Electronic Communications (BEREC) consists of the heads of these independent regulators and provides advice to the Commission regarding measures affecting telecommunications.

As part of the EU's DSM strategy, on September 14, 2016, the Commission released a proposal for a common "European Electronic Communications Code" (the Code) that would update and merge four existing telecommunications Directives (Framework, Authorization, Access, and Universal Service) into a single measure that would include rules on network access, spectrum management, communication services, universal service, and institutional governance. The European Council and Parliament are now considering whether to amend the Commission's proposal. The legislation is not expected to be finalized until late 2017, at the earliest. The Commission asserts that the proposed Code will promote infrastructure competition, greater investment in high-speed broadband networks, and greater harmonization of spectrum management across the EU. U.S. suppliers welcomed the Commission's attempt to reduce market fragmentation, promote the development and introduction of innovative services, and harmonize spectrum management.

The proposed Code, however, would, for the first time, apply European telecommunications regulations to "over the top" (OTT) Internet services, such as voice, messaging, and other communications applications. Most of the obligations in the Code would apply to "number-based" Internet services that enable communications with mobiles and landlines. These obligations would address requirements relating to access to emergency services, duration of contracts, quality of service, number portability, and switching rules for service bundles. All covered Internet services, including those that do not use public numbering, would be bound by rules on security and integrity of services that govern their risk management strategies and their reporting of security incidents to competent authorities. U.S. suppliers have expressed significant concerns with the proposed expanded scope of EU telecommunications law and have highlighted that Internet services face low barriers to entry by new competitors, while traditional telecommunications services providers enjoy high barriers to new entry and little direct competition, thus justifying asymmetric regulation. In addition, this extension of NRA authority to Internet services raises concerns given that most traditional telecommunications services suppliers historically serve one or a limited number of EU Member State markets, whereas most Internet "interpersonal communications services" are available in every Member State, thereby potentially subjecting them to conflicting NRA jurisdiction.

Termination Rates

One of the main cost components of an international telephone call from the United States to an EU country is the rate a foreign telecommunications operator charges a U.S. operator to terminate the call on the foreign operator's network and deliver the call to a local consumer. The GATS Telecommunications Services Reference Paper includes disciplines designed to ensure that the charge for terminating a call on a network of a major supplier (which in most countries is the largest or only fixed-line telecommunications supplier) is cost-oriented. This ensures that a major supplier is not able to gain an unfair competitive advantage from terminating foreign or competitive carriers' calls, and also helps to ensure that U.S. carriers can offer

reasonable and competitive international rates to consumers located in the United States. Termination rates for both fixed and wireless traffic should be set in relationship to the costs of providing termination, as would be reflected in a competitive market. Where competition does not discipline the costs of termination services, governments should ensure that the termination rates charged by its operators are not unreasonably higher than cost.

In 2016, the United States observed that several suppliers in multiple EU Member States, including Croatia, the Czech Republic, France, Greece, and Portugal, were charging higher rates for the termination of international traffic originating outside of the EU, or in some cases outside the European Economic Area (EEA, which is comprised of the EU plus Iceland, Liechtenstein, and Norway), than for international traffic between sovereign states within the EU or EEA. In 2016, French operators exempted U.S. traffic from the higher rates charged to U.S.-originated traffic that began in early 2014, when ARCEP, the French telecommunications regulator, had permitted French operators to charge reciprocal rates for non-EEA originated. This year, however, U.S. suppliers expressed concern that, with the exception of France, suppliers continue to charge high termination rates in the previously cited countries and suppliers in Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, and Slovenia are also engaged in this practice. Neither the Commission nor BEREC have made efforts to resolve this issue.

These discrepancies in termination rates do not appear to reflect incremental costs for termination of such traffic. Termination rate increases also disadvantage enterprises in those foreign markets for which foreign communications is a key part of business (*e.g.*, traders, hotels). The United States remains concerned that the Commission and EU 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 EU Member States.

Television Broadcasting and Audiovisual Services

Audiovisual Media Services Directive

A legislative proposal amending the 2007 Audiovisual Media Services Directive (AVMSD) (COM/2016/0287 final) was issued by the Commission on May 25, 2016. This proposal aims to update the 2007 Directive to reflect developments in the audiovisual and video on-demand markets. The 2007 Directive established minimum content quotas for broadcasting that must be enforced by all Member States. Member State requirements are permitted to exceed this minimum quota for EU content, and several have done so, as discussed below. The AVMSD did not set any strict content quotas for on-demand services, but it still required Member States to ensure that on-demand services encourage production of, and access to, "EU works." This could be interpreted to refer to the financial contribution made by such services to the production and rights acquisition of EU works, or to the prominence of EU works in the catalogues of video on-demand services.

The 2016 proposal includes provisions that would impose on Internet-based video-on-demand providers, which already must promote European works under current rules, additional European content requirements, such as establishing a minimum 20 percent threshold for European content in their catalogs and giving prominence to European content in their offerings. The proposal also provides Member States the option of requiring on-demand service providers not based in their territory, but whose targeted audience is in their territory, to contribute financially to European works, based on revenues generated in that Member State. The proposal amending the AVMSD is due to be voted in the lead Culture Committee of the European Parliament on March 22, with a plenary vote likely before the summer break. Meanwhile trialogue discussions among the Commission, Parliament and Council are expected to begin in late May.

Satellite and Cable Directive

The 1993 Satellite and Cable Directive (SatCab) governs satellite broadcasting and cable retransmission. It was enacted to promote cross-border satellite broadcasting of programs and their cable retransmission from other Member States and to remove obstacles arising from disparities between national copyright provisions. Under SatCab's country-of-origin principle, the satellite broadcasting of copyrighted works requires the authorization of the rights holder, and such rights may only be acquired by agreement.

In 2016, the Commission carried out a review (REFIT) of the 1993 Directive, with the aim of enhancing cross border access to broadcasting and related online services across the EU. This review was followed by a Commission proposal for a "Regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organizations and retransmissions of television and radio programmes" (Broadcasting Regulation), which is currently going through the decision-making process in the European Parliament. The proposed Broadcasting Regulation seeks to extend the country-of-origin principle to online programming, a development strongly opposed by the U.S. film and commercial television sectors. U.S. studios are particularly concerned that the proposed regulation would interfere with the ability of rights holders to continue licensing on a country-by-country basis and tailor audiovisual content for specific cultural audiences at different price points.

Member State Measures

Several Member States maintain measures that hinder the free flow of some programming or film exhibitions. A summary of some of the more significant restrictive national practices follows.

France: France continues to apply AVMSD in a restrictive manner. France's implementing legislation, approved by the Commission in 1992, requires that 60 percent of programming be of EU origin and 40 percent include French-language content. These requirements exceed AVMSD thresholds. Moreover, these quotas apply to both the regular and prime time programming slots, and the definition of prime time differs from network to network. The prime time restrictions pose a significant barrier to U.S. programs in the French market. Internet, cable, and satellite networks are permitted to broadcast as little as 50 percent EU content (the AVMS Directive minimum) and 30 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 ten most-played French songs on a station account for less than 50 percent of the songs played are they counted towards the quota. France's Broadcasting Authority, Conseil supérieur de l'audiovisuel, oversees implementation of the quotas.

Beyond broadcasting quotas, cinemas must reserve five weeks per quarter for the exhibition of French feature films. This requirement is reduced to four weeks per quarter for theaters that include a French short subject film during six weeks of the preceding quarter. Operators of multiplexes may not screen any one film in such a way as to account for more than 30 percent of the multiplex's weekly shows. While they are in theatrical release, feature films may not be shown or advertised on television. France also maintains a four-month waiting period between the date a movie exits the cinema and the date when it can be shown on video-on-demand.

Italy: The Italian Broadcasting Law, which implements EU regulations, provides that the majority of television programming time (excluding sports, news, game shows, and advertisements) be EU-origin content. Ten percent of transmissions (and 20 percent for state broadcaster RAI) must be reserved for EU works produced within the past five years.

Poland: Television broadcasters must devote at least 33 percent of their broadcasting time each quarter for programming originally produced in the Polish language, except information services, advertisements, telesales, sports broadcasts, and television quiz shows. Radio broadcasters are obliged to dedicate 33 percent of their broadcasting time each month and 60 percent of broadcasting time between 5:00 a.m. and midnight, to Polish language programming. Television broadcasters must dedicate more than 50 percent of their broadcasting time quarterly to programs of EU origin, except information services, advertisements, telesales, sports broadcasts, and television quiz shows. Television broadcasters must devote at least 10 percent of their broadcasting time to programs by EU independent producers, and compliance is reviewed every three months. On-demand audiovisual media services providers also must promote content of EU origin, especially content originally produced in Polish, and dedicate at least 20 percent of their catalog to EU content.

Portugal: Television broadcasters must dedicate at least 50 percent of air time to programming originally produced in the Portuguese language, with at least half of this produced in Portugal. Music radio broadcasters must dedicate between 25 to 40 percent of programming time to music produced in the Portuguese language or in traditional Portuguese genres, with at least 60 percent of this produced by citizens of the EU.

Slovakia: As of April 2016, private radio stations were required to allocate at least 20 percent of airtime to Slovak music, rising to 25 percent in 2017. State-run radio must allocate at least 35 percent by 2017. In addition, at least one fifth of the Slovak songs must have been recorded in the past five years.

Spain: For every three days that a film from a non-EU country is screened, one EU film must be shown. This ratio is reduced to four days to one if the cinema screens a film in an official language of Spain other than Castilian and keeps showing the film in that language throughout the day. In addition, broadcasters and providers of other audiovisual media services annually must invest five percent of their revenues in the production of EU and Spanish films and audiovisual programs.

In 2010, the Autonomous Community of Catalonia passed legislation requiring distributors to include the regional Catalan language in any print of any movie released in Catalonia that had been dubbed or subtitled in Spanish, but not any film in Spanish. The law also requires exhibitors to exhibit such movies in Catalan on 50 percent of the screens on which they are showing. In 2012, the European Commission ruled that the law discriminated against European films and must be amended. To date, the law has not been amended to comply with EU law and the issue has not been brought before the CJEU.

In 2010, the Spanish government revised its audiovisual law and imposed restrictions on non-EU ownership (limited to no more than 25 percent share) and leasing of audiovisual licenses, and U.S. investors report that they have been negatively impacted. Following the 2010 amendment, several U.S. investors signed agreements with Spanish audiovisual license holders to provide content for free-to-air television channels. These investments were disrupted by a 2012 decision by the Spanish Supreme Court, which annulled the nine digital terrestrial television (DTT) broadcasting licenses of these Spanish firms on the basis that the government had not followed the proper public tender process in allocating the licenses in 2010. In 2014, all of the annulled DTT channels ceased broadcasting, and in 2015 the Spanish government awarded six new licenses through a public tender process. U.S. investors were unable to participate directly in this tender process due to restrictions on foreign ownership. The United States continues to engage on these issues with the Spanish government.

Video-on-demand services in Spain must reserve 30 percent of their catalogs for European works (half of these in an official language of Spain) and contribute five percent of their turnover to the funding of audiovisual content.

Legal Services

Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Greece, Hungary, Latvia, Lithuania, Malta, and Slovakia require EU or EEA nationality for full admission to the bar, which is necessary for the practice of EU and Member State law. In many cases, non-EU lawyers holding authorization to practice law in one Member State face more burdensome procedures to obtain authorization in another Member State than would a similarly situated lawyer holding EU citizenship.

Member State Measures

Bulgaria: The Bulgarian Bar Act allows law firms registered in the EU to practice in Bulgaria under their original name after they register with the local bar association. However, at least one of the partners has to be registered both in Bulgaria and in another Member State if the local partnership is to use an internationally recognized name.

Czech Republic: Unlike EU-based law firms, U.S. law firms cannot establish Czech branches to practice law (*i.e.*, operate directly through their home legal entities). However, attorneys from U.S. law firms admitted as foreign lawyers may establish a business entity to engage in the practice of law under the U.S. company name.

Hungary: U.S. lawyers may provide legal services only under a "cooperation agreement" in partnership with a Hungarian law firm, and may only provide information to their clients on U.S. or international law.

Accounting and Auditing Services

Member State Measures

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

Slovakia: Slovakia requires that companies providing auditing services be registered in a Member State and maintains an equity cap requiring that 60 percent of the voting rights of these companies be held by EU nationals.

Retailing

Member State Measures

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

Hungary: In April 2016, Hungary repealed the mandatory Sunday closure of large retail shops, which was introduced in May 2015. A 2015 law requires that food retail chains with annual revenue of $180 million or greater shut down if they incur losses for two consecutive years. While the EU required Hungary to repeal a sanitation tax levied only on large, multinational supermarkets, government officials have stated they would find new ways to make foreign retailers pay more tax.

Romania: In July 2016, Romania passed a law requiring large supermarkets to source from the local supply chain at least 51 percent of the total volume of their merchandise in meat, eggs, fruits, vegetables, honey, dairy products, and baked goods. The law vaguely defined the local supply chain and it is intended to favor Romanian products. This law applies to high-volume supermarkets with more than €2 million in annual

sales, affecting all major chains. The law also bans food retailers from charging suppliers for any services, including on-site marketing services, thereby preventing producers from influencing how stores market or display their products and injecting greater unpredictability into the business environment. The government has not yet implemented the 51 percent provision by passing the required secondary legislation, although it announced its intention to do so after the European Commission notified Romania on February 15, 2017 of possible infringement proceedings.

EU Enlargement

After each of the three most recent rounds of EU enlargement, the EU has submitted notifications to WTO Members concerning the modification of existing commitments under the GATS by the newly acceded EU Member States. In accordance with GATS Article XXI, the EU was required to enter into negotiations with any other WTO Member that indicated that it was affected by the modification of existing commitments. In connection with the largest of these rounds of enlargement (the expansion to 25 members in 2004), the United States and the EU agreed to a compensation package on August 7, 2006. To date, however, the Commission has failed to secure the approval of all Member States, which is necessary to implement the agreement. The United States will continue to monitor this process to ensure the agreement is implemented before the EU's modifications enter into effect.

INVESTMENT BARRIERS

With few exceptions, EU law generally requires that any company established under the laws of one Member State must receive national treatment in all other Member States, regardless of the company's ultimate ownership. Laws and regulations pertaining to the initial entry of foreign investors, however, are largely still the purview of individual Member States. As discussed below, the policies and practices of the EU and its Member States can have a significant impact on U.S. investment.

Member State Measures

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

In April 2016, after nearly two years of negotiations, the Bulgarian government paid in full arrears it owed to two U.S. thermal power companies. The companies are, however, awaiting a decision from the EU as to whether the tariff rates on power generation negotiated with the government constitute illegal state aid.

Croatia: U.S. companies doing business in Croatia complain that their operations are negatively affected by frequent, unexpected legislative changes. Investors reportedly find it difficult to make sound, long-term business plans due to the unpredictable legislative environment.

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

Cyprus: Cypriot law imposes significant restrictions on the foreign ownership of real property and construction-related businesses. Non-EU residents may purchase no more than two independent housing

units (apartments or houses), or one housing unit and a small shop or office. Exceptions are available for projects requiring larger plots of land, but are difficult to obtain and rarely granted. Separately, only EU citizens have the right to register as construction contractors in Cyprus, and non-EU investors are not allowed to own a majority stake in a local construction company. Non-EU residents or legal entities may bid on specific construction projects, but only after obtaining a special license from the Cypriot Council of Ministers.

France: Pursuant to a November 2004 law that streamlined the French Monetary and Financial Code, the State Council has designated a number of "sensitive" sectors in which prior approval is required before foreign acquisition of a controlling equity stake is permitted. A December 2005 government decree (Decree 2005-1739) lists 11 business sectors that the French government monitors. The government may restrict foreign ownership in these sectors through a system of "prior authorizations" in which the Ministry of the Economy and Finance must in advance authorize investment activity related to foreign ownership in the sectors. In May 2014, the government issued decree 2014-479, which expanded the list of sectors to include energy, water, health, transportation, and telecommunications, as well as any installation, facility, or structure deemed to be "vital" within the meaning of the Defense Code.

The French government has expressed concern over the foreign acquisition of "strategic" companies whose stock prices fell steeply in the wake of the financial crisis. In late 2008, France established a strategic investment fund, the Fonds Strategique d'Investissement, to assume a stake in companies with "key technologies." The fund is majority-owned and run as a "strategic priority" by the Caisse des Dépôts et Consignations (CDC), a state-sponsored financial institution and France's largest institutional investor. The French government has asked the CDC to work as a domestic buffer against foreign takeovers by increasing its stake in French companies. The government also is able to become directly involved in mergers and acquisitions by using its "golden share" in state-owned firms to protect perceived national interests.

Greece: All purchases of land in border areas and on certain islands require approval from the Ministry of Defense. The definition of "border area" is broader for non-EU purchasers of land than for purchasers from within the EU, and obtaining approval for such purchases is more burdensome. Greek authorities consider local content and export performance criteria when evaluating applications for tax and investment incentives, although such criteria are not prerequisites for approving investments.

Hungary: The Hungarian government has passed hundreds of laws since 2010, including many "cardinal" laws that require a two-thirds majority to repeal. Investors have observed that these laws are frequently enacted with little debate and no consultation with potentially affected businesses and other stakeholders, and have expressed concern about the impact that these legislative changes have had on the predictability of Hungary's investment climate.

Recent "crisis taxes" have targeted foreign-owned firms in a disparate way, either by applying to sectors dominated by foreign-owned firms, or by taxing larger (primarily foreign-owned) firms at a far higher rate than smaller firms. In 2016, the EU determined that Hungary's advertising and tobacco taxes, as well as a food chain inspection fee, violate EU rules by discriminating against larger companies. Hungary suspended the tobacco tax and food inspection fee as a result of this ruling, but has maintained the advertising tax. The Hungarian government has declared that it will continue to seek ways to extract revenues from foreign multinationals.

Members of the business community have expressed concern with the "strategic agreements" that the government has signed with over 70 major companies operating in Hungary. The agreements, which are not made public, often do not contain specific obligations, but are non-binding commitments to invest in Hungary and in turn the government will provide access to high-level officials. The concern is that these

agreements could be a hidden forum for lobbying, allowing the government to give preferential treatment to favored companies.

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 change frequently and are interpreted inconsistently. Companies report long delays in receiving VAT refunds to which they are legally entitled. Tax disputes are resolved slowly, and initial findings are frequently reversed, which reduces certainty and increases compliance costs.

Latvia: The judicial and insolvency systems in Latvia present significant challenges to investors. Insolvency proceedings can take several years to resolve, and there have been reports of large-scale abuse by both insolvency administrators and bad-faith creditors who have manipulated the proceedings to seize control of assets and companies and to extract unwarranted settlements and fees. In a recent study, 76.8 percent of business owners said they believe insolvency proceedings in Latvia are not transparent and fair, and 74.3 percent said they had encountered insolvency abuse. Similarly, U.S. stakeholders have voiced concerns about the length of civil cases, while the nature and opacity of judicial rulings have led some investors to question the fairness and impartiality of some judges.

Poland: Financial service institutions and retailers have expressed concerns over new tax measures, such as a new bank tax on assets, increased contributions to the Bank Guarantee Fund, and the potential costs of converting Swiss Franc-denominated loans into the local Polish currency, the złoty. The bank tax on assets, which entered into force in early 2016, could cost the industry €1 billion this year – more than a third of their aggregate net profits in 2015.

Romania: Uncertainty and a lack of predictability in legal and regulatory systems pose a continuing impediment to foreign investment in Romania. Many companies report experiencing long delays in receiving VAT refunds to which they are legally entitled. 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 in Slovenia. Potential U.S. investors have reported that opaque decision-making processes in the government's privatization program have discouraged investment.

GOVERNMENT PROCUREMENT

Government procurement in the European Union is governed by EU public procurement directives. In 2014, the European Parliament approved revised directives addressing general public procurement and procurement in the utilities sector. The Parliament also approved a new directive on concessions contracts. Member States were required to transpose the new directives into national legislation by April 2016.

The directive on procurement procedures in the utilities sector covers purchases in the water, transportation, energy, and postal sectors. This directive requires open and competitive bidding procedures, but it permits Member States to reject bids with less than 50 percent EU content for tenders that are not covered by an international or reciprocal bilateral agreement. The EU content requirement applies to foreign suppliers of goods and services in water (the production, transport, and distribution of drinking water); energy (gas and heat); urban transport (urban rail, automated systems, trams, buses, etc.); and postal services. Subsidiaries of U.S. companies may bid on all public procurement contracts covered by the EU Directives.

The EU is a member of the WTO Agreement on Government Procurement (GPA). U.S.-based companies are allowed to bid on public tenders covered by the GPA.

The EU's lack of country of origin data for winning bids makes it difficult to assess the level of U.S. and non-EU participation. Nevertheless, a 2011 report commissioned by the EU noted that only 1.6 percent of total Member State procurement contracts were awarded to firms operating and bidding from another Member State or a non-EU country, demonstrating that in practice the value of direct cross-border procurement awards even among Member States was very small. The same study said that U.S. firms not established in the EU received just 0.016 percent of total EU direct cross-border procurement awards.

Member State Measures

Lack of transparency in certain Member State public procurement processes continues to be an almost universally cited barrier to the participation of U.S. firms. U.S. firms seeking to participate in procurements in Bulgaria, the Czech Republic, France, Greece, Hungary, Italy, Lithuania, Romania, Slovakia, and Slovenia have all proactively voiced concerns over a lack of transparency, including with respect to overly-narrow definition of tenders, language and documentation barriers, and implicit biases toward local vendors and state-owned enterprises. The Commission's 2014 EU Anti-Corruption Report asserts that Member State public procurement is one of the areas most vulnerable to corruption.[15] Additional Member State-specific trade barriers to U.S. participation in public procurement processes are cited below.

Bulgaria: Stakeholders report that the public procurement process in Bulgaria is frequently discriminatory and unfair. There are persistent complaints that tenders are too narrowly defined and are tailored to a specific company. For example, a U.S. company seeking to sell nuclear fuel to Bulgaria's state-owned Kozloduy Nuclear Power Plant (KNPP) is facing substantial barriers imposed by KNPP and by Bulgaria's nuclear regulator. In order to participate in a 2018 procurement of nuclear fuel, the U.S. supplier has to be able to test its fuel in a KNPP reactor. To date, the U.S. company has been denied permission to carry out the necessary tests. In contrast, in 2016 a Russian state-owned company, and the incumbent supplier to KNPP, was permitted to load a new nuclear fuel type prior to completing comparable tests. Without permission to test its fuel, the U.S. supplier will be unable to compete in the 2018 procurement.

France: France continues to maintain ownership shares in several major defense contractors (10.94 percent of Airbus, formerly EADS, shares; 14 percent of Safran shares and 21.9 percent of its voting rights; and 25.97 percent of Thalès shares). It is generally difficult for non-EU firms to participate in French defense procurement, and even when the competition is among EU suppliers, French companies are often selected as prime contractors.

Greece: U.S. firms have complained that Greece often requires suppliers to source services and production locally or partner with Greek manufacturers as a condition for the awarding of some defense contracts. Additional complaints center on onerous certification and documentation requirements on U.S. firms.

Hungary: Hungary appears to favor state-owned enterprises and companies close to the government over other participants in public tenders. A 2015 Transparency International study on EU-financed public procurement concluded that corruption is a significant problem for the country's public procurement system. A December 2016 amendment of Hungary's new public procurement regulations, enacted in November 2015, will permit the Hungarian government to exempt companies using more than HUF 40 million ($140,000) of EU or Hungarian government funding from the public procurement requirement if the tendering "would not serve the most efficient use of public funds." Non-governmental organization

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

that focus on issues of transparency believe this requirement provides Hungary with wide discretion to decide which procurements would fall under its public procurement rules.

Italy: Although laws implemented in Italy following a major 1992 scandal reduced corruption somewhat, U.S. firms continue to cite widespread corruption in procurements, especially at the local level. In 2012, the Italian parliament approved an anti-corruption bill that introduced greater transparency and more stringent procedures to the public procurement process. Nonetheless, corruption in public administration remains a challenge. According to the Italian Court of Audit, corruption costs the Italian economy approximately 60 billion Euros each year – the equivalent of four percent of GDP.

Poland: U.S. firms report disappointment with the speed of change in Poland's public procurement regulations. They note that "lowest cost" remains the main criterion Polish officials use to award contracts, often overlooking other important factors in bid evaluation, such as quality, company reputation, and prior experience in product and service delivery. Defense companies complain of the use of a classification level in procurement documents that does not have a U.S. equivalent, and the requirement that foreign company management submit Polish criminal background checks not available outside of Poland, as common issues with military tenders.

Slovenia: U.S. firms report short timeframes for bid preparation, tendering documentation that is difficult to understand, and opacity in the bid evaluation process as major impediments. Slovenia's quasi-judicial National Revision Commission (NRC), which reviews all disputed public procurement cases, has received multiple complaints. The NRC has the authority to review, amend, and cancel tenders, and its decisions are not subject to judicial appeal. In the instances where U.S. companies alleged improprieties in the procurement process, Slovenian authorities directed them to the NRC, which is not required to justify its decisions.

SUBSIDIES

Various financial transactions and equity arrangements throughout the EU raise questions as to the role of state funding in supporting or subsidizing private or quasi-private organizations, including in the civil aviation sector.

Beginning in June 2014, the Commission announced that certain transfer pricing rulings given by Member States to particular taxpayers may have violated the EU's restriction on state aid. The EU initiated a series of state aid investigations primarily involving U.S.-headquartered companies. As the U.S. Department of the Treasury explained in a white paper dated August 24, 2016, the United States remains deeply concerned with the Commission's approach in these investigations. This approach is new, and departs from prior EU case law and Commission decisions. The Commission's actions also undermine the international consensus on transfer pricing standards, call into question the ability of Member States to honor their bilateral tax treaties, and undermine the progress made under the OECD/G20 Base Erosion and Profit Shifting project.

Government Support for Airbus

Over many years, Belgium, France, Germany, Spain, and the United Kingdom have provided subsidies to their Airbus-affiliated companies to aid in the development, production, and marketing of Airbus's large civil aircraft. These governments have financed between 33 and 100 percent of the development costs (launch aid) of all Airbus aircraft models and have provided other forms of support, including equity infusions, debt forgiveness, debt rollovers, marketing assistance, and research and development funding, in addition to political and economic pressure on purchasing governments.

The EU's 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 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 to create the AeroConstellation site, which contains additional facilities for the A380. After having given the Airbus A380 more than $5 billion in subsidies, the relevant Member State governments have also provided launch aid in comparable amounts for the new Airbus A350 XWB aircraft.

Airbus SAS, the successor to the original Airbus consortium, is owned by the Airbus Group, now the second largest aerospace company in the world. This entity was previously known as the European Aeronautic, Defense, and Space Company (EADS). The name change accompanied a reorganization of the company's ownership structure, resulting in France and Germany each owning up to 11 percent of the shares, Spain approximately 4 percent, and the remaining approximately 72 percent of shares trading on open markets. The reorganization also ended these governments' rights to veto strategic decisions and to appoint directors to the Airbus board. Instead, the governments only have the right to veto board members appointed by the company. The Airbus Group accounted for more than half of worldwide deliveries of new large civil aircraft over the last few years and is a mature company that should face the same commercial risks as its global competitors.

On May 31, 2005, the United States requested establishment of a WTO panel to address its concern that Member State subsidies were inconsistent with the WTO Agreement on Subsidies and Countervailing Measures. The WTO established the panel on July 20, 2005. In 2010, the dispute settlement panel found in favor of the United States on the central claims, and the Appellate Body upheld the finding of WTO inconsistency in 2011. On December 1, 2011, the EU submitted a notification to the WTO asserting that it had taken appropriate steps to bring its measures into conformity with its WTO obligations. On December 9, 2011, the United States requested consultations with the EU to address its concern that the EU had failed to bring its Airbus subsidies into conformity with WTO rules. The WTO compliance panel issued its report on September 22, 2016, finding that the EU Member States had not withdrawn the past subsidies conferred by $17 billion in past launch aid to Airbus, and that the launch aid of nearly $5 billion for the A350 XWB was also contrary to WTO rules.

Government Support for Airbus Suppliers

Member State Measures

Belgium: The Belgian federal government coordinates with Belgium's three regional governments on the subsidies for Belgian manufacturers that supply parts to Airbus. Belgium currently has a €195 million support program for the A380 superjumbo and a €175 million support program for the A350 XWB. Belgium has always claimed that these were refundable advances, structured in accordance with the 1992 bilateral agreement, and that they covered nonrecurring costs. In 2006 and again in 2009, the Commission initially disputed that view, but later acquiesced. Industrial research or experimental development projects linked to the A350 XWB and A380 were cited as examples of projects that could benefit from the program. However, in 2014, Eurostat, the Commission's statistical unit, notified the Belgian government that these amounts should not be considered advances but subsidies, because they were never reimbursed. Beginning in 2016, Belgian federal and regional governments were supposed to include the Airbus subsidies as such in their budgets, which they have never done before. Close scrutiny of the Flemish and Walloon regional 2016 budgets shows no such reimbursements. For the A350 XWB and A380 programs, the price distortion coming from Belgian subcontractors is estimated to be a minimum of €370 million. For the A400M program, the Belgian federal government agreed in 2016 on a €45 million grant for the 2017-2020 period.

France: In addition to the seed investment that the French government provided for the development of the A380 and A350 XWB aircraft, France provides assistance in the form of reimbursable advances for the development by French manufacturers of products such as airplanes, aircraft engines, helicopters, and onboard equipment. In February 2013, the government confirmed €1.4 billion in reimbursable advances for the A350 over the period 2009-2017 and a similar scheme for the helicopter X6 to be built by Eurocopter. At the same time, the government announced the implementation of tax and financial assistance for airline companies to restore their competitiveness. The government's 2015 budget included €136 million in reimbursable advances, which grew to €145 million in the 2016 budget. French appropriations for new programs included €82.8 million in support of research and development in the civil aviation sector in 2015. In 2016, this support decreased by 10.2 percent to €74.3 million.

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 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.

Germany: In March 2015, the German Ministry of Economic Affairs and Energy announced the issuance of €623 million in loans to Airbus for the new A350 XWB wide-body jet. The loan runs until 2031 and covers deliveries of 1,500 airplanes. Negotiations between Airbus and the German government on this second tranche of a €1.1 billion loan package to Airbus had broken down in 2013 amid differences between the company and the government over guaranteed work and jobs. The German government had paid the first tranche of the loan package of €500 million at the end of 2010. In addition to the A350 loan package, Airbus continues to receive funds from the 2012 to 2015 aeronautics research program for a number of projects. In their 2013 coalition agreement, the German government pledged further support for the aeronautics program.

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

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

CUSTOMS ADMINISTRATION

Notwithstanding the existence of customs legislation that governs all Member States, the EU does not administer its laws through a single customs administration. Rather, there is a separate agency responsible for the administration of EU customs law in each of the 28 Member States. Institutions or procedures are not currently in place to ensure that EU rules and decisions on classification, valuation, origin, and customs procedures are applied uniformly throughout the Member States. (The Binding Tariff Information program provided for by EU-level law, but administered at the Member State level, does provide for advance rulings on tariff classification and country of origin.) EU rules do not require the customs agency in one Member

State to follow the decisions of the customs agency in another Member State with respect to materially identical issues.

In some cases, where the customs agency of a Member State administers EU law differently, or disagrees with the Binding Tariff Information issued by another Member State, the matter may be referred to the Customs Code Committee (CCC). The CCC consists of Member State representatives and is chaired by a Commission representative. Although a stated goal for the CCC is to help reconcile differences among Member States and thereby help to achieve uniformity of administration, in practice its success in this regard has been limited. The CCC and other EU-level institutions do not provide transparency in decision-making or opportunities for participation by traders, which might make them more effective tools for achieving the uniform administration and application of EU customs law.

In addition, the EU lacks tribunals or procedures for the prompt review and EU-wide correction of administrative actions relating to customs matters. Instead, review is provided in the tribunals of each Member State; the rules regarding these reviews vary from Member State to Member State. A trader encountering differing treatment in multiple Member States must bring a separate appeal in each Member State whose agency rendered an adverse decision.

Ultimately, a question of interpretation of EU law may be referred to the CJEU. Although the judgments of the CJEU apply throughout the EU, referral of a question to the CJEU is generally discretionary, may take many years, and may not afford sufficient redress. Thus obtaining corrections with EU-wide effect for administrative actions relating to customs matters is frequently cumbersome and time-consuming. The United States has raised concerns regarding the uniform administration of EU customs law with the EU in various forums, including in the WTO DSB.

The Commission has sought to modernize and simplify customs rules and processes. The Union Customs Code (UCC), adopted by the Commission in 2013, entered into force in 2016. While the UCC contains a number of procedural changes, the key element of a harmonized information technology infrastructure has yet to be completed; Member States continue to use different data templates. Full implementation of harmonized customs systems is not expected to be complete before the end of 2020.

The Commission has published delegated and implementing acts on the procedural changes set forth in the UCC. These include Delegated Regulation (EU) 2015/2446, Delegated Regulation (EU) 2016/341, and Implementing Regulation (EU) 2015/2447. In April 2016, the Commission published another implementing decision (2016/578) on the work program relating to the development and deployment of the UCC's electronic systems.

The United States will continue to monitor the UCC implementation process closely, focusing on its impact on the consistency of customs treatment under EU customs law.

BARRIERS TO DIGITAL TRADE

In 2015, the European Commission issued a communication launching an EU Digital Single Market (DSM) strategy to eliminate intra-EU digital trade barriers. In 2016, the Commission launched a number of DSM initiatives and continued work on existing initiatives (see section above on intellectual property). The United States supports the EU's goal of achieving a Digital Single Market insofar as it expands transatlantic digital trade and does not create new barriers for non-EU companies. As the EU continues its work on the DSM, the United States has encouraged the Commission to ensure predictable and consistent market conditions, which will support growth in transatlantic trade and investment. The effects of the proposed EU rules on innovative services will be of particular interest to the United States. The well-intentioned goal of creating a harmonized digital market in Europe, if implemented through flawed regulation, could

seriously undermine transatlantic trade and investment, stifle innovation, and undermine the Commission's own efforts to promote a more robust, EU-wide digital economy.

Data Localization

Data Transfer Consultation

On January 10, 2017, the Commission released a Staff Working Paper on the free flow of data and on emerging issues of the European data economy and opened a consultation on these issues. The Commission's stated aim is to foster an efficient, competitive single market for data services, including cloud-based services, and to identify relevant legal, economic, and regulatory challenges. The consultation requests information on several issues, including whether and how local or national data localization restrictions inhibit the free flow of data in Europe, and on issues relating to data portability (the ability of a user to transfer his or her data between different suppliers). In the Staff Working Paper, the Commission notes that an analysis of a sample of 50 data localization restrictions in 21 EU Member States found that most of the restrictions applied across multiple sectors and often to commercial data, including accounting documents, tax records, invoices, and other company documents. The Staff Working Paper also noted that "the level of security of data in electronic format does not depend on its storage location, but rather on the security of the IT infrastructure and strength of the encryption techniques used. Ways to achieve secure data storage or processing include removing obstacles to keep data in larger state-of-the art data centers, which are much less vulnerable to attacks, and enabling cross-border cooperation, *i.e.* one data center being the back-up of another located in a different Member State." The United States is encouraged by the Commission efforts to identify and potentially address data localization barriers in the EU and in Member States, as these barriers affect U.S. suppliers based in particular Member States. The United States also strongly encourages the EU to examine barriers not only within the EU, but also between the EU and the rest of the world.

General Data Protection Regulation

In April 2016, the EU enacted the General Data Protection Regulation (GDPR), which will take effect in May 2018, replacing the 1995 Data Protection Directive (DPD) that is currently in force. Unlike the DPD, which was implemented through EU Member State national law, the GDPR will apply directly to all EU Member States, thereby reducing current regulatory fragmentation and potentially reducing administrative burdens for U.S. stakeholders. The new regulation is more complex than its predecessor and includes several elements with a potentially significant impact on the interests of U.S. companies. These elements include joint liability obligations, a data protection officer requirement, data portability, data breach notification, parental consent requirements, and the "right to be forgotten." The Commission and Member State Data Protection Authorities (DPAs) are expected to issue a number of implementing measures during 2017, and the United States will monitor these developments closely.

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

Under the GDPR, the Commission can impose fines up to four percent of annual global revenue on firms that breach the new EU data protection rules. For multinational corporations, such fines could amount to billions of dollars. The GDPR also introduces joint liability for controllers (the company that controls the personal data) and processors (generally contractors hired by the controller to provide services using the data). Under the DPD, only the controller was liable for data breaches. Companies are concerned that joint liability would require them to monitor other companies' data protection practices, which would increase administrative costs and burdens. Such due diligence requirements could require controllers and processors to pass more personal data back and forth, thereby increasing potential vulnerabilities to unauthorized disclosure.

The GDPR will also require companies to appoint a data protection officer if they process sensitive data on a large scale. The data protection officer would also be responsible for notifying the relevant DPA of serious data breaches as soon as possible. Although there is an exception in the GDPR for many small- and medium-sized businesses, this requirement will impact a large number of companies operating in the EU. The GDPR further creates a new data portability right for individuals to move their personal data from one service provider to another. Companies have expressed concerns regarding the cost and technical feasibility of this provision.

The GDPR requires data controllers to obtain parental consent to process the personal data of minors aged 16 years or younger, but allows Member States the flexibility to lower the age for this requirement to 13 years. (In the United States, the Children's Online Privacy Protection Act imposes a similar requirement for minors aged 13 years or younger.) U.S. companies have expressed concerns that different Member States will impose different age requirements, increasing administrative burdens in providing services across the EU. In addition, raising the age requirement to 16 years will force them to interrupt or curtail service to a large and active segment of their customer base.

Right To Be Forgotten

The GDPR codifies the 2014 decision of the CJEU that imposed a right for EU citizens to demand that search engines remove information that is inaccurate, inadequate, irrelevant, or excessive for the purposes of data processing ("right to be forgotten"). Companies have continued to express concern over the "right to be forgotten" and its potential to conflict with free speech and to restrict access to information of legitimate public interest.

In the two years since the CJEU ruling was issued, a lack of consistent guidance has raised concerns for companies, particularly with regards to the possible extraterritorial application of the ruling by EU Member State DPAs. In some cases, search engines were ordered not to link to news stories about the "right to be forgotten" ruling, since those stories may reference individuals who had petitioned to remove information under the "right to be forgotten." In other cases, notably involving the French DPA (CNIL), search engines have been directed to remove information even from services not aimed at an EU audience. CNIL ordered one U.S. search supplier to remove information under a "right to be forgotten" matter from all its domains on a worldwide basis. The CNIL matter is on appeal to the State Council, France's highest administrative court. If upheld, France and presumably other EU Member State DPAs would maintain that they have the authority to restrict what non-EU businesses and individuals would be able to access on the Internet. This would set a worrisome precedent for governments to exert extraterritorial application of their domestic law on the Internet and would create significant market uncertainty for businesses worldwide.

The "right to be forgotten" provision in the GDPR will apply not only to search engines but to all data controllers. The GDPR requires data controllers to erase personal data "without undue delay" if the data is no longer needed, the data subject objects, or the data processing was unlawful. Under the CJEU ruling, search engines have already fielded hundreds of thousands of requests from individuals. U.S. companies

have expressed concern that the cost to respond to all requests concerning the "right to be forgotten" is administratively burdensome, particularly for small and medium sized companies.

Electronic Privacy Regulation

On January 10, 2017, the Commission proposed a new Regulation on Privacy and Electronic Communications, which would replace the e-Privacy Directive of 2002. The new regulation would enter into force in May 2018, when the GDPR is also scheduled to take effect. The Commission has stated that the proposed Regulation on Privacy and Electronic Communications will align rules for telecommunications services in the EU with the GDPR and cover business-to-business communication and communication between individuals. The proposal gives Member State DPAs the authority to enforce its requirements. While it would remove existing inconsistencies between Member State rules, it would also expand regulatory coverage intended for traditional telecommunications services providers to Internet-enabled communication and messaging services (*i.e.*, "over-the-top" services), thereby imposing additional costs on those suppliers.

Privacy Shield

On July 12, 2016, the United States and the EU concluded the EU-U.S. Privacy Shield Framework to provide U.S.-based organizations a mechanism to comply with EU data protection requirements when transferring personal data from the EU to the United States in support of transatlantic commerce. On August 1, 2016, the International Trade Administration (ITA) of the U.S. Department of Commerce, which administers the Framework, began accepting certifications for the Privacy Shield Framework. As of January 2017, over 1,900 companies had self-certified to the Privacy Shield. Of those, ITA's Privacy Shield team had finalized more than 1,550 and was reviewing approximately 400 more.

The Privacy Shield Framework supports cross-border trade estimated to be in the hundreds of billions of dollars. The Framework replaced the U.S.-EU Safe Harbor Framework of 2000, following an October 2015 CJEU ruling striking down the Commission decision that found Safe Harbor adequate under the EU's 1995 Data Privacy Directive. While joining the Privacy Shield Framework is voluntary, once an eligible organization makes the public commitment to comply with the Framework's requirements, the commitments become enforceable under U.S. law.

Other valid legal mechanisms for moving the personal data of EU citizens to the United States include binding corporate rules and standard contractual clauses. Although the European Commission and the United States have both affirmed that the Privacy Shield Framework and other mechanisms for the movement of the personal data of EU citizens to the United States meet the requirements of EU law, new legal challenges continue to create uncertainty for companies moving data. As of the end of 2016, two legal challenges had been filed against the Privacy Shield in the EU's General Court (lower court). Standard contractual clauses are also under judicial review in Ireland. Finally, the Privacy Shield Framework also provides for an annual Commission review of its effectiveness.

Interactive Computer Services

Aggregation Services

Over the past several years, certain EU Member States have adopted measures requiring fees associated with online news aggregation services. Specifically, the measures require news aggregators, which provide "snippets" of text from other news sources, to remunerate those other sources. One Member State has also introduced a similar measure with respect to digital images. These measures are intended to address publishers' and visual artists' challenges in adapting to the digital marketplace, but 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. The following measures and proposals warrant careful monitoring in light of the interests and concerns of stakeholders.

A 2014 amendment to the Spanish intellectual property law (Article 32.2) imposed upon commercial news aggregators a mandatory compensation regime for the use of fragments of news publications. News aggregators are required to remunerate publishers via a rights management organization for the use of "non-significant fragments" of their news publications; there is 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.*, so as to allow readers to find and access such publications). Faced with this measure, at least one leading U.S. supplier suspended its news aggregation service in the Spanish market. A 2015 economic study conducted for the Spanish Association of Publishers of Periodical Publications (AEEP) found that the amendment raised barriers to entry for Spanish publishers, decreased innovative access online for users, and cost publishers an estimated €10 million per year, with a disproportionate impact on smaller publishers.

A similar 2013 German law ("Leistungsschutzrecht für Presseverleger") allows uncompensated "short extracts" of news publications, and permits news publishers and news aggregators to negotiate terms of individual licenses (including the possibility of opting out of requiring payment under the law). Implementation of the German law has reportedly been less disruptive than in the case of the Spanish measure. In fact, at least one leading U.S. supplier obtained a royalty-free license from a German collecting society for the display of short extracts of news publications. There are continuing stakeholder concerns regarding the legal uncertainty created by the law and its effect on innovative businesses in Germany.

In its recent proposal for a Directive on Copyright in the Digital Single Market, the Commission recommends expanding the reproduction right to press publishers with respect to the digital use of their press publications. Although certain EU stakeholders, particularly from the publishing industry, have supported this proposal, online news aggregators, including but not limited to U.S. service suppliers, have raised concerns regarding the potential impact of this proposed directive, in part because of their experiences with the German and Spanish laws.

France. In July 2016, France passed the Freedom of Creation Act, a set of measures designed to bolster suppliers of cultural products through subsidies and other governmental interventions. The so-called "thumbnail amendment" in the Freedom of Creation Act, found in Article 30, requires "automated image referencing services" to remunerate French rights collecting societies for the right to "reproduce and represent" an image. Individual artists or photographers cannot opt out of this licensing regime. Although the act requires its implementation no later than six months after its promulgation, on January 8, 2017, the French government's initial Article 30 implementing decree was rejected by the State Council, France's highest administrative court, on the grounds that the article's remuneration mechanism does not conform to EU legislation. Due to 2017 presidential and legislative elections in France, it may be 2018 before further efforts are made to implement the thumbnail amendment. How images subject to the thumbnail amendment will be determined and how a collecting society will be managed and funded remain unclear. But these requirements could present market access barriers for online services based in the United States and elsewhere that index images, and they may affect the ability of these and other innovative services to operate and grow in the French market to the possible detriment of visual artists.

Other Issues

Geo-blocking

On May 25, 2016, the Commission issued an "e-Commerce package" that included a proposed draft regulation targeting "unjustified geo-blocking," which the Commission views as unnecessary

discrimination amongst residents of the EU based on nationality, place of residence, or place of establishment. The proposed geo-blocking regulation is still being reviewed by the Council and the Parliament, but the Commission expects it to be enacted during 2017. The Commission defines geo-blocking as a market segmentation practice whereby vendors treat their customers differently, based on the EU Member State in which they reside or are located, by applying different contract terms, directing them to different websites, or offering different prices, usually based on the customer's IP address, physical address, or nationality, or on the issuer of the customer's credit or debit card. In its proposed draft regulation, the Commission proposed to bar unjustifiable "geo-discrimination," and set forth disclosure requirements for businesses that engage in geo-blocking or re-routing to justify these practices. Several companies have expressed concerns that the elimination of what some EU officials consider to be "unjustified geo-blocking" could adversely affect companies' ability to market tailored offerings to different customers or engage in territorial licensing of audiovisual works.

Cross-Border Contract Rules

In December 2015, the European Commission tabled legislative proposals on contract rules on the supply of digital content (*e.g.*, streaming music) and on contract rules on the online sale of physical goods (*e.g.*, buying a camera online). The two proposed Directives are now before the Council and Parliament for review and amendment and are expected to be finalized during the first half of 2017. The proposals seek to address concerns over a perceived relative lack of legal remedies in certain cases, such as for "defective" digital content purchased online. Specific provisions include expanding the cases in which vendors may rely on their own national laws when selling to other EU markets and improving coordination and monitoring for infringement of consumer protection rules.

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

GHANA

TRADE SUMMARY

The U.S. goods trade surplus with Ghana was $509 million in 2016, a 20.5 percent decrease ($131 million) over 2015. U.S. goods exports to Ghana were $830 million, down 12.6 percent ($119 million) from the previous year. Corresponding U.S. imports from Ghana were $321 million, up 3.8 percent. Ghana was the United States' 81st largest goods export market in 2016.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Ghana issues its own standards for most products under the auspices of the Ghana Standards Authority (GSA). The GSA has promulgated more than 500 Ghanaian standards and adopted more than 2,000 international standards for certification purposes. The Ghanaian Food and Drugs Authority is responsible for enforcing standards for food, drugs, cosmetics, and health items.

Some imports are classified as "high risk goods" (HRG) that must be inspected by GSA officials at the port to ensure they meet Ghanaian standards. The GSA classifies these HRGs into 20 broad groups, including food products, electrical appliances, and used goods. U.S. stakeholders have found this classification system vague and confusing. For example, the category of "alcoholic and nonalcoholic products" could include anything from beverages to pharmaceuticals to industrial products. According to GSA officials, these imports are classified as high risk because they pose "potential hazards," although that phrase remains undefined in law or regulation.

Importers of HRGs must register and obtain approval from GSA prior to importing any of these goods. In particular, as part of this approval, the importer must submit to GSA a sample of the good, accompanied by a certificate of analysis (COA) or a certificate of conformance (COC) from an accredited laboratory in the country of export. Frequently, GSA officials will conduct a physical examination of the goods and check labeling and marking requirements to ensure that they are released within 48 hours. Currently, the fee for registering the first three HRGs is GHS 100 (about $25) and GHS 50 (about $12.50) for each additional product, valid for one year and subject to renewal.

Any HRG presented to enter Ghana without a COC or COA from an accredited laboratory is detained and subjected to testing by the GSA. The importer is required to pay the testing fee based on the number of products and the parameters tested.

Expiration Date and Fat Content Requirements

The GSA requires that all food products carry expiration and shelf life dates. Expiration dates must extend at least to half the projected shelf life at the time the product reaches Ghana. Goods that do not have half of their shelf life remaining are seized at the port of entry and destroyed. The United States has raised this issue with Ghana in recent years and questioned the requirement's consistency with the Codex Alimentarius Commission General Standard for Labeling of Pre-packaged Foods.

To address human health risks, Ghana prohibits the importation of meat with a fat content by weight greater than 25 percent for beef, 25 percent for pork, 15 percent for poultry, and 30 percent for mutton.

Imported turkeys must have their oil glands removed. Ghana also restricts the importation of condensed or evaporated milk with less than 8 percent milk fat by weight, and dried milk or milk powder containing less than 26 percent by weight of milk fat, with the exception of imported skim milk in containers.

IMPORT POLICIES

Tariffs

The Economic Community of West African States (ECOWAS) Common External Tariff (CET), which was formally adopted by ECOWAS in 2013, entered into force in Ghana on February 1, 2016. The CET has five tariff bands: no duty on essential social goods (*e.g.*, medicine); five percent duty on basic raw materials, capital goods and specific inputs; 10 percent duty on intermediate goods; 20 percent duty on final consumer goods; and 35 percent duty on goods in certain sectors that the government seeks to protect, such as poultry and rice.

Ghana has bound all agricultural tariffs in the WTO at an average rate of 96.5 percent, more than five times the average level of its MFN applied rates on agricultural goods. On industrial goods, almost all of Ghana's tariffs are unbound at the WTO, such that Ghana could raise tariffs to any rate at any time without violating its WTO commitments, which contributes to uncertainty for importers and exporters.

Nontariff Measures

Importers are confronted by a variety of fees and charges in addition to tariffs. Since 2014, Ghana levies a 17.5 percent VAT-like tax on all refined petroleum products. In addition, Ghana imposes a 0.5 percent ECOWAS levy on all goods originating from non-ECOWAS countries and charges 0.4 percent of the free onboard value of goods (including VAT) for the use of the Ghana Community Network, an automated clearing system.

Parliament passed the Ghana Export-Import Bank Act in March 2016. Under the new law, which came into effect on January 3, 2017, Ghana imposes a 0.75 percent levy on all non-petroleum products imported in commercial quantities. It replaces the Export Development and Agricultural Investment Fund levy of 0.5 percent. Ghana also applies a one percent processing fee on all duty-free imports. In 2013, Ghana imposed a special import levy of one percent on the cost, insurance, and freight (CIF) value of goods under chapters 84 and 85 of the Harmonized System schedule which covers, *inter alia*, boilers and certain types of machinery, electrical machinery, mechanical appliances and recording devices, and imposed a special import levy of two percent of the CIF value on all other imports, except for some petroleum products and fertilizers. These special import levies are in effect through the end of 2017.

An examination fee of one percent is applied to imported vehicles. Imported used vehicles that are more than 10 years old incur an additional tax ranging from 2.5 percent to 50 percent of the CIF value. The Customs Division of the Ghana Revenue Authority maintains a price list that is used to determine the value of imported used vehicles for tax purposes. This system is not transparent and the price list used for valuation is not publicly available.

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

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

Customs Procedures

Ghanaian port practices continue to present major obstacles to trade. Officials do not effectively utilize risk management-based inspection approaches and generally inspect all imports on arrival, causing delays and increased costs. Importers report erratic application of customs and other import regulations, lengthy clearance procedures, and corruption. The resulting delays contribute to product deterioration and result in significant losses for importers of perishable goods. Additionally, Ghana's ports suffer from congested roads and lack a functioning rail system to transport freight, creating long waits for ships to berth at cargo terminals and for containers to be transported out of the ports. Ghana Ports and Harbor Authority (GPHA) is working to modernize both the Ports of Tema and Takoradi. In November 2016, the government of Ghana launched a $1.5 billion Public-Private Partnership between GPHA and Meridian Port Services, a partnership representing interests from the Netherlands and France, to quadruple the capacity of the Tema Port. This port expansion project is expected to be completed in 2019.

The government launched its National Single Window in December 2015. While the single window trade portal is still under development, it currently includes information on customs and other requirements for all border agencies. The Customs Division of the Ghana Revenue Authority has taken on the inspection and valuation role once occupied by five licensed destination inspection companies, who many believe were the source of the long clearance delays. However, the one percent fee associated with the inspections is still being collected.

Ghana has ratified the WTO Trade Facilitation Agreement and identified the articles it will apply at entry into force (Category A).

GOVERNMENT PROCUREMENT

Some large public procurements are conducted with open tendering and allow the participation of nondomestic firms; however, single source procurements are common on many government contracts. A guideline that applies to current tenders gives a margin of preference of 7.5 percent to 20 percent to domestic suppliers of goods and services in international competitive bidding. Notwithstanding the public procurement law, companies report that locally funded contracts lack full transparency. Supplier- or foreign government-subsidized financing arrangements appear in some cases to be a crucial factor in the award of government procurements. Allegations of corruption in the tender process are fairly common.

Ghana is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Ghana was not listed in the 2016 Special 301 Report. In 2016, Ghana launched its first national intellectual property rights (IPR) policy and strategy. Further, Ghana has taken action to enforce IPR, including periodically conducting raids on physical markets for pirated works and inspections of import shipments. Despite Ghana's effort to strengthen its IPR regime, enforcement remains weak and unreasonable delays in infringement proceedings discourage IPR owners from filing new claims in local courts.

SERVICES BARRIERS

Telecommunications

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

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

Following legislation enacted in 2009, Ghana requires a minimum rate of $0.19 per minute for terminating international calls into Ghana, significantly higher than the average rate prior to 2009. This rate increase has correlated with a decrease in call volume from the United States to Ghana, and a decrease in U.S. termination payments to carriers in Ghana.

INVESTMENT BARRIERS

All foreign investment projects must register with the Ghana Investment Promotion Center. While the registration process is designed to be completed within five business days, the process often takes significantly longer. Foreign investments are also subject to the following minimum capital requirements: $200,000 for joint ventures with a Ghanaian partner; $500,000 for enterprises wholly-owned by a non-Ghanaian; and $1 million for trading companies (firms that buy or sell imported goods or services) wholly owned by non-Ghanaian entities. Trading companies are also required to employ at least 20 skilled Ghanaian nationals.

Ghana's investment code excludes foreign investors from participating in eight economic sectors: petty trading; the operation of taxi and car rental services with fleets of fewer than 25 vehicles; lotteries (excluding soccer pools); the operation of beauty salons and barber shops; printing of recharge scratch cards for subscribers to telecommunications services; production of exercise books and stationery; retail of finished pharmaceutical products; and the production, supply, and retail of drinking water in sealed pouches.

Mining

Ghana restricts the issuance of mining licenses based on the size of the mining operation. Foreign investors are restricted from obtaining a Small Scale Mining License for mining operations that equal an area less than 25 acres (10 hectares). Non-Ghanaians may only apply for a mineral right in respect of industrial minerals for projects involving an investment of $10 million or above.

The Minerals and Mining Act (2006, Act 703) mandates compulsory local participation, whereby the government acquires a 10 percent equity in ventures at no cost. In order to qualify for a license, a non-Ghanaian company must be registered in Ghana, either as a branch office or a subsidiary that is incorporated under the Ghana Companies Code or Private Partnership Act.

Oil and Gas

The oil and gas sector is subject to a variety of state ownership and local content requirements. The Petroleum (Exploration and Production) Act (2016, Act 919) mandates local participation. All entities seeking petroleum exploration licenses in Ghana must create a consortium in which the state-owned Ghana National Petroleum Company (GNPC) holds a minimum 10 percent stake. The Petroleum Commission issues all licenses, but exploration licenses must be approved by Parliament. Further, local content regulations specify in-country sourcing requirements with respect to the full range of goods, services, hiring, and training associated with petroleum operations. The regulations also require mandatory local equity participation for all suppliers and contractors. The Minister of Petroleum must approve all contracts, sub-contracts, and purchase orders above $100,000. Non-compliance with these regulations may result in a criminal penalty, including imprisonment for up to five years.

The Petroleum Commission applies registration fees and annual renewal fees on foreign oil and gas service providers, which, depending on a company's annual revenues, range from $70,000 to $150,000, compared to fees of between $5,000 and $30,000 for local companies.

Insurance

The National Insurance Commission (NIC) imposes nationality requirements with respect to the board and senior management of locally-incorporated insurance and reinsurance companies. At least two board members must be Ghanaians, and either the Chairman of the board or Chief Executive Officer (CEO) must be Ghanaian. In situations where the CEO is not a Ghanaian, the NIC requires that the Chief Financial Officer be Ghanaian.

OTHER BARRIERS

Foreign investors experience difficulties and delays in securing required work visas for their non-Ghanaian employees. The process for obtaining required work permits can be unpredictable and take several months from application to delivery. Obtaining access to land may also be challenging for foreign investors. Non-Ghanaians are only permitted to acquire interests in land on a long-term leasehold basis, and Ghana's complex land tenure system makes establishing clear title on real estate difficult.

Foreign investors in Ghana must also contend with a politicized business community and a lack of transparency in certain government operations. Entrenched local interests can derail or delay new entrants. The political leanings of the Ghanaian partners of foreign investors are often subject to government scrutiny. Corruption among government and business figures also remains a concern. Ghanaian law enforcement and judicial bodies have robust legal powers to fight corruption in the country, but the government does not implement anticorruption laws effectively.

GUATEMALA

TRADE SUMMARY

The U.S. goods trade surplus with Guatemala was $2.0 billion in 2016, a 15.7 percent increase ($265 million) over 2015. U.S. goods exports to Guatemala were $5.9 billion, up 1.6 percent ($93 million) from the previous year. Corresponding U.S. imports from Guatemala were $3.9 billion, down 4.2 percent. Guatemala was the United States' 36th largest goods export market in 2016.

U.S. exports of services to Guatemala were an estimated $1.5 billion in 2015 (latest data available) and U.S. imports were $999 million.

U.S. foreign direct investment (FDI) in Guatemala (stock) was $1.1 billion in 2015 (latest data available), a 5.1 percent decrease from 2014.

Free Trade Agreement

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

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Sanitary and Phytosanitary Barriers

Guatemalan sanitary and phytosanitary import requirements change frequently, often without prior WTO notification. Import permit requirements frequently change, resulting in an 80 percent initial rejection rate, requiring re-application and delays of up to five days and extra demurrage costs. As a result, U.S. agricultural exports are sometimes detained at port until a final permit or waiver is issued. Guatemala lacks a science-based risk analysis approach for developing import regulations for agricultural and food products, and imposes burdensome state-by-state certification requirements.

In November 2016, Guatemala published an official list of quarantine pests, identifying those that require fumigation. Since then, fumigations of U.S. agricultural products have dropped from 90 percent to 30 percent. Guatemala also reduced the number of pests that needed to be declared for fresh produce. Seeds and propagative materials are still subject to a strict regulations that demands disease-free-status certification and a more restrictive pest-free status.

In September 2016, Guatemala rescinded Regulation 382-2014 which required mandatory plant-by plant inspection prior to approval for select meat and seafood exports. However, it is unclear what inspection procedures, if any, will replace this regulation. To date, U.S. exports of seafood products continue to be limited to those exported from previously approved processing plants. Beef, pork and poultry meat are not affected.

IMPORT POLICIES

Tariffs

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

In addition, 95 percent of U.S. agricultural exports enter Guatemala duty free under the CAFTA-DR. Guatemala will eliminate its remaining tariffs on nearly all U.S. agricultural products by 2020, on rice and chicken leg quarters by 2023, and on dairy products by 2025. Guatemala has requested to the other CAFTA-DR members approval to accelerate the elimination of the out-of-quota tariff for chicken leg quarters. Depending on member responses, the tariff could be eliminated in 2017, 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.

Nontariff Measures

All CAFTA-DR countries, including Guatemala, committed to improve transparency and efficiency in administering customs procedures. The CAFTA-DR countries also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and agreed to share information to combat illegal transshipment of goods. Customs information for Guatemala is available at: http://portal.sat.gob.gt/sitio/.

Guatemala's denial of claims for preferential treatment for U.S. products under the CAFTA-DR continues to be an occasional source of difficulty in exporting to Guatemala. U.S. companies have raised concerns that the Guatemalan Customs Administration (part of the Superintendence of Tax Administration) might be using reference prices, such as prices from imports in previous months, to adjust invoice price declarations.

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

GOVERNMENT PROCUREMENT

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

Reforms of Guatemala's Government Procurement Law in 2009 simplified bidding procedures, eliminated the fee previously charged to suppliers for bidding documents, and provided an additional opportunity for

suppliers to raise objections to the bidding process. Furthermore the Guatemalan Congress approved reforms to the Government Procurement Law in November 2015 that improved procurement transparency and efficiency by barring government contracts for financers of political campaigns/parties, members of Congress, other elected officials, government workers, and their family members. The 2015 reforms expanded the scope of procurement oversight to include public trust funds and all institutions (including NGOs) executing public funds and also eliminated some of the special-purpose mechanisms used to avoid competitive bidding processes. The Guatemalan Congress approved a further set of reforms to the Government Procurement Law in October 2016 that will help expedite public spending and simplify procedures for implementation of some of the reforms approved in 2015. However, foreign suppliers must still submit their bids through locally-registered representatives, a process that can place foreign bidders at a competitive disadvantage.

Guatemala is neither a signatory nor an observer to the WTO Agreement on Government Procurement**.**

EXPORT SUBSIDIES

Guatemala employed an export incentive program in the "Law for the Promotion and Development of Export Activities and Drawback" through December 31, 2015. Guatemala provided tax exemptions and duty benefits to companies that imported over half of their production inputs or components and exported their completed products. Investors were granted a 10-year exemption from both income taxes and the Solidarity Tax, which is Guatemala's temporary alternative minimum tax. Additionally, companies were granted an exemption from the payment of tariffs and value-added taxes on imported machinery and a one-year suspension (extendable to a second year) of the same tariffs and taxes on imports of production inputs and packing material. Taxes were waived when the goods were re-exported. The Guatemalan Congress amended the "Law for the Promotion and Development of Export Activities and Drawback" in February 2016 to replace the tax incentive program that concluded in December 2015. The new tax exemptions are applied to apparel and textile companies as well as to information and communication technology service providers such as call centers and business processes outsourcing (BPO) operations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Guatemala remained on the Watch List in the 2016 Special 301 Report. Guatemala has a generally sound intellectual property rights (IPR) legal framework, but enforcement is insufficient to effectively address the wide availability of pirated and counterfeit goods. Additional concerns include trademark squatting, cable signal piracy, and government use of unlicensed software. The United States will continue to engage Guatemala on these and other concerns, including through the Special 301 process, and will continue to monitor Guatemala's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Professional Services

Public notaries must be Guatemalan nationals. Foreign enterprises may provide licensed professional services in Guatemala only through a contract or other relationship with an enterprise established in Guatemala.

Telecommunications

In April 2014, the Guatemalan Congress approved a new telecommunications law that included requirements designed to strengthen the country's data transmission infrastructure. Some stakeholders raised concerns that the conditions imposed on operators appeared to discriminate against small and new

suppliers. The Constitutional Court temporarily suspended some provisions of the law in June 2014 and revoked the entire law in March 2016 as unconstitutional during the Congressional approval process.

INVESTMENT BARRIERS

Some U.S. companies operating in Guatemala have raised concerns that complex and unclear laws and regulations constitute barriers to investment. Resolution of business and investment disputes through Guatemala's judicial system is extremely time-consuming and civil cases can take many years to resolve. In addition, government institutions in Guatemala can be prone to third-party influence. U.S. firms and citizens have found corruption in the government, including in the judiciary, to be a significant concern and a constraint to investment.

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

HONDURAS

TRADE SUMMARY

The U.S. goods trade surplus with Honduras was $227 million in 2016, a 50.5 percent decrease ($231 million) over 2015. U.S. goods exports to Honduras were $4.8 billion, down 7.1 percent ($369 million) from the previous year. Corresponding U.S. imports from Honduras were $4.6 billion, down 2.9 percent. Honduras was the United States' 41st largest goods export market in 2016.

U.S. exports of services to Honduras were an estimated $998 million in 2015 (latest data available) and U.S. imports were $648 million. Sales of services in Honduras by majority U.S.-owned affiliates were $500 million in 2014 (latest data available).

U.S. foreign direct investment (FDI) in Honduras (stock) was $1.2 billion in 2015 (latest data available), a 58.6 percent increase from 2014. U.S. direct investment in Honduras is led by manufacturing, nonbank holding companies, and information.

Free Trade Agreement

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

TECHNICAL BARRIERS TO TRADE

Product Registration

Product registration is a legal requirement for marketing products in Honduras. Registration of products with the Ministry of Health is particularly burdensome for importers. The Ministry of Health registers food items, medical devices, beauty products, and pharmaceuticals. In November 2016, the Ministry of Health announced plans to restructure and modernize its traditional administrative and operational procedures. Among the main challenges related to product registration are corruption, lack of specialized personnel, a laboratory system unable to meet demand, lack of equipment and electronic platforms, and outdated legislation. As a means of addressing this issue, the Honduran government has signaled its interest in partnering with the United States Government to strengthen the product registration regime and alleviate barriers. U.S. Embassy Tegucigalpa hosted a regional product registration conference in early 2017, where leading experts from Government and the private sector shared best practices with the countries of the Northern Triangle.

IMPORT POLICIES

Tariffs

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

Under the CAFTA-DR, 100 percent of U.S. consumer and industrial goods enter Honduras duty free. Nearly all textile and apparel goods that meet the Agreement's rules of origin also enter Honduras duty free and quota free, creating opportunities for U.S. fiber, yarn, fabric, and apparel manufacturers.

In addition, more than half of U.S. agricultural exports currently enter Honduras duty free. Honduras will eliminate its remaining tariffs on nearly all U.S. agricultural products by 2020, on rice and chicken leg quarters by 2023, and on dairy products by 2025. For certain products, tariff-rate quotas (TRQs) permit some duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount 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.

TRQs under the CAFTA-DR are to be made available on January 1 of each year. However in 2016, Honduras did not issue TRQ permits for white corn and milled rice until March. Honduras claimed that the delay was due to an audit of permit requests. The United States is carefully monitoring Honduran issuance of these permits and has reminded Honduran authorities about the importance of issuing them in a timely manner.

Nontariff Measures

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

Restructuring of Honduras Revenue Directorate and Customs Service

In March 2016, the government of Honduras restructured its customs and tax agency, the Executive Tax Authority (DEI), and significantly reduced its workforce. A new Tax Administration System (SAR) has replaced DEI and assumed DEI's role in verifying that claims of origin meet the requirements of the CAFTA-DR and other international agreements. The SAR has implemented a much stricter approach to customs compliance, which has initially resulted in increased fines against Honduran importers, whose paperwork may contain errors, in addition to delays in customs processing. However, this restructuring presents an opportunity for Honduras to modernize customs processing. The future implementation of paperless customs processing for importers and exporters, in order to simplify and expedite the clearance process and promote greater transparency and oversight by Honduran customs officials, is a priority for the SAR. To further assist the Honduran government in the restructuring of the SAR and in building its technical capacity, the U.S. Embassy has launched a Customs Task Force, which aims to provide a variety of technical assistance, including site visits to view U.S. port operations, trainings and workshops, and technology exhibitions with U.S. companies.

Honduras Ratification of WTO Trade Facilitation Agreement

In July 2016, Honduras formally ratified the WTO Trade Facilitation Agreement **(**TFA), which contains provisions for expediting the movement, release, and clearance of goods, and sets out measures for effective cooperation for customs compliance and trade facilitation issues. As a means to improve customs and trade facilitation within the Northern Triangle, the government of Honduras has formally signed a cooperation agreement with USAID to identify and alleviate trade bottlenecks along its border with El Salvador.

GOVERNMENT PROCUREMENT

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

Efforts to strengthen Honduran procurement systems are also underway. In order to facilitate broader dissemination of public bidding opportunities, the Honduran government has established an online Contracting and Procurement Information System known as "Honducompras," which is administered by the State Procurement Agency (ONCAE). As part of ONCAE's State Contracting and Procurement Efficiency Program to simplify the bidding process, Honduras implemented a national "Standard Bidding Document," which has been deemed acceptable to multilateral financing entities such as the Inter-American Development Bank and the World Bank.

Honduras is neither a party nor an observer to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Honduras currently employs the following export incentive programs: Free Trade Zone of Puerto Cortes (ZOLI), Export Processing Zones (ZIP), and Temporary Import Regime (RIT).

Honduras provides tax exemptions to firms in free trade zones. Under the CAFTA-DR, Honduras may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, Honduras may maintain such duty waiver measures for such time as it is an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The United States worked closely with the government of Honduras as it developed a Work Plan, finalized in early 2016, to improve the protection and enforcement of intellectual property in Honduras. Effective implementation of the Work Plan will help address the need for more effective administrative and criminal enforcement against intellectual property violations, including by combatting cable and satellite signal piracy and the scope of geographical indications. Greater clarity is needed to improve procedures relating to customs enforcement, including developing a trademark recordation system, and relating to the scope of protections for geographical indications, among other issues.

SERVICES BARRIERS

U.S. firms and citizens report a significant concern with obtaining government permits, particularly in real estate transactions, and meeting regulatory requirements in the telecommunications, health, and energy sectors.

INVESTMENT BARRIERS

Honduran law places certain restrictions on foreign ownership of land within 40 kilometers of the country's coastlines and national boundaries. However, foreigners are allowed 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 numerous investment disputes involving U.S. nationals who are landowners in Honduras.

Corruption

The Hernández Administration has undertaken several measures in an effort to address corruption, including pursuing indictments against former government officials; signing international transparency initiatives, such as the Construction Sector Transparency Initiative; and dedicating resources to bolster existing commitments under initiatives such as the Open Government Partnership and the Extractive Industry Transparency Initiative. Despite these efforts, U.S. firms and citizens continue to report corruption in the government, including in the judiciary, to be a significant concern and a constraint to successful investment in Honduras. These reports suggest that corruption is pervasive in government procurement, the issuance of government permits, real estate transactions (particularly land title transfers), and the regulatory system in general. The telecommunications, health, and energy sectors appear to be particularly problematic.

HONG KONG

TRADE SUMMARY

The U.S. goods trade surplus with Hong Kong was $27.5 billion in 2016, a 9.4 percent decrease ($2.8 billion) over 2015. U.S. goods exports to Hong Kong were $34.9 billion, down 6.1 percent ($2.3 billion) from the previous year. Corresponding U.S. imports from Hong Kong were $7.4 billion, up 8.7 percent. Hong Kong was the United States' 9th largest goods export market in 2016.

U.S. exports of services to Hong Kong were an estimated $9.8 billion in 2015 (latest data available) and U.S. imports were $8.8 billion. Sales of services in Hong Kong by majority U.S.-owned affiliates were $34.3 billion in 2014 (latest data available), while sales of services in the United States by majority Hong Kong-owned firms were $4.5 billion.

U.S. foreign direct investment (FDI) in Hong Kong (stock) was $64.0 billion in 2015 (latest data available), a 5.9 percent increase from 2014. U.S. direct investment in Hong Kong is led by nonbank holding companies, wholesale trade, and information.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

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

Technical Barriers to Trade

The Hong Kong government published a draft Code of Marketing and Quality of Formula Milk and Related Products and Food Products for Infants and Young Children (draft Code) in October 2012, and is in the process of finalizing the draft Code. If the draft Code is implemented as originally drafted, U.S. stakeholders maintain that, together with related legislative proposals, it will have significant negative impacts on sales of food products for infants and young children, and is more restrictive than relevant international standards. The United States is continuing to engage with the Hong Kong government on this draft measure.

IMPORT POLICIES

The Hong Kong government pursues a market-oriented approach to commerce. Hong Kong is a duty-free port, with few barriers to trade in goods and services and few restrictions on foreign capital flows and investment.

COMPETITION POLICY

Hong Kong's first comprehensive competition law – the Competition Ordinance (Ordinance) – was passed by the Legislative Council in June 2012, after six years of public consultation and study. Since then, Hong Kong has made positive advancements in the development of its competition policy. The Ordinance, which went into effect in December 2015, contains rules to prohibit anticompetitive agreements and abuse of market power. The Ordinance also prohibits anticompetitive mergers and acquisitions, but only with respect to carrier license holders in the telecommunications sector. The maximum penalties under the Ordinance are 10 percent of the company's turnover obtained in Hong Kong for each year of violation, up

to a maximum of three years, and disqualification from direct or indirect involvement in the management of a company for up to five years. The Ordinance exempts 575 of Hong Kong's 581 statutory bodies from its coverage.

The government established a Competition Commission (Commission) and a Competition Tribunal (Tribunal) in 2013. The Commission is empowered to investigate anticompetitive conduct and promote public understanding of the value of competition. The Tribunal is in charge of hearing and adjudicating cases brought before it by the Commission after due investigation. In July 2015, the Commission published the final version of six enforcement guidelines. To provide further details of how the Commission intends to carry out its enforcement under the Ordinance, the Commission issued the enforcement policy and the cartel leniency policy in November 2015.

In the first six months of 2016, the Commission received 1,250 complaints and queries about potentially anti-competitive conduct. By October 2016, the Commission had begun in-depth probes into 10 cases.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Hong Kong generally provides robust IPR protection and enforcement and has strong laws in place. Hong Kong also maintains a dedicated and effective enforcement capacity, a judicial system that supports enforcement efforts with deterrent fines and criminal sentences, and youth education programs that discourage IPR-infringing activities. On the other hand, Hong Kong's failure to modernize its copyright system has allowed it to become vulnerable to digital copyright piracy. While the Hong Kong Customs and Excise Department routinely seizes IPR-infringing products arriving from mainland China and elsewhere, U.S. stakeholders report that counterfeit pharmaceuticals, luxury goods, and other infringing products continue to transit through Hong Kong in significant quantities. Such transits are typically destined for both the local market and places outside of Hong Kong.

INDIA

TRADE SUMMARY

The U.S. goods trade deficit with India was $24.3 billion in 2016, a 4.2 percent increase ($970 million) over 2015. U.S. goods exports to India were $21.7 billion, up 1.1 percent ($237 million) from the previous year. Corresponding U.S. imports from India were $46.0 billion, up 2.7 percent. India was the United States' 18th largest goods export market in 2016.

U.S. exports of services to India were an estimated $18.1 billion in 2015 (latest data available) and U.S. imports were $24.7 billion. Sales of services in India by majority U.S.-owned affiliates were $22.7 billion in 2014 (latest data available), while sales of services in the United States by majority India-owned firms were $13.4 billion.

U.S. foreign direct investment (FDI) in India (stock) was $28.3 billion in 2015 (latest data available), a 4.4 percent increase from 2014. U.S. direct investment in India is led by professional, scientific, and technical services, manufacturing, and wholesale trade.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

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

Cosmetics - Registration Requirements

On December 31, 2014, India's Ministry of Health (MoH) invited comments on a new draft of the Drugs and Cosmetics (Amendment) Bill 2015. U.S. stakeholders provided comments to India expressing concern with a new and vague category of "new cosmetics," the proposed application of clinical trials requirements to cosmetics, and what stakeholders considered to be excessive damages provisions. India has not yet published a revised draft of the bill.

Separately, India banned imports of animal-tested cosmetics on February 15, 2015, as a result of Rule 135-B of the Drug and Cosmetics (Fifth Amendment) Rules, 2014, announced through the Central Drugs Standard Control Organization (Office of Drugs Controller General India) Circular. India had previously banned domestic cosmetic testing on animals in May 2014 (Gazette of India, Ministry of Health and Family Welfare, "Notification" dated May 21, 2014). U.S. exporters have reportedly encountered difficulties proving that cosmetics comply with the animal testing ban and have yet to receive guidelines from the Indian government on how to do so.

Food - Package Size and Labeling Requirements

The government of India mandated standard retail package sizes for 19 categories of foods and beverages effective November 1, 2012, via amendment to the Legal Metrology (Packaged Commodities) Rules, 2011. This rule has not been notified to the WTO, nor is there any reference to a specific comment period for domestic stakeholders. As the United States does not impose specific standards for packaging size, and U.S. package sizes tend to be in English rather than metric units, the list of package sizes effectively prevents many U.S.-origin products from entering India. Attempts to import such U.S.-origin products have resulted in rejection at the port of entry. These standards are having a negative effect on trade, with numerous U.S. brands effectively excluded from the Indian market. The United States continues to raise

concerns about these standards in various bilateral and multilateral fora in an effort to ensure that U.S. products have access to the Indian market.

Foods Derived from Biotechnology Crops

Biotechnology products must be approved by the Genetic Engineering Appraisal Committee (GEAC), before importation or domestic cultivation. India's biotechnology approval processes are slow, opaque, and subject to political influences, although, the new GEAC leadership was generally more active in 2016. For instance, GEAC met more regularly in 2016 and made substantial progress toward approving a public sector, domestically developed GE mustard plant variety. However, to date, GEAC still has not recommended the Delhi University GE mustard plant variety for commercial cultivation. Accordingly, soybean oil and canola oil, derived from genetically engineered (GE) soybeans and canola, remain the only biotechnology food or agricultural products currently approved for import into the Indian market, and Bt cotton is the only biotechnology crop approved for commercial cultivation in India. This slow and uncertain approval process continues to negatively impact product registrations needed to facilitate trade in biotechnology products. Without enhanced capacity for science-based decision making, India's acceptance and approval of additional agricultural biotechnology products will remain limited.

In the event that additional biotechnology products are approved for import in the future, the labeling requirements for packages containing "genetically modified" foods remain unclear. Lack of clarity regarding jurisdictional authority between the Food Safety and Standards Authority of India (FSSAI) and the Ministry of Consumer Affairs could also have negative effects on U.S. crops and products derived from biotechnology entering the Indian market. Also, the Ministry of Agriculture and Farmers Welfare (MAFW) has issued regulations that have significantly limited the incentive for research and development, as well as investment in the agriculture biotechnology sphere. These include the December 2015 Cotton Seed Price Control Order, 2015, the March 2016 Notification that established the maximum sale price of Bt cottonseed packets (including the royalty fee), and the May 2016 Licensing and Formats for GM Technology Agreement Guidelines.

Livestock Genetics

The Department of Animal Husbandry, Dairying, and Fisheries (DAHDF) of the Ministry of Agriculture imposes restrictions on imports of livestock genetics and establishes quality standards. Importation of animal genetics also requires a "no objection certificate" (NOC) from the state government, import permission from the Directorate General of Foreign Trade, and an import permit from the DAHDF. The entire procedure for obtaining import permission generally takes upwards of four months or longer. Similarly, certain sanitary conditions are also restrictive, including animal disease regulations and testing requirements for imports of animal genetics. Neither the burdensome progeny testing nor the NOC are required of domestic producers of animal genetics. The United States discussed these requirements in technical animal health meetings held in November 2016 with the DAHDF and will continue to work with the government of India to resolve the issue.

Dairy Products

India imposes onerous requirements on dairy imports. India continues to insist that dairy products be derived from animals which have never consumed any feeds containing internal organs, blood meal, or tissues of ruminant origin. India has explained that its position is based on religious and cultural grounds. This requirement, along with high tariff rates, continues to prevent market access for U.S. milk and dairy product exports to India, one of the largest dairy markets in the world. In order to address India's religious and cultural concerns, in 2015, the United States proposed a labeling solution to allow for consumer choice

between dairy products derived from animals that have or have not consumed feeds with ruminant protein. India has so far rejected that proposal, but has agreed to further discussions on dairy access in 2017.

Alcoholic Beverage Standards

On December 1, 2015, India notified a draft Alcoholic Beverages Standards to the WTO. An update to the draft standard was published on the FSSAI website for local industry comment on September 9, 2016. While the updated draft favorably revised the definitions of Tennessee Whiskey and Bourbon, the United States still has a range of concerns, including certain product definitions, production method specifications, compositional requirements and ingredient limits, alcohol by volume limits, serving size criteria that contradict standard international practice, and maximum residue levels for many chemical contaminants for which standards do not exist in Codex Alimentarius. This new standard would also build on already onerous labeling and testing requirements. The United States views India as an important export market for alcoholic beverages and continues to take every opportunity to raise concerns and improve the restrictive approach to the regulation of alcoholic beverages in India.

Sanitary and Phytosanitary Barriers

The United States has raised concerns about India's SPS-related trade restrictions in bilateral and multilateral fora including the TPF, the WTO SPS Committee, and Codex. The United States will continue to make use of all available fora with a view to securing the entry of U.S. poultry, pork, and other agricultural products, including among others, alfalfa hay, cherries, strawberries, shrimp feed, and pet food into the Indian market. As part of the TPF, the United States and India met for a plant health bilateral meeting in February 2016, followed by an animal health bilateral meeting in November 2016. Both countries agreed during the October 2016 TPF to continue these meetings in 2017. In addition, a bilateral meeting on other food issues will be held in 2017 under the umbrella of the TPF.

Food - Product Testing

Importers have expressed concerns with the Food Safety and Standards Authority of India's (FSSAI) batch-by-batch inspections at the port because of high cost and the detention of cargoes for indeterminate periods of time, which is particularly costly with respect to perishable products. In June 2015, India announced a plan to transition its imported food inspection protocol from batch-by-batch inspections and sampling to a risk-based approach. During discussions at the 2016 TPF, Indian officials noted that they are actively working to develop and implement a risk-based inspection system and provided a general overview of their approach. The United States is collaborating with India on developing more specific guidance and a timeline to transition its inspections protocols.

On April 1, 2016, the Indian Central Board of Excise and Customs (CBEC) launched its Single Window Interface for Facilitating Trade (SWIFT) system. This is an initiative by the government of India to streamline clearances for inbound consignments and to improve the 'ease of doing business.' Along with SWIFT, the CBEC also introduced an Integrated Risk Management facility for partner government agencies, which is designed to ensure that consignments are selected for testing based on the principle of risk management – ensuring that that foods that present actual food safety risks are tested while goods that pose little to no risk can avoid becoming subject to unnecessary procedures by inspection agencies. In the modified Food Import Regulations published September 2, 2016, FSSAI stated that a risk-based random sampling will be followed wherein the samples will be drawn randomly based on the risk factor and compliance history of the importer identified by the newly introduced SWIFT system software. However, market sources report that the risk-based random sampling database is not yet operational.

Food - Product Approval

FSSAI's product approval process has been under intense media and political scrutiny since August 2015 when the Supreme Court of India upheld an earlier decision by the High Court of Bombay that FSSAI did not have the legal authority to maintain its product approval regime. FSSAI stopped issuing product approvals in order to come into compliance with the Supreme Court's decision and is seeking a new approach to regulate new food and beverage products. On October 4, 2016, FSSAI published its new draft regulation called the "Food Safety and Standards (Approval for Non-Specified Food and Food Ingredients) Regulations, 2016." The draft regulation outlines the new product approval procedures for all food products that are not covered under any pre-existing regulations under the Food Safety Act, 2006. These products have been termed by FSSAI as "non-specified food and food ingredients." Comments were invited from WTO Members on the draft regulation and the comment period expired on December 16, 2016. This draft regulation, if fully implemented, could establish an overly burdensome product approval system that could hamper U.S. exports. Associated implementation delays could be a roadblock to market innovations and product launches.

Pork

The current Indian import certificate for pork requires that importers make an attestation that imported pork does not contain any residues of pesticides, drugs, mycotoxins, or other chemicals above maximum residue levels prescribed in international standards. The United States does not dispute the use of international standards. However, India's certificate is problematic because it fails to identify the specific compounds that India is concerned with and their corresponding limits. Furthermore, veterinary certificates are valid for only six months, and a separate import permit must be obtained for each imported lot. On March 16, 2015, India notified to the WTO and requested comment from Members on a draft veterinary certificate for the import of pork and pork products. On November 6, 2015, the Department of Animal Husbandry, Dairying, and Fisheries (DAHDF) published a revised veterinary health certificate for pork and pork product imports. To date, this veterinary health certificate has not been notified to the WTO. In September 2016, the United States proposed a veterinary certificate to DAHDF for its approval, but has not received a response. The United States will continue to seek market access for U.S. pork products in India in 2017.

Poultry

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

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

During this same time period, India on two occasions notified to the WTO requirements for poultry and poultry product imports from countries reporting an outbreak of highly pathogenic or low pathogenic influenza to the WTO. The United States provided comments on the proposed measures and highlighted concerns regarding the differences between the content of India's proposed measures and standards set out by the OIE. The United States continues to work with India to ensure market access for U.S. poultry products in India consistent with the WTO decisions. Until then, the United States considers the dispute unresolved.

Separately, in 2015, FSSAI notified a Draft Order on Meat and Poultry to the WTO. The United States provided comments on the draft order and expressed concerns regarding: (1) the requirement that imported meat be derived from animals that were never fed ruminant derived protein; (2) the requirement that individual establishments be approved as eligible for export to India rather than a systems-based approach that would examine the food safety controls applied by the United States; and (3) restrictions on the use of previously approved veterinary drugs. However, FSSAI has not yet notified the final order incorporating any changes.

Plant Health

India maintains zero-tolerance standards for certain plant quarantine pests, such as weed seeds and ergot that are not based on risk assessments and result in blocked U.S. wheat and barley imports. Bilateral discussions to resolve these issues, including at the senior official level, have achieved little success to date. The government of India's requirement of methyl bromide (MB) fumigation at the port of origin as a condition for the import of pulses is not feasible in the United States because of the U.S. phase-out of MB due to its demonstrated negative impact on the environment. In August 2004, the United States requested India to permit entry of U.S. peas and pulses subject to inspection and fumigation at the port of arrival. India has granted a series of extensions allowing MB fumigation on arrival, but has offered no permanent solution. On September 28, 2016, India's Ministry of Agriculture confirmed the extension of the fumigation-upon-arrival waiver for U.S. peas and pulses, including chickpeas, until March 31, 2017. While these extensions have avoided formal bans on trade, they are frequently last minute and create uncertainty for U.S. exporters.

IMPORT POLICIES

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

Tariffs and other Charges on Imports

The structure of India's customs tariff and fees system is complex and characterized by a lack of transparency in determining net effective rates of customs tariffs, excise duties, and other duties and charges. The tariff structure of general application is composed of a basic customs duty, an "additional duty," a "special additional duty," and an education assessment ("cess"). The additional duty, which is applied to all imports except for wine, spirits, and other alcoholic beverages, is applied on top of the basic customs duty, and is intended to correspond to the excise duties imposed on similar domestic products. The special additional duty is a four percent *ad valorem* duty that applies to all imports, including alcoholic beverages, except those imports exempted from the duty pursuant to an official customs notification. The special additional duty is calculated on top of the basic customs duty and the additional duty. In addition, there is a three percent education cess (surcharge) applied to most imports, except those exempted from the cess pursuant to an official customs notification. India charges the cess on the total of the basic customs

duty and additional duty (not on the customs value of the imported product). A landing fee of one percent is included in the valuation of all imported products unless exempted through separate notification.

While India publishes applied tariffs and other customs duty rates applicable to imports, there is no single official publication publically available that includes all relevant and up-to-date information on tariffs, fees, and tax rates on imports. However, as part of its computerization and electronic services effort, in 2009, India initiated a web-based Indian Customs Electronic Commerce/Electronic Data Interchange Gateway, known as ICEGATE (http://icegate.gov.in). It provides options for calculating duty rates, electronic filing of entry documents (import goods declarations) and shipping bills (export goods declarations), electronic payment, and online verification of import and export licenses. In addition to being announced with the annual budget, India's customs rates are modified on an *ad hoc* basis through notifications in the Gazette of India and contain numerous exemptions that vary according to the product, user, or specific export promotion program, rendering India's customs system complex to administer and open to administrative discretion.

India's tariff regime is also characterized by pronounced disparities between bound rates (*i.e.*, the rates that under WTO rules generally cannot be exceeded) and the most favored nation (MFN) applied rates charged at the border. According to the latest WTO data, India's average bound tariff rate was 48.5 percent, while its simple MFN average applied tariff for 2015 was 13.4 percent. Many of India's bound tariff rates on agricultural products are among the highest in the world, averaging 113.5 percent and ranging from 100 percent to 300 percent. Applied agricultural tariff rates are also high and average 32.7 percent. On a trade-weighted basis, the average agricultural tariff is 47.2 percent. In addition, while India has bound all agricultural tariff lines in the WTO, over 25 percent of India's non-agricultural tariffs remain unbound (*i.e.*, there is no WTO ceiling on the rate). Given this large disparity between bound and applied rates, U.S. exporters face tremendous uncertainty because India has considerable flexibility to change tariff rates at any time.

The large gap between bound and applied tariff rates in the agricultural sector in particular allows India to use tariff policy to make frequent adjustments to the level of protection provided to domestic producers, creating uncertainty for importers and exporters. For example, in January 2013, India issued a customs notification announcing an immediate doubling of the tariff on imports of crude edible oils. While certain Indian agricultural applied tariff rates are lower, they still present a significant barrier to trade in agricultural goods and processed foods (*e.g.*, potatoes, citrus, almonds, apples, grapes, canned peaches, chocolate, cookies, and frozen French fries and other prepared foods used in quick-service restaurants).

India maintains very high tariff peaks on a number of other goods, including flowers (60 percent), natural rubber (70 percent), automobiles and motorcycles (60 percent to 100 percent), raisins and coffee (100 percent), alcoholic beverages (150 percent), and textiles (some *ad valorem* equivalent rates exceed 300 percent). India also instead operates a number of complicated duty drawback, duty exemption, and duty remission schemes for imports. Eligibility to participate in these schemes is usually subject to a number of conditions. India also 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.

Despite its goal of moving toward Association of Southeast Asian Nations (ASEAN) tariff rates (approximately 5 percent on average), India has not systematically reduced the basic customs duty and the budget increased tariffs on 96 tariff lines considered to be capital goods. India has also raised tariffs on specified telecommunication equipment (from nil to 7.5 or 10 percent) and on electronic-readers (from nil to 7.5 percent). Tariffs on other products were increased in March 2016 as well, including industrial solar water heaters (from 7.5 percent to 10 percent) and solar tempered glass/solar tempered (anti-reflective coated) glass for use in manufacture of solar cells/modules/panels (from nil to 5 percent), impeding some

of India's climate goals. India also increased its duties on medical equipment and devices to a 7.5 percent basic customs duty, 12.5 percent additional duty, and a 4 percent special additional duty. This increase applied to devices such as pacemakers, coronary stents and stent grafts, and surgical instruments, and also to parts of medical devices, such as medical grade polyvinyl chloride sheeting for the manufacture of sterile Continuous Ambulatory Peritoneal Dialysis bags for home dialysis. U.S. companies have raised significant concerns with these actions.

Imports are subject to state-level value-added or sales taxes and the Central Sales Tax as well as various local taxes and charges. India allows importers to apply for a refund of the special additional duty paid on imports subsequently sold within India and for which the importer has paid state-level value-added taxes. Importers report that the refund procedures are cumbersome and time consuming. In addition, U.S. stakeholders have identified various state-level taxes and other charges on imported alcohol that appear to be higher than those imposed on domestic alcohol. The central government has taken steps and continues to work with state governments to adopt a national goods and services tax (GST) that would replace most indirect taxes, including various charges on imports. The GST is designed to simplify the movement of goods within India. In 2015, India's government introduced the GST Bill in Parliament and it passed in July of 2016. India is working on the implementation of the GST law, which would put in place a two-part system. The first part of the system are the State and Central GST that will be levied simultaneously on every transaction of goods and services within a State. The second part is an "Integrated GST" that covers goods and services sold between all Indian states. The Integrated GST would apply to imports. India intends to implement GST in July 2017.

Import Licenses

India maintains various forms of nontariff regulation on three categories of products: banned or prohibited items (*e.g.*, tallow, fat, and oils of animal origin); restricted items that require an import license (*e.g.*, livestock products and certain chemicals); and "canalized" items (*e.g.*, some pharmaceuticals) importable only by government trading monopolies and subject to cabinet approval regarding import timing and quantity. India, however, often fails to observe transparency requirements, such as publication of timing and quantity restrictions in its Official Gazette or notification to WTO committees.

For purposes of entry requirements, India has distinguished between goods that are new, and those that are secondhand, remanufactured, refurbished, or reconditioned. India allows imports of secondhand capital goods by the end users without an import license, provided the goods have a residual life of five years. India's official Foreign Trade Policy categorizes remanufactured goods in a similar manner to secondhand products, without recognizing that remanufactured goods have typically been restored to original working condition and meet the technical and safety specifications applied to products made from new materials. Refurbished computer spare parts can only be imported if an Indian chartered engineer certifies that the equipment retains at least 80 percent of its life, while refurbished computer parts from domestic sources are not subject to this requirement. India requires import licenses for all remanufactured goods. U.S. stakeholders report that meeting this requirement, like other Indian import licensing requirements, has been onerous. 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.

India subjects boric acid imports to stringent restrictions, including arbitrary import quantity approval restrictions and other requirements that only apply to imports. No-objection certificates (NOCs) are required before applying for import permits from the Ministry of Agriculture's Central Insecticides Board & Registration Committee. In order to receive an NOC from the relevant Indian government ministries and departments and an import permit from the Ministry of Agriculture, traders (*i.e.*, wholesalers) of boric acid for non-insecticidal use must identify end-users of the product, which is often not possible in advance of a

shipment, and consequently cannot obtain an NOC. In addition, importers must obtain certificates from the Central Excise Authorities confirming the last three years of the company's purchases of boric acid, separated out by the quantity imported and procured locally in India, as well as data on the total output of the finished product that utilized the boric acid. Meanwhile, local refiners continue to be able to produce and sell boric acid for non-insecticidal use subject only to a requirement to maintain records showing they are not selling to end users who will use the product as an insecticide. The United States urged India to eliminate its import licensing requirements on boric acid in meetings of the WTO Import Licensing Committee and at the 2016 TPF.

Customs Procedures

U.S. exporters have raised concerns regarding India's application of customs valuation criteria to import transactions. India's valuation procedures allow Indian customs officials to reject the declared transaction value of an import when a sale is deemed to involve a lower price than the ordinary competitive price, effectively raising the cost of exporting to India beyond applied tariff rates. U.S. companies have also faced extensive investigations related to their use of certain valuation methodologies when importing computer equipment. Companies have also reported being subjected to excessive searches and seizures of imports.

Furthermore, as explained above, India does not assess the basic customs duty, additional duty, and special additional duty separately on the customs value of a given imported product. Rather, India assesses each of these duties cumulatively, meaning that the additional duty is assessed on the sum of the actual (or transaction) value and the basic customs duty, while the special additional duty is assessed on the sum of the actual (or transaction) value, the basic customs duty, and the additional duty. This raises concerns about the potential for importers paying higher duties than they should be liable for on the basis of the actual value of their imported product.

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

After ratifying the WTO Agreement on Trade Facilitation (TFA) in April 2016, India established the National Committee on Trade Facilitation (NTFC) in August 2016. NTFC will develop the road map for trade facilitation for India and it will facilitate domestic co-ordination and implementation of TFA provisions. The United States and India held a joint workshop covering best practices in trade facilitation in October 2016. The two-day trade facilitation workshop, which included strong attendance from Indian and U.S. private industry, provided a forum for stakeholders to exchange views and best practices on customs issues.

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 World Bank report stated that there are over 150 different contract formats used by the state owned Public Sector Undertakings, each with different qualification criteria, selection processes, and financial requirements. The government also provides preferences to Indian micro, small, and medium enterprises and to state owned enterprises. Moreover, India's defense offsets 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.

While India has started the legislative process for enacting a new Procurement Bill, the Bill is stalled in Parliament. However, the Indian Ministry of Defense announced in March 2016 a new Defense Procurement Procedure that increased the offset threshold to 20 billion Indian rupees (approximately $300 million) for defense industry companies contracting with the Indian government and also increased indigenous content requirements, although flexibility may exist for certain projects.

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

EXPORT SUBSIDIES

The Indian government's Foreign Trade Policy (FTP) 2015-2020 announced on April 1, 2015 is primarily focused on increasing India's exports of goods and services to raise India's share in world exports from 2 to 3.5 percent. The FTP consolidated most of India's existing export subsidies and other incentives into two main export incentive schemes: the Manufactured Goods Exports Incentive Scheme (MEIS) and the Service Exports Incentive Scheme (SEIS).

India maintains several export subsidy programs, including exemptions from taxes for certain export-oriented enterprises and for exporters in Special Economic Zones. Numerous sectors (*e.g.*, textiles and apparel, paper, rubber, toys, leather goods, and wood products) receive various forms of subsidies, including exemptions from customs duties and internal taxes, which are tied to export performance. India not only continues to offer subsidies to its textiles and apparel sector in order to promote exports, but it has also extended or expanded such programs and even implemented new export subsidy programs. As a result, the Indian textiles sector remains a beneficiary of many export promotion measures. In July 2016, India announced subsidies intended to encourage employment generation in the garment sector in addition to providing for refund of state levies.

India maintains a large and complex series of programs that form the basis of India's public food stockholding program. India maintains stocks of food grains not only for distribution to poor and needy consumers but also to stabilize prices through open market sales. India uses export subsidies to reduce stocks and has permitted exports of certain agricultural commodities from government public-stockholding reserves at below the government's costs. For example, the government authorized the exportation of 66.5 million tons of wheat from government-held stocks during August 2012 to May 2014 at varying minimum export prices significantly below the government's acquisition cost of $306 per ton, plus storage, handling, inland transportation cost, and other charges for exports. In February 2014, the Indian Cabinet Committee on Economic Affairs made 4 million metric tons of raw sugar eligible to receive export subsidies under a new, two-year subsidy program. The United States, along with other interested Member countries, has raised this issue in the WTO Committee on Agriculture.

Agriculture Programs

India provides a broad range of assistance to its agricultural sector, including credit subsidies, debt waiver, and subsidies for inputs, such as fertilizer, fuel, electricity, and seeds. These subsidies, which are of substantial cost to the government, lower the cost of production for India's producers and have the potential to distort the market in which imported products compete. In addition, producers of 25 agricultural products benefit from the government program to sell to the government at minimum support prices. Rice and wheat account for the largest share of products procured by the government and distributed through India's public distribution system. However, in crop year 2014/2015, the Indian government purchased 1.5 million tons (8.695 million 170 kg bales) of cotton through announced minimum support price operations, at a cost of nearly U.S. $3 billion. Purchases made through these operations at above market prices significantly increase the cost to the government and may have the effect of providing a subsidy to the entire crop as well as distorting market prices and planting decisions. 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 minimum support prices and extensive government procurement can distort domestic market prices and incentivize over production, which restricts demand for imports and distorts international markets.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

India remained on the Priority Watch List in the 2016 Special 301 Report because of concerns regarding weak protection and enforcement of intellectual property rights (IPR). Through the High-level Working Group on Intellectual Property under the TPF, the United States and India held numerous and regular dialogues in 2016 on the range of IPR challenges facing U.S. companies in India with the intention of creating stronger IPR protection and enforcement in India. The United States and India also hosted successful workshops on copyright and trade secrets. On May 13, 2016, India released its National IPR Policy, which had been in draft form for the previous two years. This policy charts a path for IPR policy and administrative reform. In a notable step, the National IPR Policy announced that the Department of Industrial Policy and Promotion (DIPP) would serve as the nodal agency for all IPR-related matters, including copyright issues. Other notable developments in 2016 included the streamlining of patent and trademark rules to simplify filings, increasing the number of patent and trademark examiners, and establishing India's first state-level IPR crime unit in Telangana.

In the field of copyright, procedural hurdles and effective enforcement remain a concern. The Cinematographic Bill has not been re-introduced since 2010 and online piracy and illegal camcording continue to proliferate. The lack of a copyright board has created uncertainty regarding how royalties are to be collected and distributed, and the United States welcomed India's 2016 TPF commitment that it hopes to establish one by the second quarter of 2017.

In the area of patents, there are a number of factors that negatively affect stakeholders' perception of India's overall IPR regime, investment climate, and innovation goals. While certain administrative decisions in 2016 upheld patent rights, and certain tools and remedies to support patent holders' rights do exist in India, concerns remain over revocations and other challenges to patents, particularly patents for pharmaceutical products. The United States also continues to monitor India's application of its compulsory licensing law. Furthermore, in 2013, the Indian Supreme Court stated that India's Patent Law creates a second tier of requirements for patenting certain technologies, like pharmaceuticals, an interpretation that may have the effect of limiting the patentability of an array of potentially beneficial innovations. The United States remains concerned over the development and issuance of patent examination guidelines that proposed to significantly narrow the patentability of software-enabled inventions and reduce clarity for patent applicants.

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 infringing pharmaceuticals being marketed without advance notice or opportunity for parties to resolve their IPR disputes.

With respect to trade secrets, U.S. and Indian companies have expressed interest in eliminating gaps in India's trade secrets regime, such as through the adoption of standalone trade secrets legislation. The National IPR Policy called for trade secrets to serve as an "important area of study for future policy development" and the United States and India held a positive workshop on trade secrets issues in October 2016. Following the workshop, both countries announced important new work under the TPF to advance bilateral efforts on trade secrets.

SERVICES BARRIERS

The Indian government has a strong ownership presence in major services industries such as banking and insurance. Foreign investment in businesses in certain major services sectors, including financial services and retail, is subject to limitations on foreign equity. Foreign participation in professional services is significantly restricted and in the case of legal services, is prohibited entirely.

Insurance

In March 2015, India's Parliament enacted the Insurance Laws (Amendment) Act, 2015, which ostensibly allows up to 49 percent FDI in Indian insurance companies, a change long sought by U.S. and other foreign companies. FDI in this sector was previously capped at 26 percent. However, the amendment was accompanied by a new requirement that all insurance companies be Indian "controlled."

Responding to uncertainty about the meaning of this term, the Insurance Regulatory and Development Authority of India (IRDAI) promulgated guidelines on October 19, 2015 that prescribe conditions for satisfying the "Indian control" requirement. The guidelines include: (1) a mandatory requirement that a majority of directors be nominated by Indian investors; (2) limitations on the rights of foreign-nominated board members; (3) requirements for how "key management persons" are to be appointed; and (4) requirements on the manner in which control over "significant policies" of the enterprise must be exercised.

Foreign investors have expressed concern that the new 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. As these guidelines are intended to be applied retroactively, the requirements regarding "control" would apply to existing companies with foreign investment regardless of whether foreign investors plan to increase their equity, in addition to companies planning future investment.

In December 2015, the IRDAI issued a revision to its draft regulations governing the provision of reinsurance services in India, proposing that local Indian reinsurers be afforded a mandatory first order of preference (or right of first refusal) for reinsurance business in India. Such a requirement would severely restrict the business for which foreign reinsurers could compete and would decrease the interest of foreign reinsurers in establishing branches in India, with resulting negative impacts to the supply and cost of reinsurance services in the Indian market.

In October 2016, the Insurance Regulatory and Development Authority (IRDA) circulated a discussion paper that called for the compulsory public listing of life insurers that have been in operation in India for seven years or more. Such a requirement to publicly list is rare, and companies generally decide whether

to undertake an initial public offering based on an analysis of company-specific facts. If implemented, this requirement would be another measure that would have a discouraging effect on foreign investors.

Banking

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 of the other banks are Indian-owned, with foreign banks constituting less than one half of one percent of the total bank branches in India. Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis, and their ability to expand is hindered by non-transparent limitations on branch office expansion.

Foreign banks also face restrictions on direct investment in Indian private banks. Unlike domestic banks, foreign banks are not authorized to own more than five percent of an Indian private bank without approval by the Reserve Bank of India (RBI). Total foreign ownership of any private bank from all sources (foreign direct investment, foreign institutional investors, and non-resident Indians) cannot exceed 74 percent.

Audiovisual Services

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

The Telecommunications Regulatory Authority of India has introduced new regulations on content aggregation and distribution that eliminates bundling of channels and certain types of distribution partnerships. Content aggregation is commonly used internationally, as it allows niche and foreign content to be bundled into and sold by domestic partners without a large local presence or sales force. The new regulations are particularly difficult for small and international content providers because these companies must now interact with each of the 60,000 local cable operators, radio, and TV broadcasters that they seek to target.

There are also a number of limits on foreign 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). Additionally, pending litigation related to audiovisual services, including the acquisition of content and telecasting rights and advertising revenue of foreign telecasting companies, is causing uncertainty for companies considering market entry.

Accounting

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.

Legal Services

At present, membership in the Bar Council of India (BCI), the governing body for the legal profession, is mandatory "to practice law" in India and is limited to Indian citizens. Foreign law firms are not allowed to open offices in India. The Advocates Act, which is administered by BCI, provides for foreign lawyers or law firms to visit India on a reciprocal basis for temporary periods to advise their clients on foreign law and diverse international legal issues.

Some industry and government actors in India are reviewing the merits of liberalization of the legal services market in India. In June 2016, BCI published draft rules that would liberalize the legal services sector in India. The rules would have opened India's market to non-litigation services (*i.e.*, foreign and international law counseling, and advisory, arbitration, and other services relating to domestic law), but litigation services would still have been restricted to Indian lawyers and controlled by the Advocates Act. However, on September 29, 2016, the BCI rescinded the draft rules on liberalization. The United States and India are continuing to discuss liberalization of legal services under the TPF.

Architecture

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. An uncertain Indian legal regime for architectural and related services has resulted in court cases against foreign design firms seeking to perform work in India and harassment of their potential clients, causing significant losses for U.S. companies.

Telecommunications Services & Equipment

Barriers to Entry

India eliminated a 74 percent cap on FDI in Indian wireless and fixed telecommunications providers in August 2013, though government approval is required for FDI above 49 percent. U.S. companies note that India's one-time licensing fee (approximately $500,000 for a service-specific license, or $2.7 million for an all India Universal License) for telecommunications providers serves as a barrier to market entry for smaller market companies. The government of India continues to hold equity in multiple telecommunications firms. These ownership stakes have caused private carriers to express concern about the fairness of India's general telecommunications policies. For example, valuable wireless spectrum was set aside for Mahanagar Telephone Nigam Limited (MTNL) and Bharat Sanchar Nigam Limited (BSNL), state-owned telecommunications service providers in India, instead of being allocated through competitive bidding. Although it does not appear that MTNL and BSNL paid a preferential price, they did receive their spectrum allocation well ahead of privately-owned firms.

Telecommunications Equipment - Security Regulations

In 2009 and 2010, India promulgated a number of regulations negatively impacting trade in telecommunications equipment, including mandatory transfer of technology and source code, as well as burdensome testing and certification requirements for telecommunications equipment. India removed most of these measures in response to international stakeholders' concerns, but is still seeking to require testing of all "security-sensitive" telecommunications equipment in India and is expected to implement this requirement after developing additional indigenous testing capacity. It is unclear whether that capacity will increase sufficiently in order to be able to implement the testing criteria. U.S. officials continue to urge India to reconsider the domestic testing policy and to adopt the use of the Common Criteria Recognition

Arrangement. In 2016, the United States raised issues related to telecommunications security testing requirements bilaterally under the TPF and in the WTO TBT Committee.

Electronics and Information Technology Equipment - Safety Testing Requirements

Since 2012, the United States has been actively raising the concerns of the U.S. electronics and information and communications technology (ICT) manufacturers regarding MEITY's Compulsory Registration Order (CRO). The CRO prescribes safety standards and in-country testing requirements for electronic and ICT goods. The policy, which entered into force in January 2014, mandates that manufacturers register their products with laboratories affiliated or certified by the Bureau of Indian Standards (BIS), even if the products have already been certified by accredited international laboratories. The government of India has never articulated how such a domestic certification requirement advances India's legitimate public safety objectives. In 2015, the coverage of the CRO increased from 15 to 30 product categories. U.S. stakeholders have raised concerns regarding delays in product registration due to the lack of government testing capacity, a cumbersome registration process, 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 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, which were 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; 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 2016.

Remote Access Policy

Global telecommunications operators have made significant investments in establishing India's network infrastructure. However, sudden changes in policies pertaining to Remote Access (RA) negatively impact network security and compliance, and ultimately hamper telecommunications operators' ability to efficiently operate networks in India. There has been a continuous backtracking on RA policies even though the same policy was developed by way of a government-industry consultative process.

Despite complying with the new requirements pertaining to the establishment of an in-country storage server, the DOT has attempted to introduce additional requirements that are not part of any stated policy. As a result, some operators are experiencing complete uncertainty regarding the RA policy. Clearances of some operators are not being granted even after meeting the requirements. Instead, carriers are required to perform additional activities, which are not part of the guidelines. This has affected some operators' ability to execute future deployments of services and investments in the network.

Satellite Services

India's Ministry of Information and Broadcasting (MIB) has issued guidelines that establish a preference for Indian satellites to provide capacity for delivery of Direct-to-Home (DTH) subscription television services. In practice, authorized DTH licensees have not been permitted to contract directly with foreign

satellite operators and have encountered procedural and contracting delays when they have sought to do so. Rather, DTH licensees must procure any foreign satellite capacity through Antrix, the commercial arm of the Indian Space Research Organization (ISRO), which, in turn, only permits such procurements if it does not have available capacity on its own system. This issue is compounded by a lack of transparency regarding ISRO's plans for future transponder capacity. If ISRO does permit the use of foreign satellite capacity, the foreign satellite operator must sell the capacity to ISRO, which then resells the capacity to the end-user after adding a surcharge.

Foreign satellite operators are thus prevented from developing direct relationships with DTH licensees. This is a particular concern to the United States, as it puts U.S. satellite operators at a competitive disadvantage, promotes market uncertainty, and prevents DTH licensees from offering a fuller range of services from U.S. satellites. The United States continues to encourage India to adopt an "open skies" satellite policy to allow consumers the flexibility to select the satellite capacity provider that best suits their business requirements and to promote market access for foreign satellite service providers.

Distribution Services

India requires government approval for retailers selling a single brand of product if foreign ownership is above 49 percent. Foreign investments exceeding 51 percent are also 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 (although, DIPP's Press Note No. 12 (2015 Series) of November 2015 allows the government to relax the local sourcing requirement for "state of the art" or "cutting edge" technology and where local sourcing is not possible).

India permits up to 51 percent foreign ownership in companies in the multi-brand retail sector, but leaves to each Indian state the final decision on whether to authorize such FDI in its territory. In addition, where FDI is allowed, it is subject to conditions, including: (1) a minimum investment of approximately $100 million, at least 50 percent of which must be in "back-end infrastructure" (*e.g.*, processing, distribution, quality control, packaging, logistics, storage, and warehouses); (2) a requirement to operate only in cities that have been identified by the relevant state government; and (3) a requirement to source at least 30 percent of the value of products sold from "small" Indian enterprises that have a total investment in plant and machinery not exceeding $2 million. Several foreign companies have reported that the local sourcing requirements and other conditions on foreign investment have diminished the commercial case for expanding investment in India's retail sector.

Indian states have periodically challenged the activity of direct selling (*i.e.*, the marketing and selling of products to consumers away from fixed locations) as violations of the Prize Chits and Money Circulation Schemes (Banning) Act of 1978 (Prize Chits Act), creating uncertainty for companies operating in this sector. This central government legislation contains no clear distinction between fraudulent activities and legitimate direct-selling operations. Enforcement of the Prize Chits Act is reserved to the states, which have adopted varying implementation guidelines and taken unexpected enforcement actions on the basis of the ambiguous provisions of the Act, including the arrest of a chief operating officer of a direct selling company.

Stakeholders have asked DIPP to issue guidance establishing a definition of direct selling and clarifying ambiguities, including uncertainty related to commissions earned in connection with the sale of products. In 2012, the Ministry of Finance issued draft guidelines designed to guide the preparation of state measures implementing the Prize Chits Act. Rather than clarifying the distinction between fraudulent schemes and legitimate business operations, however, the draft contained provisions making many standard direct selling activities, including activities that go to the core of the direct selling business model, inconsistent with the Prize Chits Act. In 2016, after extensive advocacy by the U.S. Government, India approved new guidelines

governing direct selling that established clear legal definitions of direct selling, but enforcement and application of the new guidelines will still be left to state authorities.

Education

Foreign suppliers of higher education services interested in establishing a presence in India face a number of barriers, including: a requirement that representatives of Indian states sit on university governing boards; quotas limiting enrollment; caps on tuition and fees; policies that create the potential for double-taxation; and difficulties repatriating salaries and income from research.

In June 2016, India's former planning commission, NITI Aayog, submitted its report to the Prime Minister's Office (PMO) and the Human Resource Development (HRD) Ministry calling for the invitation of foreign universities to set up campuses in India. The report suggested that foreign education providers be allowed entry into the country via three possible regimes: (1) operation of foreign universities in the country should be regulated by law; (2) the University Grants Commission (UGC) Act of 1956 should be amended along with the relevant regulations on universities, to allow foreign universities to be deemed universities; and (3) to facilitate joint ventures between Indian and foreign institutions, the UGC and the All India Council for Technical Education (AICTE) regulations should be modified to add viable co-beneficial arrangements and twinning programs. However, no action has been taken to date with respect to the report's recommendations.

BARRIERS TO DIGITAL TRADE

Data Localization

India's 2015 National Telecom M2M ("machine to machine") Roadmap (Roadmap) requires all M2M gateways and application servers serving customers in India to be located within India. The Roadmap also recommends that foreign 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.

The 2012 National Data Sharing and Accessibility Policy, issued by the Ministry of Science & Technology, requires that all data collected using public funds – including weather data – be stored within the borders of India. Such localization requirements reduce productivity, dampen domestic investment, and undermine the ability of information and communications technology companies to offer cutting-edge services.

Data and server localization requirements are imposed across regulatory structures and procurement contracts in India. For example, in 2015, the Department of Electronics and Information Technology (DEITY) issued guidelines for a cloud computing empanelment process by which cloud computing service providers (CSPs) may be provisionally accredited as eligible CSPs for government procurements of cloud services. However, the policy requires that CSPs store all data in India to qualify for the accreditation. There is strong evidence that such policies reduce productivity and dampen domestic investment in the country.

Technology

Indian Internet providers must attain government approval from the Telecom Regulation Authority of India (TRAI) to employ encryption stronger than 40-bit encryption. This requirement continues to create regulatory uncertainty for Internet providers seeking to use strong encryption. Most other countries allow the use of strong encryption standards ranging from 128-bit to 256-bit to ensure the security of sensitive information exchanged via the Internet and other networks. Encryption standards differ greatly from one

regulatory agency to another, since each one has its own specific criteria. In September 2015, DEITY published a draft National Encryption Policy but quickly withdrew it. The draft policy raised a number of concerns including restrictions on the use of commercially available encryption (by restricting key lengths, for example) and mandates proprietary information disclosure. India is currently working on a new draft encryption policy that could potentially introduce market access barriers if it fails to address these issues. The Ministry of Electronics and Information Technology (MEITY) – the successor agency to DEITY – has allowed public comments and stakeholder input during the policymaking process.

Internet Services

Intermediary Liability

India's 2011 Information Technology Rules fail to provide a robust safe harbor framework to shield online intermediaries from liability for third-party user content. Any citizen can complain that certain content is "disparaging" or "harmful," and intermediaries must respond by removing that content within 36 hours. Failure to act, even in the absence of a court order, can lead to liability for the intermediary. The absence of a safe harbor framework discourages investment to Internet services that depend on user generated content.

Taxation

India recently began assessing an "equalization levy," which is an additional 6 percent withholding tax on foreign online advertising platforms, with the ostensible goal of "equalizing the playing field" between resident service providers and non-resident service providers. However, its provisions do not provide credit for tax paid in other countries for the service provided in India. Further, this levy will result in taxes on business income even when a foreign resident does not have a permanent establishment in India or when underlying activities are not carried out in India. The current structure of the equalization levy represents a shift from internationally accepted principles, which provide that digital taxation mechanisms should be developed on a multilateral basis in order to prevent double taxation. This levy may impede foreign trade and increase the risk of retaliation from other countries where Indian companies are doing business.

Electronic commerce

India allows for 100 percent FDI in business-to-business (B2B) electronic commerce, but largely prohibits foreign investment in business-to-consumer (B2C) electronic commerce transactions. In practice, this has meant that an inventory-led electronic retailing model cannot attract FDI whereas a marketplace-based electronic retailing model can still attract FDI. The only exception allowing for B2C foreign investment in electronic commerce was published in November 2015 by the Ministry of Commerce and Industry, DIPP, Press Note No. 12 (2015 Series) and states that single brand retailers that meet certain conditions, including the operation of physical stores in India, may undertake retail trading through electronic commerce. This narrow exception limits the ability of the majority of potential B2C electronic commerce foreign investors to access the Indian market.

OTHER BARRIERS

In 2010, India initiated the Jawaharlal Nehru National Solar Mission (JNNSM), which currently aims to bring 100,000 megawatts of solar-based power generation online by 2022, as well as promote solar module manufacturing in India. Under the JNNSM, India imposes certain local content requirements (LCRs) for solar cells and modules and requires participating solar power developers to use solar cells and modules made in India in order to enter into long-term power supply contracts and receive other benefits from the Indian government. The United States challenged these requirements through the WTO dispute settlement

system. In February 2016, a WTO panel found India's LCRs inconsistent with multiple WTO requirements. These findings were affirmed by the Appellate Body on September 16 2016, and the DSB adopted the Appellate Body and Panel reports at a special meeting of the DSB on October 14, 2016. In November 2016, India provided formal notice that it would bring the challenged measures into WTO compliance within a "reasonable period of time."

India has steadily increased export duties on iron ore and its derivatives. In February 2011, India increased the export duty on both iron ore fines and lumps from 5 percent and 15 percent, respectively, to 20 percent on both, and increased that export duty to 30 percent in January 2012. A 5 percent *ad valorem* export duty on iron ore pellets has been in place since January 2014. Furthermore, a 10 percent export duty is levied on iron ore containing Fe (iron) less than 58 percent since May 2015. In February 2012, India changed the export duty on chromium ore from Rs. 3,000 per ton to 30 percent *ad valorem*, an increase at current chromium ore price levels. In recent years, certain Indian states and stakeholders have increasingly pressed the central government to ban exports of iron ore. To improve availability of iron ore for the local steel producers, in March 2016, the government India enhanced and unified the rate of export duty for all types of iron ore (other than pellets) at 20 percent; earlier a 15 percent export tax was applicable on lumps and 5 percent on fines. India's export duties impact international markets for raw materials used in steel production.

Lack of transparency with respect to new and proposed laws and regulations affecting traders remains a problem due to a lack of uniform notice and comment procedures and inconsistent notification of these measures to the WTO. This in turn inhibits the ability of traders and foreign governments to provide input on new proposals or to adjust to new requirements. In February 2014, India's Ministry of Law and Justice issued a policy on pre-legislative consultation, which was to be applied by all Ministries and Departments of the central government before any legislative proposal was to be submitted to the Cabinet for its consideration and approval. The policy also required central government entities to publish draft legislation or a summary of information concerning the proposed legislation for a minimum period of 30 days. Issuance through electronic media was also encouraged in the policy, as were public consultations. However, despite U.S. requests, the Indian government has provided no information on the implementation of the policy, other than to clarify it is only intended to apply to draft legislation, not regulations or tariff-setting.

In addition, in May 2016 the Indian Supreme Court judgement concerning the Telecom Regulatory Authority of India recommended "Parliament to take up this issue and 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 consultation and without WTO notification. This lack of transparency imparts a lack of predictability to the Indian market, negatively affecting the ability of U.S. companies to enter or operate in that market. The United States continues to raise our concerns regarding uniform notice and comment procedures with the government of India both bilaterally in the TPF and multilaterally in the WTO and other fora.

INDONESIA

TRADE SUMMARY

The U.S. goods trade deficit with Indonesia was $13.2 billion in 2016, a 5.5 percent increase ($685 million) over 2015. U.S. goods exports to Indonesia were $6.0 billion, down 15.2 percent ($1.1 billion) from the previous year. Corresponding U.S. imports from Indonesia were $19.2 billion, down 2.0 percent. Indonesia was the United States' 35th largest goods export market in 2016.

U.S. exports of services to Indonesia were an estimated $2.5 billion in 2015 (latest data available) and U.S. imports were $780 million. Sales of services in Indonesia by majority U.S.-owned affiliates were $3.3 billion in 2014 (latest data available), while sales of services in the United States by majority Indonesia-owned firms were $111 million.

U.S. foreign direct investment in Indonesia (stock) was $13.5 billion in 2015 (latest data available), a 1.2 percent decrease from 2014. U.S. direct investment in Indonesia is led by mining, nonbank holding companies, and finance/insurance.

Overview

In recent years, Indonesia has enacted numerous regulations on imports that have increased the burden for U.S. exporters. Import licensing procedures and permit requirements, product labeling requirements, pre-shipment inspection requirements, local content and domestic manufacturing requirements, and quantitative import restrictions impede U.S. exports. In addition, the Indonesian government has adopted measures that impede imports as it pursues the objective of agricultural self-sufficiency. Beginning in late 2015 the Indonesian government introduced a series of economic reform packages designed to ease regulatory burdens and attract additional investment, which may signal a renewed emphasis on openness and reform in Indonesian economic policymaking. However, the impact of these reforms has been limited so far because of their limited scope and slow implementation.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Toys – Standards and Testing Requirements

In April 2014, Indonesia began enforcing a new mandatory toy regulation (Ministry of Industry (MOI) Regulation 24/2013). For a two-year transition period until April 2016, the regulation provided for acceptance of test reports from foreign International Laboratory Accreditation Cooperation-accredited laboratories, pending negotiation of mutual recognition agreements. After the transition, mutual recognition agreements would allow acceptance of test reports from laboratories outside Indonesia. No mutual recognition agreements have been executed, however, leaving imported toys subject to mandatory in-country testing in Indonesia.

U.S. stakeholders also remain concerned about the frequency of testing under the regulation, which is on a per-shipment basis for imports but only every six months for domestic products. They also are concerned about burdensome documentation requirements, as well as specific technical requirements, such as for formaldehyde, which are not based on the latest International Organization for Standardization (ISO) standard. In addition, U.S. stakeholders have asked MOI to reduce the inspection frequency once an importer demonstrates a history of compliance along the lines of the U.S. Consumer Product Safety

Commission's post-market surveillance approach. Since the regulation came into effect, importers have reported that the import testing and registration process has increased from 15 days to an average of 80 to 90 days. In mid-2015, Indonesia indicated that it was considering amending the toy regulation, but has not done so to date. The United States has pressed Indonesia to amend the regulation and will continue to raise concerns over this regulation bilaterally and in the WTO Committee on Technical Barriers to Trade.

Bahasa Indonesia Labeling Requirements

In September 2015, Indonesia issued Regulation 73/2015 on product labeling, replacing Regulation 67/2013. Under the new regulation, pre-approved Bahasa Indonesia-language labels are still required on a wide range of products, including various information and communications technology products, building materials, motor vehicle goods, household products, and apparel and textiles, that are distributed or sold in Indonesia. However, the labeling can now be done in Indonesia after importation before the product is distributed to the market. Indonesian officials have clarified that while the regulation requires that labels be "embossed or printed on the goods, or wholly attached to the goods," "permanent stickers" are permitted.

Halal Certification

In September 2014, Indonesia passed Law 33/2014 governing *halal* products. The law makes *halal* certification mandatory for food, including products derived through agricultural biotechnology, beverage, pharmaceuticals, cosmetics, and chemical products sold in Indonesia, as well as machinery and equipment used in processing these products. Companies have five years from October 2014 to comply with the new law. In the meantime, Indonesia has instructed companies to follow existing Indonesia Ulama Council *halal*-certification procedures. In September 2015, the Indonesian government established the structure of the new the *Halal* Product Assurance Agency under the Ministry of Religious Affairs (MORA). While the basic structure has been established, other staffing and operational functions are yet to be determined. MORA is also in the process of drafting an implementing regulation on *halal* product assurance, which reportedly is to be finalized in 2017. The United States will continue to monitor developments and engage with Indonesia on these issues. (*See Import Policies Section for information on the pharmaceutical market access requirements in these regulations*.)

In July 2016, the Ministry of Agriculture issued Regulation 34/2016, replacing Regulation 139/2014. As in previous regulations, all meat and poultry facilities wishing to export products to Indonesia must be fully dedicated for *halal* production. However, in practice this rule has only been applied to poultry. In addition, all poultry slaughterhouses in the country of origin must be fully-dedicated *halal* manual-slaughter facilities in order for any facility to be eligible to export to Indonesia and each of the poultry facilities must be approved by the Ministry of Agriculture and Indonesia's religious authority for *halal*.

Prepackaged and Fast Foods – Labeling of Sugar, Salt and Fat Requirements

In September 2015, the Indonesian government delayed implementation of Regulation 30/2013 on the inclusion of sugar, salt, and fat content information on labels for prepackaged and fast foods. The regulation also would require inclusion of a health message affixed to labels for processed and fast foods. Indonesia failed to notify the regulation to the WTO TBT Committee until after it was finalized and in effect. The United States supports Indonesia's regulatory and public health effort to improve nutritional literacy and raise awareness among Indonesians about healthy lifestyle choices, but is concerned about the lack of an open public consultation process regarding this measure. U.S. stakeholders have raised concerns regarding the need for further technical clarification and implementing guidance including acceptable methods for the required nutrient conformity tests, and whether tests performed by foreign laboratories or by companies' "in-house" laboratories would be acceptable. Indonesia's strict testing procedure may not allow *de minimis* variations between batches and could lead to unnecessary shipment-by-shipment inspections for label

conformity. The United States submitted written comments on the regulation in 2014, and has raised the regulation at the WTO TBT Committee meetings, which led Indonesia to delay implementation. As much as $418 million in annual U.S. prepackaged food exports to Indonesia could be affected by the regulation.

Indonesia Food Law Implementing Regulation

Indonesia's food and drug regulatory agency, the National Agency of Drug and Food Control (BPOM), has issued a draft regulation, the "Government Regulation Concerning the Label and Advertisement of Food," to implement provisions of the Law 18 on Food of 2012. Among other things, the regulation would prohibit advertising or promotion of milk products for children up to two years of age, as well as any functional claims to children under three years of age. The regulation also would severely restrict interactions with health care providers, and the draft contains additional restrictions, including a ban on advertising for alcohol and stringent requirements for nutrition labeling. It is unclear when Indonesia intends to finalize this regulation. The United States has asked Indonesia to notify the measure to the WTO TBT Committee before finalizing the regulation.

Sanitary and Phytosanitary Barriers

Beef and Pork

Indonesia requires each U.S. meat establishment seeking to export to Indonesia to complete an extensive questionnaire that includes proprietary information, and to be inspected by Indonesian inspectors, before it can ship meat to Indonesia. The United States has raised concerns about this approval system with Indonesia repeatedly, including at the WTO Committee on Sanitary and Phytosanitary matters and at meetings of the United States-Indonesia Council on Trade and Investment, and will continue to raise concerns in WTO and bilateral fora. In late 2016, Indonesia visited the United States on an audit and we are now awaiting the report of that audit.

Animal-Derived Products

Indonesia's animal health and husbandry law (Law 18/2009, as amended by Law 41/2014) requires companies that export animal-derived products, such as dairy and eggs, to Indonesia to complete a pre-registration process with the Indonesian Ministry of Agriculture. The law allows imports of these products only from facilities that Indonesian authorities have individually approved. To date, Indonesia has not notified the law to the WTO. After a 2011 audit of the U.S. food safety system as it applies to dairy products, Indonesia agreed to a simplified questionnaire for U.S. dairy facilities seeking to pre-register for review and approval. The United States is continuing to work with Indonesia to further improve the system under which U.S. establishments become eligible to export dairy products to Indonesia.

Horticulture

Ministry of Agriculture Regulation 55/2016 establishes the most recent requirements for countries wishing to export "Fresh Food of Plant Origin" to Indonesia. The regulation specifies that Indonesia must recognize either the food safety system of an exporting country or a registered food safety testing laboratory serving that country's exporters. The United States food safety system currently is recognized under this system, but the United States must apply for this recognition again in 2017. (*See Customs Barriers section for more information*.)

IMPORT POLICIES

Tariffs

Indonesia's average MFN applied tariff rate is 6.9 percent. Indonesia periodically changes its applied rates and over the last five years has increased its applied tariff rates for a range of goods that compete with locally-manufactured products, including electronic products, electrical and non-electrical milling machines, chemicals, cosmetics, medicines, wine and spirits, iron wire and wire nails, and a range of agricultural products including milk products, animal and vegetable oils, fruit juices, coffee, and tea. Since December 2011, the average tariff rate for oilseeds have fluctuated between zero and 5 percent. As of December 2016, the tariff on soybeans is zero.

Indonesia's simple average bound tariff rate of 37 percent is much higher than its average applied tariff. Most Indonesian tariffs on non-agricultural goods are bound at 40 percent, although tariff rates exceed 40 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 40 percent. Tariffs on fresh potatoes, for instance, are bound at 50 percent, although the applied rate is 20 percent. The high bound tariff rates, combined with unexpected changes in applied rates, create uncertainty for foreign companies seeking to enter the Indonesian market. U.S. motorcycle exports remain severely restricted by the combined effect of a 60-percent tariff, a luxury tax of 75 percent, a 10-percent value-added tax, and the prohibition of motorcycle traffic on Indonesia's highways.

In late 2016, Ministry of Finance issued regulation 182 of 2016, which levies a 7.5-percent charge on certain imported goods (known as "consignment goods") shipped by business entities regardless of the tariff rate in Indonesia's WTO and FTA schedules.

Taxes and Luxury Taxes

Indonesia assesses an income tax on the payment of delivery of goods and activities related to import through the issuance of the Ministry of Finance Regulation No.175/2013. Import of certain goods listed in this regulation is subject to a 7.5-percent income tax rate based on the import value. Unlisted goods imported by holders of an importer identification number (*Angka Pengenal Importir* or API) are subject to a 2.5-percent tax rate with the exception of soybeans, wheat, and wheat flour, while non-API importers are charged a 7.5-percent- rate.

Luxury goods (defined as goods not considered necessities), imported or locally produced, may be subject to a luxury tax of up to 200 percent. Currently, however, there are no luxury goods subject to the 200 percent rate, and the applied luxury tax rates generally range from 10 to 75 percent, depending on the product. Finance Ministry Regulation 106, issued in June 2015, updated luxury tax rates for certain non-motor vehicle luxury goods, including yachts, aircraft, firearms, and certain types of housing.

Pursuant to Government Regulation 22/2014, issued in March 2014, the current highest tax rate applied is 125 percent for special luxury cars. However, under Regulation 41/2013, the luxury goods sales tax base rates were lowered for motor vehicles that meet certain environmental requirements. Luxury sales taxes were reduced by up to 100 percent for motor vehicles with an internal combustion engine with a cylinder capacity up to 1,200 cc and a fuel consumption rate of at least 20 kilometers per liter of fuel, or a compression ignition engine (diesel or semi-diesel) with a cylinder capacity of up to 1,500 cc and a fuel consumption rate of at least 20 kilometers per liter of fuel. A luxury tax reduction of 50 percent is granted for motor vehicles using advanced technology diesel or petrol engines, biofuel engines, hybrid engines, or compressed natural gas (CNG) or liquefied gas for vehicles (LGV) dedicated engines, with fuel consumption of more than 28 kilometers per liter of fuel or other equivalent. A luxury tax reduction of 25

percent is granted for motor vehicles that use advanced technology diesel or petrol engines, dual petrol-gas engines (CNG kit converter or LGV), biofuel engines, hybrid engines, or CNG or LGV dedicated engines, with fuel consumption ranging from 20 kilometers per liter to 28 kilometers per liter of fuel.

Although Indonesia has eliminated its luxury tax on imported distilled spirits, the current excise tax regime imposes higher excise taxes on imported spirits than on domestic spirits. Excise tax rates are 150 percent on spirits and 90 percent on wine.

Import Licensing

Indonesian importers must comply with numerous and overlapping import licensing requirements that impede access to Indonesia's market. Ministry of Trade (MOT) Regulation 70/2015 came into effect in January 2016, replacing MOT Regulation 27/2012 as amended by Regulation 59/2012. The new regulation requires all importers to obtain an import license as either importers of goods for further distribution (API-U) or as importers for their own manufacturing (API-P), but importers are not permitted to obtain both types of licenses. In response to stakeholder concerns, in December 2015, MOT issued Regulation 118/2015 on complementary goods, which allows companies that operate under an API-P import license to import finished products for complementary goods, market testing, or for after sales service purposes, as long as the goods are new, consistent with the company's business license and meet import requirements.

In October 2015, MOT issued Regulation 87/2015 on the Import of Certain Products (replacing Decree 56/2009, which had been extended through MOT Regulation 83/2012). Like its predecessors, Regulation 87/2015 requires pre-shipment verification by designated companies (known in Indonesia as "surveyors"), at the importer's expense, and limits the entry of imports to designated ports and airports. In addition, Regulation 87/2015 maintains non-automatic import licensing requirements on a broad range of products, including electronics, household appliances, textiles and footwear, toys, food and beverage products, and cosmetics. However, for holders of an API-U license, Regulation 87/2015 appears to eliminate the additional requirement to register as an importer of certain products.

MOT Regulation 82/2012, as amended by Regulations 38/2013, 68/2015, 41/2016, and MOI Regulation 108/2012, in effect since January 2013, imposes burdensome import licensing requirements for cell phones, handheld computers, and tablets. Under Regulation 82/2012, importers of cell phones, handheld computers, and tablets are not permitted to sell directly to retailers or consumers, and they must use at least three distributors to qualify for a MOT importer license. MOT Regulation 41/2016 requires 4G device importers to provide evidence of contributions to the development of the domestic device industry or cooperation with domestic manufacturing, design, or research firms. In addition, U.S. companies have reported that, in some cases, MOI is informally limiting import quantities under existing licenses (issued under MOI Regulation 108/2012) to protect locally-manufactured cell phones, handheld computers, and tablets. (*See below Barriers to Digital Trade section for related information*.)

Import of Used Capital Goods

In December 2015, MOT issued Regulation No.127/2015 on Import Provisions for Used Capital Goods, replacing Regulation No. 75/2013. The new regulation came into force on February 1, 2016 and remains in effect until December 31, 2018. Under the new regulation, capital goods of all types must appear on an approved list to be eligible for import and are subject to age restrictions ranging from limitations of 15 to 30 years. Under MOT 127/2015 used medical devices are no longer eligible for import. The regulation requires importers to apply for import approval from the MOT; the approval is effective for one year from issuance and can be extended once for a maximum of 60 days. The new regulation also eliminates the provision in MOT 73/2013 that permitted non-capital goods not on the approved-used goods list to be imported in certain amounts with a recommendation from the relevant authority. The approval process for

import of used capital goods not included on the list remains unclear. The regulation has made it more difficult for U.S. companies to import spare parts and refurbished equipment, disrupting their ability to provide post-sales service, as well as hampering their customers' operations.

Import Licensing for Agricultural Products

Import licensing requirements also apply to certain horticultural products. In order to import horticultural products into Indonesia, Ministry of Agriculture (MOA) and MOT regulations require Indonesian importers to obtain: (1) an Import Recommendation of Horticultural Products (RIPH) from MOA; and (2) an Import Approval (SPI) from MOT. Import approvals are issued on a biannual basis and are valid for one six-month period. RIPHs specify, *inter alia*, the product name, HS code, country of origin, manufacturing location (for industrial materials), and entry point for all horticultural products the applicant wishes to import. After securing an RIPH, an importer must obtain an SPI from MOT before importing horticultural products. An SPI specifies the total quantity of a horticultural product (by tariff classification) that an importer may import during the period for which the SPI is valid. Importers cannot amend existing SPIs or apply for additional ones outside the application window.

Indonesia has updated its import rules on horticultural products through MOT's Regulation 71/2015 (superseding MOT Regulations 16/2013, 47/2013, and 40/2015), but the new regulation makes few substantial changes. Import licenses still are required and quantities will be allocated subject to the importer's cold storage capacity. MOT eliminated the 80-percent rule for horticultural products, which imposed punitive measures on importers that used less than 80 percent of the quota allotted under their import permits. However, importers state that they must file import-realization reports and that the 80-percent rule is still being implemented informally. This regulation also specifies that the total import allocation will be set annually and that importers are no longer required to register as horticultural product importers. MOA also maintains seasonal import restrictions on certain horticultural products. For example, oranges can only imported in months outside of Indonesia harvest periods.

Indonesia changed its requirements for importation of beef in 2016. Under Regulation 34/2016, all kinds of bovine meat cuts, including variety meats and offal, are allowed for import. Additional changes include the extension of import license validity to six months, and the elimination of a rule requiring importers to use at least 80 percent of their allotted import licenses. Despite these changes, the import licensing procedures continue to hinder Indonesia's beef imports. For example, import licenses are issued for specific countries of origin, and importers cannot change sourcing to respond to evolving market conditions. Also, Indonesia only issues import licenses for meat originating in approved facilities. Approvals for new facility require on-site inspection by MOA, but MOA lacks the resources to inspect all interested U.S. facilities. Indonesia also limits trade through practices not covered by its written regulations. For example, certain importers have reported that the Indonesian Ministry would only approve approximately 10 percent of quantity of beef offal that they have requested in their import licensing application. Additionally, importers are required to sell beef at prescribed reference prices in traditional wet markets as a condition for the issuance of import licenses. Finally, although Indonesia has stated that it will issue import licenses to any importer at any quantity, importers report that the Indonesian Ministry will refuse licenses to importers who request quantities above a certain threshold determined by the Indonesian government.

Similar to the prior import regulations, the new import regulations restrict the import of poultry and poultry products. The regulations governing animals and animal products maintain a positive list of products that may be imported with a permit. The regulations provide for the import of whole, fresh or frozen poultry carcasses (chicken, turkey, or duck), but not for the import of poultry parts, effectively eliminating importation of poultry parts. Additionally, although the regulations provide for the import of whole-chicken carcasses, Indonesia in practice does not issue import permits covering these products. This practice also

covers whole duck and turkey carcasses, as Indonesia has not issued import permits for these products since December 2013.

MOT regulation 63/2016 "Farmer Level Purchase and Consumer Level Selling Reference Prices" sets reference prices to ensure availability and price stability for agricultural products. The regulation covers seven commodities: rice, corn, soybeans, sugar, shallots, chilies, and beef. According to MOT 63/2016, the Indonesian government (through Indonesia's state procurement body, the Bureau of Logistics (BULOG), and other state-owned enterprises) is required to carry out market operations in the event that market prices fall below buying reference prices or rise above selling reference prices. In its initial implementation of this new regulation, the Ministry of Agriculture has assigned PD. Pasar Jaya (a provincial government-owned company) to distribute sugar to consumers at a maximum price of Rp. 12,500/kg. The Indonesian government also is currently requiring beef importers to sell beef at set prices in Jakarta's traditional markets as a condition for the issuance of import licenses. Sales to modern retail outlets, as well as hotel, restaurant and institutional buyers are not bound by government-set prices.

The licensing regimes for horticultural products and animals and animal products have significant trade-restrictive effects on imports, and the United States has repeatedly raised its concerns with Indonesia bilaterally and at the WTO. Because Indonesia failed to address these concerns, in January 2013, the United States requested consultations with Indonesia under the WTO's dispute settlement procedures. After the consultations failed to resolve the concerns, the United States requested establishment of a WTO dispute settlement panel, and a panel was established in April 2013. In August 2013, New Zealand joined the dispute by filing its own request for consultations to address Indonesia's measures. At the same time, the United States filed a revised consultations request to address recent modifications to Indonesia's measures and to facilitate coordination with co-complainant New Zealand. A panel was established in May 2015, and the panel held meetings with the parties on February 1-2, 2016 and April 13-14, 2016. On the December 22, 2016, the WTO issued the panel report, finding for the United States and New Zealand on 18 out of 18 claims that Indonesia is applying import restrictions and prohibitions that are inconsistent with WTO rules. On February 17, 2017, Indonesia appealed the ruling. WTO rules provide that the WTO Appellate Body must issue its report within 90 days of the filing of the appeal.

Pharmaceutical Market Access

The United States continues to have concerns about barriers to Indonesia's market for pharmaceutical products. Ministry of Health Decree 1010/2008 requires foreign pharmaceutical companies either to manufacture locally or to entrust another company that is already registered as a manufacturer in Indonesia to obtain drug approvals on its behalf. Among its requirements, Decree 1010/2018 mandates local manufacturing in Indonesia of all pharmaceutical products that are five years past patent expiration, and also contains a technology-transfer requirement. A subsequent pair of regulations, Regulation 1799/2010 and an updated regulation on drug registration from the BPOM (most recently revised in Regulation 16/2015), provide additional information about the application of the local manufacturing requirements and applicable exceptions. In May 2016, Indonesia revised its negative investment list to raise the foreign investment cap for the manufacturing of raw materials for medicines from 85 percent to 100 percent in an apparent effort to redress shortages of raw materials, which are almost exclusively imported. However, foreign investments in finished drugs industry are still capped at 85 percent. The United States also remains concerned by Indonesian government statements indicating that Indonesia failed to abide by domestic legal procedures in issuing a compulsory license decree in 2012 and indicating that Indonesian patent law does not require individual merits review in connection with the grant of compulsory licenses. The United States will continue to monitor the implementation of these regulations. (*See IPR Section for related information on the Patent Law*.)

The manufacture and distribution of medical devices now face foreign-investment caps of 33 percent and 49 percent, respectively, while previously they were not included in the negative investment list. BPOM determined in 2016 that it would not follow through with a 2015 proposal to regulate certain nutritional supplements as "Foods for Special Medical Purposes" in a manner that would prohibit their promotion, sale, and distribution directly to the customer. Indonesia adopted a bill in September 2014 requiring *halal* certification of pharmaceuticals as well as other products. The United States will continue to monitor the status of the implementing regulations for this bill, including the potential impact on market access for affected products. (*See TBT Section for related information on the Halal Law*.)

The innovative pharmaceutical industry has also raised concerns regarding the transparency of and opportunity for meaningful stakeholder engagement within the Indonesian pricing and reimbursement system. In particular, stakeholders report a lack of clarity and certainty regarding how pharmaceutical products are selected for listing on the Indonesian National Formulary and whether and for how long such products will remain on the formulary. The United States will continue to engage Indonesia on this issue and request that the Ministry of Health have quarterly meetings with U.S. stakeholders to discuss these issues.

Quantitative Restrictions on Imports

Indonesia imposes restrictions on feed corn imports, limiting imports to BULOG only. (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 quantity sufficient to maintain the poultry industry's growth.

Indonesia bans salt imports during the agricultural harvest season. It requires salt importers to be registered and to purchase domestic supplies as well as imports. Indonesia also maintains a seasonal ban on imports of sugar, in addition to limiting the annual quantity of sugar imports based on domestic production and consumption forecasts. Indonesia bans exports of raw and semi-processed rattan.

Indonesia applies quantitative limits on the importation of wines and distilled spirits. Companies seeking to import these products must apply to be designated as registered importers authorized to import alcoholic beverages, with an annual company-specific quota set by MOT.

Product Registration

BPOM has been working to improve the efficiency of its product e-registration system for low-risk products, although the Ministry of Health acknowledges that a lack of technical knowledge will continue to delay registration of pharmaceuticals and sophisticated medical devices. Registration now takes between nine months to one year. Still, concerns remain about proposed changes to the registration requirements and submission process that can further complicate product registration. U.S. stakeholders continue to express concern about the process to obtain product registration numbers (known as ML registration numbers). The United States will continue to monitor developments in this area.

Product Testing

BPOM sets out requirements for testing of heavy metals in food, drugs and cosmetics in BPOM Regulation 17/2014. BPOM 12/2015 provides further guidance on this requirement, which is fulfilled via a certificate of analysis. A 2016 BPOM circular letter extended a certificate's validity from six months to one year. In practice, Indonesian customs requires each shipment to provide a separate test in addition to the

certificate. This measure appears targeted at limiting exports and adds unnecessary costs. In addition, in the case of cosmetics, U.S. and other stakeholders have expressed concern that the pre-market testing requirement goes against the intent of the ASEAN Cosmetics Directive, which stipulates that monitoring of heavy metals should be undertaken via post-market surveillance.

Customs Barriers

U.S. firms continue to report that Indonesian customs relies on a schedule of reference prices to assess duties on some imports rather than using actual transactions as required by the WTO Agreement on Customs Valuation. Indonesia's Director General of Customs and Excise makes a valuation assessment based on the perceived risk status of the importer and the average price of a same or similar product imported during the previous 90 days.

U.S. horticultural exports continue to use Tanjung Priok port, based on Indonesia's recognition of the U.S. food safety system for fresh foods of plant origin (FFPO). Australia, New Zealand, and Canada have also received FFPO recognition and have access to Tanjung Priok. In December 2015, MOA renewed the U.S. FFPO status for two years.

State Trading

The National Logistics Agency maintains exclusive authority to import standard unbroken rice (medium grain, medium quality). Indonesia cited "food security" and price management considerations as the principle objectives of the authorization, but the Indonesian government separately cited its aspirations for food self-sufficiency. The National Logistics Agency is not allowed to import rice before, during, or immediately after the main harvest period. Private firms are only allowed to import broken rice for processing or specialty rice varieties, such as basmati and jasmine rice, for retail and food service. Importers of broken and specialty rice must obtain a special importer identification number from MOA. Since mid-2014, Indonesia has refused to issue import recommendations to private traders for the import of japonica rice, although MOT regulations allow its import. However, according to Indonesian government sources, japonica rice falls under the same category as standard unbroken rice.

In 2016, BULOG was appointed as Indonesia's sole importer of feed corn, plantation white sugar and buffalo meat (carabeef). Additionally, BULOG is mandated to carry out local purchasing operations in order to maintain producer prices. BULOG's local procurement activities are currently limited to rice and shallots.

EXPORT RESTRICTIONS AND TAXES

Indonesia's 2009 mining law requires companies to process ore locally before shipping it abroad. Indonesia has implemented this law through a series of regulations, including January 2014 regulations that ban the export of over 200 types of mineral ore, including nickel and bauxite. U.S. stakeholders have expressed serious concern about the potential impact of these measures.

Until this year, companies could export eight concentrates associated with these mineral ores (including copper, lead and iron), as long as they paid a prohibitive export tax and met other requirements, such as building smelters in Indonesia. In January 2017, Indonesia put in place a new set of requirements for the mining industry, as specified in Regulation 1 of 2017. Among other things, this regulation requires companies with existing contracts of work to convert to special mining business licenses and also requires the companies to build a smelter within five years. These licenses would allow companies to export mineral concentrates. The United States will continue to raise strong concerns about these issues with the Indonesian government.

Indonesia imposes a progressive export tax on cocoa and palm oil exports. The cocoa export tax rate ranges from 5 percent to 15 percent and is calculated based on a monthly average of export prices. In October 2014, the prices of crude palm oil dropped below the level at which export taxes are applied. However, in July 2015, the Indonesian government introduced a new minimum levy of $50/metric ton for crude palm oil and $30/metric ton for processed palm oil. Indonesia also effectively bans the export of steel scrap and bans exports of raw and semi-processed rattan. The Indonesian government is considering imposing export taxes on other products, including coconut, base metals, and coal.

GOVERNMENT PROCUREMENT

Indonesia grants special preferences to encourage domestic sourcing and to maximize the use of local content in government procurement. It also instructs government departments, institutes, and corporations to utilize domestic goods and services to the maximum extent feasible. Presidential Regulation 54/2010 requires procuring entities to seek to maximize local content in procurement, use foreign components only when necessary, and designate foreign contractors as subcontractors to local companies. Presidential Regulation 2/2009 stipulates that all state administrations should "optimize" the use of domestic goods and services and give price preferences for domestic goods and providers.

Indonesia's 2012 Defense Law mandates priority for local materials and components and requires defense agencies to use locally-produced defense and security goods and services whenever available. In addition, when an Indonesian government entity procures from a foreign defense supplier due to lack of availability from an Indonesian supplier, there is a requirement for "trade balancing" offsets, including incorporation of local content, or offset production, or a combination thereof. The amount of domestic value or local content required starts at 35 percent, and increases by 10-percent increments every five years until the value of local content is equal to 85 percent. The 35-85 percent domestic value must then be compensated by "counter-trade agreements," incorporation of local content, or offset production. Forthcoming implementing regulations will also include a series of "multipliers" that will increase the calculated final value of a given offset component on the basis of a determination from the Defense Industry Policy Committee. The implementing regulations for the 2012 Defense Law are contained in Presidential Decree 76/2014, but numerous details, including specifics for multiplier values, remain undetermined. Calculations for the value of local content can include design, engineering, IPR, raw materials, facilities/infrastructure costs, education and training, labor costs, and after-sales service.

Indonesia is not a party to the WTO Agreement on Government Procurement, but it is an observer to the Committee on Government Procurement.

SUBSIDIES

Indonesia has not filed a subsidy notification under the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) since March 1998, on which the United States has raised concerns. The United States has met bilaterally with Indonesia to urge it to submit a WTO subsidies notification and to offer technical assistance in preparing such a notification. In response to questions regarding its Indonesia's most recent WTO Trade Policy Review (TPR) in 2013, Indonesia indicated that it was pursuing support policies to, *inter alia*, improve export performance and develop downstream industries, but provided few details regarding specific measures. According to the Secretariat Report on the 2013 TPR, Indonesia provides fiscal- and non-fiscal incentives for manufacturing and exports in connection with its export processing zones and special economic zones programs. These include incentives related to corporate income tax, property tax, import duty, value-added tax, excise and luxury taxes, and local taxes, as well as assistance on land acquisition, licensing, investment and manpower. Additionally, Indonesia provides various forms of official export financing, insurance, and guarantees through the state-owned Indonesia

Eximbank and the Asuransi Ekspor Indonesia. In 2013, Indonesia became subject to the WTO prohibition of export subsidies under Article 3.1(a) of the Subsidies Agreement when it graduated from the Annex VII(b) list of developing countries exempted from the prohibition.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Indonesia remained on the Priority Watch List in the 2016 Special 301 Report. While Indonesia has taken some positive steps in recent years, including implementation of copyright reforms and continued educational outreach to the Indonesian public to advance IPR awareness, the United States remains concerned about gaps in Indonesia's laws relating to the IPR protection and enforcement. Widespread copyright piracy and trademark counterfeiting (including in physical markets, as noted in the 2016 Out-of-Cycle Review of Notorious Markets) remain key concerns. Counterfeiting activity extends to products that present serious risks to human health and safety, such as pharmaceutical products. Lack of enforcement also continues to be a problem, and the United States continues to urge Indonesia to increase interagency coordination and to provide for deterrent-level penalties for IPR infringement in physical markets and over the Internet. The United States also continues to encourage Indonesia to provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. In July 2016, Indonesia passed a new Patent Law, which has raised concerns since the new law does not appear to take into account input from relevant stakeholders.

The United States will continue to work with the Indonesian government on IPR issues, including to develop a mutually-agreed intellectual property work plan to address deficiencies in IPR protection and enforcement, as well as measures to promote public education and outreach.

SERVICES BARRIERS

Legal Services

Only Indonesian citizens may be licensed as lawyers in Indonesia. Foreign lawyers may work in Indonesia as legal consultants with the approval of the Ministry of Justice and Human Rights. A foreign law firm seeking to enter the market must establish a partnership with a local firm.

Express Delivery and Logistics Services

Indonesia maintains restrictions on the provision of postal services, broadly defined to include courier, express delivery, and other logistics services. Indonesian law requires that postal service suppliers be majority-owned by Indonesians and that foreign suppliers limit their activities to provincial capitals with international airports and seaports. Under Regulation 15/2013 and Regulation No. 32/2014, only an Indonesian legal entity can apply for a license and foreign ownership of a company offering postal services may not exceed 49 percent.

Logistics services generally remain subject to a maximum 4- percent foreign ownership, though May 2016 reforms to the Negative Investment List increased foreign-ownership limits in freight forwarding, warehousing, and storage, and increased the foreign-capital cap for distribution and warehousing from 33 to 67 percent. Investment in cold chain storage facilities was previously capped according to geographical location, but is now fully open for foreign investment.

In April 2015, Indonesia enacted Ministry of Transportation regulation 74/2015, which increased minimum capital requirements for foreign freight-forwarding companies to $10 million. Indonesia is considering

revisions to regulation 32/2014 that will ease requirements for local authorization, but will not affect restrictions on foreign ownership or capital requirements.

Health Services

The 2016 revision of the negative list of foreign investment restrictions removed the outright ban on foreign ownership of certain healthcare facilities. Up to 67 percent foreign ownership is now permitted in general hospitals, private specialist clinics, dental clinics, and specialized nursing services in all regions of Indonesia, except Manado and Makassar. However, foreign ownership is still prohibited for private maternity hospitals, general medical clinics, residential healthcare, and basic health services facilities.

Financial Services

No single entity, foreign or Indonesian, may own more than 40 percent of an Indonesian bank. The Financial Services Authority (OJK) may grant exceptions in certain cases. Indonesia's financial authorities announced in November 2015 that a foreign investor may hold a majority stake in a bank if it acquires two banks and merges them. However, this change will only apply for small banks that have capital of less than IDR 1 trillion (approximately $73 million) prior to the merger. Separately, the Indonesian Parliament is debating a draft banking law that would lower the overall foreign-ownership cap on locally incorporated banks, which is currently set at 98 percent.

Under regulation No. 15/49/DPKL, adopted in 2013, Indonesia restricts foreign ownership in private credit reporting firms to 49 percent.

In September 2014, the Indonesian Parliament passed the Insurance Law. The law requires all insurance companies to incorporate locally as Indonesian corporate entities (Perseroan Terbatas or "PT"). Foreign investment in PT insurance companies is permitted only through the acquisition of publicly-traded shares; direct foreign purchase of corporate assets is not allowed. The Negative Investment List limits foreign ownership of an insurance company to 80 percent. Previously OJK allowed foreign owners to inject capital if needed, subject to approval, which in some cases diluted the ownership percentage of the local partner. However, OJK plans to enforce the equity cap strictly, such that companies with more than 80 percent foreign ownership will be expected to reduce the foreign holding to 80 percent by November 2019 (five years after the effective date of the 2014 Insurance Law). The Insurance Law does not contain an explicit cap on foreign equity ownership, but pursuant to the Law, OJK must issue a regulation clarifying the threshold for foreign investment by April 2017.

Nonbank financial service suppliers may do business in Indonesia as a joint venture or be partially owned by foreigner investors, but cannot operate in Indonesia as a branch of a foreign entity.

OJK regulation 14/2015 came into effect January 1, 2016, with certain transition periods. It requires, among other things, insurance companies operating in the Indonesian market to cede to domestic reinsurance companies 100 percent of the reinsurance for certain products (such as vehicle, accident, health, and life insurance, and minimum amounts on other lines of insurance). The previous cession requirement was 5 percent to 15 percent. The regulation also requires insurers writing other types of risks to cede a minimum amount of reinsurance to domestic reinsurers, unless exceptions apply, such as if a domestic reinsurer is unwilling to provide reinsurance. The United States has raised concerns over mandatory cession requirements for reinsurance and will continue to engage with Indonesia on this matter.

In November 2016, the Central Bank issued regulation No. 18/40/PBI/2016 on the implementation of payment transaction processing. The regulation governs all companies providing the following services: principal, issuer, acquirer, clearing, final settlement operator, and operator of funds transfer. The regulation

caps foreign ownership of payments companies at 20 percent, though it is not retroactive. Current investments that exceed the cap are grandfathered, but some stakeholders have expressed concern that the regulation is inflexible and freezes their ownership structure.

The United States continues to monitor Bank Indonesia plans for legislation on a National Payment Gateway, which will ostensibly support electronic payments and facilitate switching between bank networks, but which could adversely affect the market access for foreign payments companies.

Maritime Cabotage

Indonesia's Law 17/2010 on Shipping requires all vessels operating in Indonesian waters to be Indonesian flagged. In addition, it limits foreign ownership of any Indonesian-flagged vessel to 49 percent. However, the Indonesian shipbuilding industry does not have the capacity to build the variety of specialty ships its economy requires and is unlikely to have such capacity in the near to medium term. Full implementation of the law would be particularly problematic for foreign investors in Indonesia's energy and telecommunications sector, which would no longer be permitted to bring in the sophisticated rigs and specialized vessels needed to develop large upstream projects or service undersea cables.

In response to concerns raised by the United States and other countries, the Ministry of Transportation issued Regulation 48/2011 allowing certain classes of non-transportation vessels to be eligible for a three-month renewable waiver from the domestic flagged-vessel requirements when there is no suitable Indonesian-flagged vessel available. The Ministry of Transportation issued Regulations 10/2014, 79/2014, 10/2015, 200/2015 and 100/2016 to provide further exemptions to Law 17/2010 and extended the renewable waiver period to one year for non-transport foreign vessels engaged in oil and gas surveying, drilling, offshore construction, dredging, salvage, and other underwater work. Under the regulation, treatment of other categories of specialty foreign vessels will be decided on a case-by-case basis for waivers of up to one year.

Audit and Accounting Services

Foreign public accounting firms must be affiliated with a local public accounting firm to conduct business in Indonesia. A foreign accounting firm must use the name of its local affiliate in addition to the foreign firm's name in presentations and disclosures. Indonesia allows a maximum of 10-percent foreign national staff for each level of management in the affiliated local accounting firm. In affiliated accounting firms, the ratio of foreign audit signing partners to local signing partners cannot exceed one to four.

Film

Although Presidential Regulation 44/2016 revised the Negative Investment List to permit foreign investment in the film sector, film policy is now under the purview of the Ministry of Education and Culture, which is drafting implementing regulations to the 2009 Film Law that could further restrict foreign participation in the sector. The 2009 Law on Film imposes a 60-percent local content requirement for local exhibitors and, to achieve that quota, it also provides authority to implement unspecified import restrictions, prohibitions against the dubbing of foreign films, and prohibitions against foreign companies distributing or exhibiting films. The law also restricts vertical integration across segments of the film industry. The local content requirement and integration restriction have not been fully implemented.

Firms have raised concerns with a 2008 regulation requiring all local and imported movies, both theatrical prints and home videos, to be replicated locally, with penalties on exhibitors for failing to do so. Its full implementation continues to be postponed under annual one-year suspensions, the most recent in January 2016, as Ministry of Tourism regulation 4/2014. The Ministry of Education and Culture has been working

on a draft regulation, but it has not been published yet. The United States continues to advocate for the permanent suspension and repeal of this regulation.

Construction, Architecture, and Engineering

Prior to November 2014, foreign construction firms were only allowed to be subcontractors or advisors to local firms in areas where the Indonesian government believed that local firms are unable to do the work. Government Regulation 10/2014 permitted the local firm to serve as subcontractor or advisor to a foreign construction firm if the Indonesian government determines that a local firm is not capable of managing an entire project on its own. The foreign firm must work together with a 100-percent locally owned firm, or if it is a joint venture, the local ownership should be at least 65 percent. In addition, the regulation requires that the construction project be worth at least Rp100 billion ($7.5 million) (or a minimum of Rp20 billion for a consultation project), considered "high-tech" (Indonesia considers projects incorporating new technology that the local market cannot provide as meeting this criteria), and that the risk ratio (the risk of project failure) should be high. Beginning in 2015, the National Construction Services Development Board certifies foreign entities as construction companies, consulting companies, or integrated (engineering, procurement, and consulting) companies. A foreign entity may have only one of these designations.

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 the Ministry of Manpower. Authorization is granted on a case-by-case basis and only when there are no Indonesian instructors capable of filling the position.

Indonesia currently regulates its educational system using Ministry of Education and Culture Regulation 31/2014, which requires every international school and National Plus School from kindergarten to high school to become a "Satuan Pendidik Kerjasama" (SPK – 'Education Unit Partnership'). Because the regulation requires all SPKs to be administered in partnership with a domestic institution or a Foreign Educational Institution already accredited or recognized in Indonesia, independent international schools are now prohibited and no school may use the word "international" in its name. The number of foreign educators within a SPK is limited to 70 percent, and SPKs may use a combination of the national curriculum and their own curriculum.

Franchising

Indonesia's MOT made three major regulatory changes in the franchising sector in recent years that threaten to have a significant chilling impact on future operations of foreign franchisors. In August 2012, Indonesia promulgated MOT Regulation 53/2012, which establishes a local content requirement obliging an Indonesian franchisee to source at least 80 percent of its equipment and inventory domestically, unless a waiver is granted.

In October 2012, MOT issued Regulation 68/2012 restricting the number of outlets that can be owned by a modern retail franchisee, such as supermarkets, to 150 before it must sub-franchise additional units to another local entity. In February 2013, MOT issued Regulation 7/2013 restricting the number of outlets that can be owned by a food and beverage franchisee to 250. In 2014, MOT issued amendments – Regulations 57/2014 and 58/2014 – to the existing franchising requirements. These revised regulations grandfather franchisors or franchisees of restaurants, cafés, and bars that already have more than 250 outlets, but the existing requirements will still apply to newcomers or those that do not already have more than 250 outlets.

In December 2013, MOT issued Regulation 70/2013 requiring that 80 percent of the total amount of and types of goods that are sold by modern retail establishments, such as shopping centers, minimarkets, and hypermarkets, be domestic products. The regulation also limits the inventory of these establishments to a maximum of 15 percent private label products. In September 2014 MOT issued regulation 56/2014, which came into effect in September 2016, providing an exception to the domestic product requirement for standalone brands or specialty stores selling products that meet any one the following criteria: (1) products requiring uniformity of production and sourcing from a global supply chain; (2) products with "world famous" or premium branding that are not yet produced in Indonesia; or (3) products from certain countries sold to meet the needs of their citizens living in Indonesia. MOT 56/2014 also provides an exception to the 15- percent maximum private label products cap to stores that have a local partner, and exempts modern stores with more than 150 outlets from the local-partner requirement.

INVESTMENT BARRIERS

Decentralized decision-making processes, legal uncertainties, and powerful domestic vested interests all contribute to Indonesia's complex and difficult investment climate. Among these include Indonesian government requirements that often compel foreign companies to do business with local partners and to purchase goods and services locally.

Indonesia's Negative Investment List provides the list of sectors that are subject to either foreign investment prohibitions or restrictions. Revisions to the list in April 2014 subsequently closed other sectors to foreign investment, including distribution and warehousing, and various areas of oil, gas, and mining services. A further revision of the Negative Investment List in May 2016 permitted greater foreign investment in sectors like film, tourism, logistics, health care, and electronic commerce, maintaining numerous other restrictions based on company size, location and sector. With respect to telecommunications services, the revised list caps foreign ownership at 67 percent for fixed and mobile network services, Internet and multimedia-based communication service suppliers, Internet service providers, data communication system services, and public Internet telephony services. Previously, the foreign-ownership limitation on suppliers of fixed services was 95 percent. The 2016 Negative Investment List contains a "grandfather clause" for existing investments, though questions remain as to how sales, mergers and acquisitions will be treated.

Energy and Mining

Over the past several years, the Indonesian government has introduced regulatory changes to increase government control and local content levels in the energy and mining sectors. The regulatory changes have raised costs for foreign businesses, and raised questions about the sanctity of contracts already in force between private companies and the Indonesian government.

In the oil and gas sector, Ministry of Energy and Mineral Resources (MEMR) Regulation 79/2010 allows the Indonesian government to change the terms of certain existing production sharing contracts, eliminate the tax deductibility of certain expenses, change the terms and criteria for cost recovery, and place limits on allowable costs for goods, services, and salaries. Furthermore, Article 79 of Presidential Regulation 35/2004, which regulates contractor activities in the upstream oil and gas sector, provides that contractors must "prioritize" the use of domestic services, including energy-related services, as well as domestic technologies and engineering and design capabilities. Foreign companies have noted that these local preference policies severely undermine their ability to efficiently and profitably operate in the Indonesian market. Indonesia's oil and gas regulator has also tightened the rules relating to how local content is measured with respect to oil and gas projects. Once fully implemented, the new criteria are intended to achieve an average of 91 percent local content by 2025, up from 61 percent in 2012. Moreover, under the new rules, goods and services supplied by companies without majority Indonesian shareholding can no

longer qualify as local content. As a result, foreign energy service companies have been placed at a disadvantage compared to majority Indonesian-owned companies, which can more easily meet local content requirements, but often are less able to meet the technical requirements of a project.

Other actions have also negatively impacted the business climate in the oil and gas sector. The Indonesian government has increased pressure on oil and gas companies to hold export earnings in Indonesian state-owned banks, per Bank of Indonesia Regulation 13/2011 (as amended by Regulation 14/2012). This regulation subjects such earnings to Indonesian banking law and regulations despite production sharing contracts that allow companies to retain such earnings abroad. In addition, MEMR Regulation 31/2013 limits the amount of time expatriates may work in Indonesia's oil and gas sector to four years, and prohibits expatriates from working past the age of 55. Further, production sharing contracts in Indonesia contain a standard clause specifying that 25 percent of all production must be sold to domestic refineries for domestic consumption. The policy, known as the Domestic Market Obligation, also requires companies to sell the crude oil to domestic refineries at a heavily discounted rate, providing a *de facto* subsidy to domestic refiners. The criminalization of a couple contract disputes has also added further to the uncertainty of the market.

In the mining sector, Indonesia's 2009 Mining Law created a system for granting mining concessions based on licenses, although some companies still operate on previously existing contracts of work. The law and its implementing regulations impose onerous requirements on companies doing business in the mining sector, including local content requirements, domestic sale requirements, and a requirement to process raw materials in Indonesia prior to export. Because the mining licenses are subject to future regulatory requirements, permitting, and tax changes, they provide significantly less certainty than the contract of work system. Moreover, companies that obtain mining licenses must divest 51 percent of their holdings over a ten-year period. The Indonesian government is given the right to participate in the divestment and buy shares before others, including Indonesian regional governments, state owned enterprises, and then private Indonesian companies, in that order. The United States will continue to press Indonesia on these issues.

In the power generation sector, Ministry of Industry 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. In July 2016, MEMR issued Regulation 19/2016 on Indonesia's state-owned company PLN's purchases of solar power-generated electricity. This regulation replaced the previous 17/2013, which had been struck down by the Supreme Court. Regulation 19/2016 prioritizes the use of domestic goods and services and requires a minimum standard of local content for solar (photovoltaic) power plant development, in accordance with Indonesia's existing regulations under the Ministry of Industry.

Telecommunications Services & Equipment

Wireless Devices Import Licensing

Indonesia has issued a number of measures that make it more difficult to import cellular and Wi-Fi-equipped products. In late 2012, Indonesia issued MOT Regulation 82, last amended by MOT Regulation 41/2016, which requires an importer of cellular devices, handheld computers, and tablets to become a "registered importer," and then seek "import approval" for different products. To become a registered importer under MOT 41/2016, companies must confirm that they are working with at least three distributors and obtain a recommendation from the Ministry of Industry showing evidence of contributions to the development of the domestic device industry or cooperation with domestic manufacturing, design, or research firms. Companies seeking to become registered importers of 4G LTE devices may only apply under a so-called "producers license" (API-P), which is generally held by importers of unfinished goods intended for use in

the manufacturing process, threatening to limit the ability of foreign producers to sell 4G devices in Indonesia. (*See Import Licensing Requirements for further discussion of API-P requirements.*)

MOT 41/2016 also requires companies applying for "import approval" to submit product identification numbers, an import certification from the Ministry of Industry, and a certificate from the Ministry of Communication and Information Technology. Companies are unable to provide identification numbers months in advance and often need to apply for this license on a per-shipment basis. However, MOT 41/2016 removed requirements for Indonesian-language labels, a one-year import plan, and the obligation to establish a manufacturing facility within three years.

Importers of any type of cellular phones, handheld computers, and tablets are also subject to Ministry of Industry regulation 68/2016, which requires importers to obtain an Industry Ministry recommendation to establish themselves as registered importers of such devices. A recommendation is only available for local manufacturers, importers in a joint venture with a local manufacturer, or an importer of "specialized items." Taken together, Indonesia's licensing practices are designed to encourage the development of local industry through the imposition of significant barriers on the importation of cellphones, handheld devices, and other electronic devices.

Local Content Requirements

In 2015, MCIT issued Regulation 27/2015, which required all 4G LTE enabled devices to contain 30-percent local content, and all 4G LTE base stations to contain 40-percent local content by January 2017. The Ministry of Industry issued regulation 65/2016 in July 2016, which sets forth new formulas for the calculation of local content, including manufacturing value, application software, and approved plans for investment in Indonesia. The regulation mandates that foreign companies utilize the formulation to comply with the local content requirements. In addition to the restrictive nature of the regulation, implementation of the requirements has been opaque and inconsistent.

For other parts of the spectrum, MCIT Regulations 07/2009 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 within five years. Indonesian telecommunication operators are also required, pursuant to Decree 41/2009, to expend a minimum of 50 percent of their total capital expenditures for network development on locally sourced components or services.

The United States continues to press Indonesia to remove requirements to use a certain amount of local content or to invest as a condition for access to the market.

Wireless Equipment Certification

The MCIT published Postel Regulation 5 in 2013, which imposes strict testing requirements on cellular and Wi-Fi equipped products, as well as on notebooks and personal computers. This measure requires that imported cell phones, tablets, handhelds, laptops, and other equipment with Bluetooth or wireless LAN features be tested at the device level rather than the more common modular level. On December 29, 2016, the MCIT released Ministerial Regulation 23/2016, which reformed the testing process for certain 4G wireless devices. Under the new regulation, devices may be licensed for sale by MCIT on the basis of a "Declaration of Conformity" filed by the device importer or manufacturer stating that testing was carried out in a laboratory recognized international testing facility or one recognized by MCIT.

BARRIERS TO DIGITAL TRADE

Data Localization

Data localization requirements remain a serious concern in Indonesia. Article 17 of Government Regulation (GR) 82/2012 requires providers of a "public service" to establish local data centers and disaster recovery centers in Indonesia. Indonesian officials have indicated that "public service" means any activity that provides a service by a public service provider, consistent with the definition in the implementing regulations to the 2009 Public Service Law. This broad definition creates uncertainty for service suppliers across sectors.

Pursuant to GR 82/2012, the MCIT issued Regulation 20/2016 on personal data protection that requires electronic system providers to process protected private data only in data centers and disaster recovery centers located in Indonesia. Bank Indonesia and the Financial Services Authority are also putting forward regulations for certain financial services sectors that require data centers and disaster recovery centers to be located in Indonesia. Indonesia may pursue national legislation and additional regulations on personal data protection in 2017, which could further define or add requirements for data localization. U.S. firms have expressed concern that a local data center requirement could prevent service suppliers from leveraging economies of scale from existing data centers and inhibit cross-border data flows. Furthermore, while some larger companies may be able to absorb data localization-related costs to provide their products and services in Indonesia, such requirements could potentially impede access for small- and medium-sized businesses. The United States continues to stress that such requirements are not necessary for financial regulators to have necessary access to data for supervisory purposes, nor are such requirements needed to secure private information.

Internet Services

In 2016, Indonesia proposed two new packages of regulations with the potential to hinder foreign providers of Internet services from participating in the Indonesian market. In November 2016, the Coordinating Ministry for Economic Affairs announced the Indonesian electronic commerce roadmap as part of the government's 14th Economic Reform Package. The roadmap calls for 31 regulatory provisions that will affect financing, taxation, consumer protection, education and human resources, logistics, communication infrastructure, and cyber security. The regulation will also coordinate regulatory efforts. The Indonesian government is in the process of finalizing a presidential regulation that will form the legal basis for the roadmap. In March 2016, MCIT released a circular letter "Concerning the Provision of Application Services and/or Content over the Internet (OTT)", which proposes a range of new regulations on Internet services. Both of these packages of regulations threaten to inhibit foreign firms' participation in Indonesian electronic commerce, create trade barriers, and harm Indonesian consumers. The packages include proposed requirements to establish a local business entity to do business with Indonesian citizens, to use a national payment gateway, and to use local IP numbers and store data within Indonesia. The requirements, as proposed, could present compliance problems for foreign service providers and raise competition concerns and trade barriers.

In May 2016, the United States provided comments on the draft OTT regulations to Indonesia's MCIT. The comments set forth U.S concerns that the scope and effect of these proposed regulations is too broad and could destabilize the fundamental architecture of Internet-delivered services and undermine the development of Indonesia's digital ecosystem. The United States requested that Indonesia delay issuing this regulation until these issues could be addressed, and Indonesia has done so.

OTHER BARRIERS

Although the Indonesian government and the Corruption Eradication Commission continue to investigate and prosecute high-profile corruption cases, many stakeholders consider corruption a significant barrier to doing business in Indonesia. Other barriers to trade and investment include poor coordination within the Indonesian government, the slow pace of land acquisition for infrastructure development projects, poor enforcement of contracts, an uncertain regulatory and legal framework, restrictive labor laws, arbitrary tax assessments, and lack of transparency in the development of laws and regulations. The ongoing process of transferring investment-related decisions from central to provincial and district governments, while helping reduce some bureaucratic burdens, has led to inconsistencies between national and regional or local laws. U.S. companies seeking legal relief in contract disputes have reported that they are often forced to litigate spurious counterclaims and have raised growing concern about the criminalization of contractual disputes.

ISRAEL

TRADE SUMMARY

The U.S. goods trade deficit with Israel was $9.0 billion in 2016, a 17.6 percent decrease ($1.9 billion) over 2015. U.S. goods exports to Israel were $13.2 billion, down 2.5 percent ($342 million) from the previous year. Corresponding U.S. imports from Israel were $22.2 billion, down 9.3 percent. Israel was the United States' 21st largest goods export market in 2016.

U.S. exports of services to Israel were an estimated $4.8 billion in 2015 (latest data available) and U.S. imports were $6.1 billion. Sales of services in Israel by majority U.S.-owned affiliates were $4.4 billion in 2014 (latest data available), while sales of services in the United States by majority Israel-owned firms were $2.0 billion.

U.S. foreign direct investment in Israel (stock) was $10.3 billion in 2015 (latest data available), a 6.1 percent increase from 2014. U.S. direct investment in Israel is led by manufacturing, information, and professional, scientific, and technical services.

The United States-Israel Free Trade Agreement

Under the United States-Israel Free Trade Agreement (FTA), signed in 1985, the United States and Israel agreed to implement phased tariff reductions culminating in the complete elimination of duties on all products by January 1, 1995. While tariffs on non-agricultural goods traded between the United States and Israel have been eliminated as agreed, tariff and nontariff barriers continue to affect a significant number of key U.S. agricultural product exports.

To address the differing views between the two countries over how the FTA applies to trade in agricultural products, in 1996 the United States and Israel signed an Agreement on Trade in Agricultural Products (ATAP), which established a program of gradual and steady market access liberalization for food and agricultural products effective through December 31, 2001. Negotiation and implementation of a successor ATAP was successfully completed in 2004. Originally scheduled to last through December 31, 2008, the 2004 ATAP granted improved access for select U.S. agricultural products. The second ATAP has been extended nine times, most recently through December 31, 2017, to allow time for the negotiation of a successor agreement. The current ATAP provides U.S. food and agricultural products access to the Israeli market under one of three different categories: unlimited duty-free access, duty-free tariff-rate quotas (TRQs), or preferential tariffs, which are set at least 10 percent below Israel’s most-favored nation rates.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Israeli regulatory bodies, such as the Ministry of Economy (Standards Institute of Israel), Ministry of Health (Food Control Services), and the Ministry of Agriculture (Veterinary Services and the Plant Protection Service), often adopt standards developed by European standards organizations rather than international standards, which results in the exclusion of certain U.S. products from the Israeli market and adds costs to certain U.S. exports to Israel.

Sanitary and Phytosanitary Barriers

In February 2016, the United States and Israel concluded a protocol allowing U.S. beef and beef products access to the Israeli market. In November 2016, a commercial shipment of U.S. beef reached the Israeli market for the first time in over a decade. At present, however, only one U.S. slaughterhouse has received the necessary approvals to export U.S. kosher beef to Israel. Other U.S. slaughterhouses have expressed interest in the Israeli market, but will need to obtain kosher certification from Israeli rabbinical authorities. Israel does not currently recognize U.S.-based kosher certifying bodies for meat products or wine.

IMPORT POLICIES

Agriculture

U.S. agricultural exports that do not enter duty free under WTO, FTA, or ATAP provisions face barriers, such as high tariffs and a complicated TRQ system. These products include higher-value goods that are sensitive for the Israeli agricultural sector, such as dairy products, fresh fruits, fresh vegetables, almonds, wine, and some processed foods. According to industry estimates, the elimination of levies on processed foods, including a broad range of dairy products, could result in increased sales by U.S. companies in the range of $30 million to $55 million per year. The removal of quotas and tariffs on dried fruits could result in an increase in sales by U.S. exporters of up to $12 million per year. U.S. producers of apples, pears, cherries, and stone fruits estimate that the elimination of Israeli trade barriers would lead to an increase of up to $15 million per year in export sales of these products. Stakeholders estimate that full free trade in agriculture could also result in U.S. cheese exports to Israel increasing significantly. Similarly, stakeholders estimate that removing tariffs on food product inputs used by U.S.-based restaurant chains operating in Israel could save these chains millions of dollars annually and lead to their expansion in Israel.

Customs Procedures

Some U.S. exporters have reported difficulty in claiming preferences for U.S. goods entering Israel under the FTA. Bilateral discussions are underway to eliminate customs forms that are duplicative or otherwise increase costs for U.S. exporters.

GOVERNMENT PROCUREMENT

Israel has offset requirements that it implements through international cooperation (IC) agreements. Under IC agreements, foreign companies that have been awarded government contracts are required to offset foreign goods or services provided under the contracts by agreeing to localization commitments that require one of the following: investment in local industry; co-development or co-production with local companies; subcontracting to local companies; or purchasing from Israeli industry. Israel is a party to the WTO Agreement on Government Procurement (GPA). Since January 1, 2009, the IC offset percentage for procurements covered by Israel's GPA obligations has been 20 percent of the value of the contract; for procurements excluded from GPA coverage, the offset is 35 percent; and for military procurements the offset is 50 percent. Under the revised GPA, which entered into force in 2014, Israel committed to phase out its offsets on procurement covered by the agreement.

U.S. suppliers have indicated that they believe the size and nature of their offset proposals can be a decisive factor in close tender competitions, despite an Israeli court decision that prohibits the consideration of offset proposals in determining the award of a contract. Small and medium-sized U.S. exporters often are reluctant to commit to make purchases in Israel in order to comply with the IC agreements, and, as a result, their participation in Israeli tenders is limited.

In addition, the inclusion of unlimited liability clauses in many government tenders discourages U.S. firms from competing. When faced with the possibility of significant legal costs for unforeseeable problems resulting from a government contract, most U.S. firms are forced to insure against the risk, which raises their overall bid price and reduces their competitiveness.

The United States-Israel Reciprocal Defense Procurement Memorandum of Understanding (MOU), extended in 1997, is intended to facilitate defense cooperation in part by allowing companies from both countries to compete on defense procurements in both countries on as equal a basis as possible, consistent with national laws and regulations. The MOU, which has benefited Israeli defense industries by opening up the U.S. procurement market to Israeli products, has not significantly opened the market for U.S. suppliers interested in competing for Ministry of Defense procurements funded by Israel.

The United States and Israel signed a new security assistance MOU in September 2016 to succeed the current MOU, which expires at the end of fiscal year 2018 (September 30, 2018). The new MOU has a total value of $38 billion ($3.8 billion per year) and will be in place from fiscal year 2019 through fiscal year 2028. This new MOU, by joint decision, will discontinue both off-shore procurement (the arrangement under the current security assistance MOU through which Israel has been permitted to spend 26.3 percent of its annual security assistance package within Israel on non-U.S. products) and Israel's use of security assistance funds to purchase fuel. Together, these changes mean that Israel will spend up to$1.2 billion more per year on advanced military capabilities that only the United States can provide, opening additional opportunities for U.S. producers.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The United States removed Israel from the Special 301 Report in 2014. The United States remains concerned with deficiencies in Israel's protections for copyrighted works. The United States also remains concerned about Israel's interpretation of its commitments for protection of confidential test and other data submitted to obtain marketing approval for biologic pharmaceuticals.

SERVICES BARRIERS

Telecommunications

Israeli law largely prohibits broadcast TV channels and radio stations, both public and private, from carrying advertisements. Only two selected private Israeli broadcast TV channels and a few private radio stations are allowed to do so. A few additional broadcast TV channels have received broadcast licenses and advertising privileges in exchange for local investment commitments. Foreign channels that are distributed through the country's cable and satellite networks are permitted to carry advertising directed at a foreign audience.

BARRIERS TO DIGITAL TRADE

Israel has two laws that govern consumer contracts: the standard form contract law and the consumer protection law. Electronic signatures, however, are regulated by Israel's electronic signature law. Under this law, the consumer may decline to pay for any merchandise for which he or she did not physically sign. This is a significant disincentive to the establishment of online consumer electronic commerce businesses.

JAPAN

TRADE SUMMARY

The U.S. goods trade deficit with Japan was $68.9 billion in 2016, a 0.0 percent increase ($16 million) over 2015. U.S. goods exports to Japan were $63.3 billion, up 1.3 percent ($822 million) from the previous year. Corresponding U.S. imports from Japan were $132.2 billion, up 0.6 percent. Japan was the United States' 4th largest goods export market in 2016.

U.S. exports of services to Japan were an estimated $44.3 billion in 2015 (latest data available) and U.S. imports were $29.4 billion. Sales of services in Japan by majority U.S.-owned affiliates were $70.6 billion in 2014 (latest data available), while sales of services in the United States by majority Japan-owned firms were $146.7 billion.

U.S. foreign direct investment (FDI) in Japan (stock) was $108.5 billion in 2015 (latest data available), a 8.5 percent increase from 2014. U.S. direct investment in Japan is led by finance/insurance, manufacturing, and wholesale trade.

Overview

The U.S. Government continues to engage closely with the Japanese government to urge it to remove a broad range of barriers to U.S. exports, including barriers at the border as well as barriers to entering and expanding the presence of U.S. products and services in the Japanese market.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Country of Origin Labeling Requirements for Ingredients

The Ministry of Agriculture, Forestry and Fisheries (MAFF) and the Japanese Consumer Affairs Agency (CAA) have drafted but not yet implemented country of origin labeling (COOL) requirements to identify the main ingredient for processed foods that are manufactured in Japan. For example, a Japanese manufacturer of soy sauce would have to provide a label identifying the country of origin for the soybeans used in its production. COOL requirements were first instituted in 2000 and have since expanded to include 22 food groups and four food items. While the proposal would not apply to imported manufactured foodstuffs, the expanded requirements have the potential to adversely affect U.S. exports of food ingredients because the domestic products may be produced with imported ingredients; thus, Japanese producers may avoid using ingredients from multiple origins as a way to minimize labeling burdens. Moreover, the requirement is very complicated; for example, the main ingredient in the product requires the country or countries of origin to be listed, and countries must be listed in rank order based on the percent volume of the ingredient sourced from each country—this complexity and the associated financial burden for compliance may lead producers to forego using imported ingredients. Accordingly, the development of the expanded labeling system requires continued monitoring and evaluation to ensure any new COOL requirements do not unnecessarily disrupt trade.

Sanitary and Phytosanitary Barriers

Food Safety

Beef and Beef Products

In December 2003, Japan banned U.S. beef and beef products following the detection of an animal positive for bovine spongiform encephalopathy (BSE) in the United States. Following steps taken by Japan in July 2006, February 2013, and January 2015 that expanded U.S. access to the Japanese market for beef and beef products, the United States is currently eligible to export all beef and beef products from cattle less than 30 months of age slaughtered in the United States. The United States continues to urge Japan to fully open its market to U.S. beef and beef products from animals of all ages, consistent with recognition by the World Organization for Animal Health of the United States as a country with negligible risk for BSE.

Food Additives

Japan's regulation of food additives has restricted imports of several U.S. food products, especially processed foods. Many additives that are widely used in the United States and other markets are not permitted in Japan. In addition, U.S. manufacturers have raised concerns about the length of Japan's approval process for food additives used in processing that are no longer present in the final food product, such as certain solvents. Based on the Japanese government's assessment that the greatest hurdle to regulatory approval of food additives is the preparation of the application, in July 2014 it created the Food Additive Designation Consultation Center (FADCC) to assist applicants. The FADCC's services are free of charge, but communication with the center must be conducted in Japanese.

In 2002, Japan created a list of 46 food additives that would be subject to an expedited approval process. All have been approved with the exception of four, which the United States understands Japan is currently reviewing. The United States has urged Japan to complete the reviews.

Pre- and Post-Harvest Fungicides

Japan classifies fungicides that are applied pre-harvest as pesticides, and fungicides that are applied post-harvest as food additives. Japan's requirement that post-harvest fungicides be classified as food additives does not have a significant impact on domestic producers, as Japanese farmers do not generally apply fungicides after harvest. However, it affects U.S. producers in various ways.

Japan has historically required a separate risk assessment and application process for pre-harvest and post-harvest use of a fungicide. Streamlining the review process for agricultural chemicals, including fungicides, applied both as pesticides (pre-harvest application) and as food additives (post-harvest application) would reduce the length and complexity of the approval process. The United States also remains concerned that Japan requires products that are treated with a post-harvest fungicide to be labeled at the point of sale with a statement indicating that they have been so treated and with a list of the chemicals used, which may dampen demand for the products. Japan also requires that shipping cartons be labeled with each chemical applied – a requirement that is burdensome for shippers who use a rotation of fungicides. The United States will continue to work with the Japanese government on these issues.

Maximum Residue Limits

Japan has historically maintained burdensome application requirements for pesticide maximum residue level (MRL) approvals. The lengthy review process for registration of new pesticides and establishment of

MRLs can delay the ability of U.S. growers to use newer and safer crop protection products on crops to be shipped to Japan.

In addition to concerns regarding the timelines for the establishment of pesticide MRLs, the United States remains concerned that Japan's procedures for enforcement of MRLs result in uncertainty even for shippers who have never violated Japan's standards. For example, after a single pesticide MRL violation on a particular product from a country, Japan imposes enhanced surveillance of all imports of that product from that particular exporting country. During the enhanced surveillance period if a second violation is found, Japan will detain and test all shipments of that product from that exporting country, holding shipments until residue testing proves compliance. While there has been some indication that Japan may offer some flexibility in its handling of specific MRL violations, the United States continues to work with the Japanese government and U.S. producers to address ongoing concerns.

Plant Health

Chipping Potatoes

Chipping potatoes from 15 U.S. states are eligible for importation. Shipments may be made during a six-month window (February to July) and may only be sent to two chipping facilities in Japan. In March 2015, Japan approved overland transportation of chipping potatoes to the approved chipping facility that lacks a port capable of receiving transnational cargo ships. The United States will continue to monitor developments ahead of the 2017 shipping season.

IMPORT POLICIES

Japan is the fourth-largest single-country market for U.S. agricultural products, with U.S. exports valued at over $11.5 billion in 2016, despite the existence of substantial market access barriers.

Rice Import System

Japan's highly regulated and nontransparent importation and distribution system for imported rice limits the ability of U.S. exporters to meaningfully access Japan's consumers. Japan has established a tariff-rate quota (TRQ) of 682,200 metric tons (milled basis) for imported rice. The Grain Trade and Operations Division of MAFF's Crop Production Bureau manages the TRQ through periodic ordinary minimum access (OMA) tenders and through simultaneous-buy-sell (SBS) tenders. Only a small amount of U.S. rice imported into Japan reaches Japanese consumers identified as U.S. rice. Imports of U.S. rice under the OMA tenders are destined almost exclusively for government stocks. 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 2016 were valued at $236 million, totaling 246,740 metric tons. Although U.S. rice exports make up only about four percent of all rice consumed in Japan, industry research shows that Japanese consumers would buy high-quality U.S. rice if it were more readily available. In October 2016, Japan temporarily suspended the SBS component of the rice tendering system as it conducted an investigation into alleged price manipulation by importers and wholesalers. Following the conclusion of the investigation, Japan resumed SBS tenders in December with a new clause in the tender contract prohibiting importers and wholesalers from directly exchanging money. The United States continues to monitor Japan's rice import system in light of its WTO import commitments.

Wheat Import System

Japan requires wheat to be imported through the Grain Trade and Operations Division of MAFF's Crop Production Bureau, which then resells the wheat to Japanese flour millers at prices substantially above import prices. These high prices limit wheat consumption by increasing the cost of wheat-based foods in Japan. The United States continues to carefully monitor the operation of Japan's state trading entity for wheat and its potential to distort trade.

Pork Import Regime

Japan is the largest export market for U.S. pork and pork products on a value basis, with shipments valued at nearly $1.6 billion (387,713 metric tons) in 2016, accounting for 28 percent of the value of total U.S. shipments to all destinations. The import tariff for chilled and frozen pork is established by a gate price system that applies a 4.3 percent *ad valorem* tariff when the import value is greater than or equal to the administratively established reference price. When the value of imports falls below the reference price, the importer pays an additional specific duty equal to the difference between the import value and the reference price.

Beef Safeguard

In 2016, Japan remained the largest export market for U.S. beef and beef products on a value basis. Shipments to Japan were valued at $1.5 billion, totaling 258,651 metric tons. In 1995, as part of the results of the Uruguay Round, Japan was allowed to institute a beef special safeguard (SSG) to protect domestic producers in the event of an import surge. The SSG is triggered when the import volume of beef increases by more than 17 percent from the level of the previous Japanese fiscal year on a cumulative quarterly basis. When triggered, beef tariffs rise from 38.5 percent to 50 percent for the rest of the Japanese fiscal year. Although U.S. exports have increased significantly since further market opening at the start of 2013, the safeguard has not been triggered.

Fish and Seafood

Total U.S. fish and seafood exports to Japan in 2016 were valued at $668 million. However, tariffs on several fish and seafood products remain an impediment to U.S. exports and also pose an impediment for importers who rely on U.S. raw product for their processing operations. Other market access issues include Japan's import quotas on Alaska pollock, cod, Pacific whiting, mackerel, sardines, squid, and Pacific herring, as well as on products such as pollock roe, cod roe, and surimi. Although Japan has reduced tariffs, increased import quota volumes, and eased the administrative burdens associated with those quotas, the import quotas continue to present barriers to U.S. exports. The United States has urged Japan to take further action to eliminate tariffs on, and remove nontariff obstacles to, U.S. exports of fish and seafood.

High Tariffs on Citrus, Dairy, Processed Food, and Other Agricultural Products

Japan maintains high tariffs that hinder U.S. exports of agricultural and other food products, including grains, sugar, citrus, wine, dairy, and a variety of processed foods. These high tariffs generally apply to food products that Japan produces domestically. Examples of double digit import tariffs include tariffs of 32 percent on oranges imported during the period from December to May, 40 percent on processed cheese, 29.8 percent on natural cheese, 22.4 percent on shredded frozen mozzarella cheese, 20 percent on dehydrated potato flakes, 17 percent on apples, 10.5 percent on frozen sweet corn, 20.4 percent on cookies, up to 17 percent on table grapes imported during the period from March to October, and 15 percent to 57.7 percent on wine.

Wood Products and Building Materials

The United States remains concerned that Japan maintains numerous localization barriers at the national, prefectural, and municipal levels in the form of domestic content subsidy programs that may favor domestic wood products. The Plywood and Lumber Stepped-Up Production Fund was established as part of a 2015 MAFF supplemental budget, making approximately $254 million available to support up to 50 percent of the expense of projects to enhance forestry production and logistics systems. The United States is currently monitoring the disbursement of these funds.

Leather/Footwear

Japan continues to apply a leather footwear tariff-rate quota (TRQ) that substantially limits imports into Japan's market, negatively impacting market access for U.S.-made and U.S.-branded footwear. Japan also applies a TRQ on some raw hides and skins. The United States continues to seek improved market access for U.S. exports in this sector.

Customs Issues

The United States continues to urge Japan to improve the speed of customs processing and to reduce the complexity of customs and border procedures. The United States has encouraged Japan to raise its *de minimis* threshold for low-value imports from 10,000 yen (approximately $87), which would reduce documentation requirements and help U.S. shipments move more quickly across borders. Expanding Japan's advance rulings system to address more customs issues would also improve transparency and predictability for U.S. exporters.

SERVICES BARRIERS

Japan Post

The government of Japan has committed to privatize the non-postal elements of Japan Post Holdings (JP Holdings). The sale of a first tranche of shares in JP Holdings and two financial subsidiaries, Japan Post Bank (JP Bank) and Japan Post Insurance (JP Insurance), in an initial public offering (IPO) in November 2015 began the final phase of the privatization process. The United States continues to monitor carefully the Japanese government's postal reform efforts to ensure that all necessary measures are taken to achieve a level playing field between the Japan Post companies and private sector participants in Japan's banking, insurance, and express delivery markets.

In the area of express delivery services, the United States remains concerned by unequal conditions of competition between Japan Post and international express delivery suppliers. The United States continues to urge Japan to take action to enhance fair competition by leveling the playing field, including by equalizing customs procedures and requirements and prohibiting the subsidization of Japan Post's international express service with revenue from non-competitive (monopoly) postal services.

The United States also continues to urge the Japanese government to ensure that the postal reform process, including implementation of revisions to the Postal Privatization Law, is fully transparent, including by providing full and meaningful use of public comment procedures and opportunities for interested parties to express views to government officials and advisory bodies before decisions are made. Timely and accurate disclosure of financial statements and related notes is a key element in the postal reform process, as is the continued public release of meeting agendas, meeting minutes, and other relevant documents.

The November 2015 IPO sold 11 percent of available shares in three of four Japan Post entities. The United States will continue to monitor developments and urge that the IPO process proceed in a fully transparent manner.

Insurance

Japan's private insurance market is the second largest in the world, after that of the United States, with direct net premiums of 41,921 billion yen (approximately $364 billion). In addition to the offerings of Japanese and foreign private insurers, insurance cooperatives (kyōsai) and JP Insurance, a majority government-owned entity of JP Holdings, also provide substantial amounts of insurance to consumers. Given the size and importance of Japan's private insurance market, the United States continues to place a high priority on ensuring that the Japanese government's regulatory framework fosters an open and competitive insurance market.

Postal Insurance

Japan's postal life insurance system retains a substantial share of Japan's insurance market. The United States has long-standing concerns about the postal insurance company's negative impact on competition in Japan's insurance market and continues to monitor closely the implementation of reforms.

The United States continues to urge the Japanese government to take steps to address a range of level playing field concerns regarding competition in the insurance sector, including differences in supervisory treatment between JP Group's financial institutions and private sector companies, access to the postal network for private suppliers (including the process of selection of financial products), and cross-subsidization among the JP businesses and related entities. In regard to private suppliers' access to the postal network, there has been significant progress since 2013.

The United States continues to urge the Japanese government not to allow the JP Group to expand the scope of operations for its financial services companies before a level playing field is established. Restraints on the scope of JP Group operations – including the cap on the amount of insurance coverage and limits on the types of financial activities and products JP entities can offer – have helped to limit the extent to which the uneven playing field harms private insurance companies. In March 2016, the Japanese government revised the ministerial ordinance to raise the per-customer deposit cap of JP Bank from 10 million yen to 13 million yen, and to raise the per-policyholder insurance coverage cap of JP Insurance from 13 million yen to 20 million yen effective April 1. This was the first time in 25 years (since 1991) that the government increased the banking deposit cap for JP Bank, and the first increase in the insurance coverage cap for JP Insurance in 30 years (since 1986); further increases have been suggested by the ruling coalition, although no official decision has been made. 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.

The U.S. Government welcomed the statement by Deputy Prime Minister Taro Aso on April 12, 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, which Japan expects will take at least several years to achieve. In addition, before final decisions are made, it is vital that Japan's process for approving new products be transparent and open to all parties, including active solicitation and consideration of private sector views, along with careful analysis and full consideration of actual competitive conditions in the market.

Kyōsai

Insurance businesses run by cooperatives (kyōsai) hold a substantial share of insurance business in Japan. Some kyōsai are regulated by their respective agencies of jurisdiction (*e.g.*, the Ministry of Agriculture, Forestry, and Fisheries (MAFF) or the Ministry of Health, Labor and Welfare (MHLW)) instead of by the Financial Services Agency (FSA), which regulates all private sector insurance and financial services companies. These separate regulatory schemes create a nontransparent regulatory environment, and afford kyōsai critical business, regulatory, and other advantages over their private sector competitors. The United States remains concerned about limited FSA supervisory authority over kyōsai.

Bank Sales of Insurance

Japanese consumers increasingly turn to banks to meet their insurance needs. As a result, banks have become an important distribution channel for the sale of insurance products. In December 2007, the Japanese government fully liberalized the range of insurance products eligible for sale through banks. In July 2011, the Japanese government carried out a follow-up review of the bank sales channel, but there were concerns about the transparency and results of that review. Limits remain on the sales of some products, there are different rules for the treatment of customer data in some cases, and sales restrictions on insurance are applied to certain categories of customers (for example, customers who work for small or medium sized corporate borrowers). The United States continues to call on the Japanese government to conduct in the near term a fact-based and transparent review of the bank sales channel that includes meaningful opportunities for input from interested stakeholders and that takes into account global best practices to further enhance policyholder protection and improve consumer choice.

Policyholder Protection Corporations

The Life and Non-life Insurance Policyholder Protection Corporations (PPCs) are mandatory policyholder protection systems created to provide capital and management support to insolvent insurers. In April 2014, the annual Life Insurance PPC contribution amount for the total life insurance industry was lowered from 40 billion yen to 33 billion yen. In December 2016, the Japanese government extended the existing system of government pre-funding of the Life Insurance PPC for an additional five years, until March 2022. The United States continues to urge Japan to consider more fundamental changes in the PPC systems, including through full and meaningful deliberations with interested parties, before renewing these measures again.

Other Financial Services

While improvements have been made in Japan's financial services sector, such as the FSA's continued commitment to its Better Markets Initiative, the United States continues to urge reforms in the areas of defined contribution pensions, sustainable lending practices, and sharing of customer information. The FSA continues to enhance its engagement and outreach with both domestic and foreign financial firms operating in Japan, but more improvement in this sector is needed, particularly with respect to transparent practices such as enhancing the effectiveness of the no-action letter and providing written interpretations of Japan's financial laws.

Telecommunications

The United States continues to focus on ensuring fair market opportunities for emerging technologies and business models in Japan, and ensuring a regulatory framework appropriate for addressing converged and Internet-enabled services, and competitive safeguards on dominant carriers. The United States also continues to urge Japan to improve transparency in rulemaking and ensure the impartiality of its regulatory decision-making.

Dominant Carrier Regulation

The Nippon Telegraph and Telephone Corporation (NTT) continues to dominate Japan's fixed-line market through its control over almost all "last-mile" connections. Although NTT's market share has been declining for the last five years and declined by 1.2 percentage points from the previous year, it still holds a 68.9 percent share (as of the end of June 2016) in the fiber-to-the-home market. NTT's authority to bundle its fixed-line services with mobile phone operator NTT Docomo's mobile service is also of concern, as it appears to undermine the rationale for structurally separating the companies. NTT began wholesaling its fiber-optic fixed-line services to other companies, including NTT Docomo, in February 2015, claiming that it does not violate the Telecommunications Business Act if it treats all customers equally. However, mobile carriers and CATV companies have expressed concerns that this could result in the NTT group once again establishing a dominant market share in specific market segments. The United States will continue to monitor developments.

New Mobile Wireless Licenses

Unlike most advanced economies, Japan does not use auctions to allocate spectrum, and the factors the Ministry of Internal Affairs and Communication (MIC) uses to determine how to evaluate applications have raised questions related to the fairness of the allocation process. In March 2012, Softbank was awarded 900MHz frequencies, and in June 2012, NTT Docomo, telecommunications operator KDDI, and eAccess (acquired by Softbank in January 2013) were awarded 700MHz spectrum. While Softbank launched its 900MHz networks in 2013, the 700MHz service has not yet launched. In July 2013, MIC awarded additional frequencies in the 2,625 MHz to 2,645 MHz bands to UQ Communications, a subsidiary of KDDI, to provide advanced Broadband Wireless Access systems. Although the Japanese government has previously considered introducing legislation that allows for auctions as an option to assign commercial spectrum, it remains unclear whether such legislation will be introduced.

Information Technologies (IT)

Health IT

The United States has urged Japan to improve the quality and efficiency of health care by rapidly implementing health IT that is based on international standards, promotes technology neutrality and interoperability, and allows patients greater access to their own health records. Engagement between United States and Japanese government health IT experts continues to address health IT issues of mutual interest.

Privacy

Separate and inconsistent privacy guidelines among Japanese ministries have historically created an unnecessarily burdensome regulatory environment with regard to the storage and general treatment of personally identifiable information in Japan. The United States has urged Japan to introduce greater uniformity in the enforcement of the Privacy Act across the central government through policy standardization and consistent implementation of guidelines. In September 2015, the Japanese Diet passed an amendment to the Act on Protection of Personal Information (APPI), seeking to "enhance the use of personal data for business purposes while protecting privacy." The amendment creates new rules for the protection of personal data including the transfer of personal data over the Internet and establishes a third party authority similar to the EU's Privacy Commissioner as regulator. Based on the amended APPI, the new Personal Information Protection Commission (PPC) released draft orders and draft guidelines for public comment in August and October 2016, respectively. While the process of drafting the new law and associated implementing guidelines incorporated several useful suggestions from stakeholders, problematic

elements, such as a mandate for the PPC to evaluate countries as acceptable destinations for information, remained intact, and details on how the law will be implemented will bear careful monitoring. Of particular interest are details on mechanisms companies can avail themselves of, including participation in the APEC Cross-Border privacy Rules system, to demonstrate compliance with Japanese requirements when transferring data outside of Japan.

Legal Services

Japan imposes cumbersome and time-consuming procedures for the registration of foreign lawyers to provide international legal services in Japan, and prohibits foreign lawyers from establishing branch offices in Japan (except for one type of firm, which is first required to corporatize locally). The United States continues to urge Japan to further liberalize the legal services market. For example, the United States urges Japan to eliminate the requirement that two years of post-admission practice of home country law take place outside Japan; ensure that legal or bar association rules do not impede Japanese lawyers from becoming members of international legal partnerships; and significantly simplify and accelerate the registration process for new foreign legal consultants.

Educational Services

The United States continues to urge the Japanese government to work with foreign universities to find a nationwide solution that grants tax benefits to foreign universities operating in Japan comparable to those provided to Japanese schools and allows foreign universities to continue providing their unique contributions to Japan's educational environment.

In its Economic Revitalization Strategy first issued in June 2013, the government of Japan committed to promoting an educational system that more effectively provides the Japanese people with the skills to compete in the global economy. Consistent with that commitment, in 2014 Japanese authorities actively engaged with American universities operating satellite campuses or extension facilities in Japan to seek a way forward on taxation and other issues. American universities have reported success in being recognized as educational institutions eligible for issuance of visas to foreign students to study at their campuses in Japan. However, despite extensive consultations with authorities, no American university has been able to satisfy all the legal requirements to be granted "educational corporation" (gakkō hōjin) status, which would confer the same tax benefits enjoyed by Japanese universities. The requirement that such corporations be "independently administered" (*i.e.*, not subject to direct administration by the parent university in the home country) is a particularly difficult legal hurdle to overcome. Lack of gakkō hōjin status means foreign satellite universities are also excluded from participation in new Japanese government grant programs that promote international exchange and provide financial support for students wishing to study abroad.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Japan generally provides strong intellectual property rights protection and enforcement. The United States continues to urge Japan to improve IPR protection and enforcement in specific areas, however, through bilateral consultations and cooperation, as well as in multilateral and regional fora.

The United States also has urged Japan to continue to reduce piracy rates, including by adopting methods to protect against piracy in the digital environment. Police and prosecutors generally lack *ex officio* authority to prosecute copyright-related IPR crimes on their own initiative, without a complaint from a rights holder. The United States also seeks improvements to Japan's Internet service provider liability law to promote cooperation between rights holders and Internet service providers.

In addition, the United States continues to urge Japan to further strengthen its laws to provide effective criminal and civil remedies against the unauthorized circumvention of technological protection measures used by rights holders to protect their works, as well as effective criminal and civil remedies against the trafficking in tools used to circumvent such technological protection measures. Furthermore, although Japan provides a 70-year term of protection for cinematographic works, it provides only a 50-year term for other works protected by copyright and related rights. The United States continues to urge Japan to extend the term of protection for all subject matter of copyright and related rights in line with emerging international trends. Also, while the United States welcomed clarifications to Japan's Copyright Law in 2010 that made clear that the statutory private use exception does not apply in cases where a downloaded musical work or a motion picture is knowingly obtained from an infringing source, the United States continues to urge the Japanese government to expand this limitation on the private use exception to cover all works protected by copyright and related rights.

In its June 2013 Economic Revitalization Strategy, the Cabinet announced that Japan would undertake revisions to the Patent Act, Design Act, Trademark Act, and Patent Attorney Act in order to promote the creation, protection, and strategic use of intellectual property. Legal revisions in support of the economic revitalization strategy took effect in 2015 and included amending the Trademark Act to grant legal protection to non-traditional trademarks and regional collective trademarks. In addition, in July 2015, Japan revised the Unfair Competition Prevention Act with the goal of strengthening deterrence against the theft of trade secrets. The amendment, which took effect in January 2016, increases fines and other penalties, enables criminal charges for theft without a formal complaint from the rights holder, and expands the scope of punishable activities to include attempted infringements. The amendment also reduces the burden of proof for wrongful use and extends the statute of limitations to 20 years.

The "Act for Protection of Designated Agricultural, Forestry and Fishery Products and Foodstuff" (GI Act) entered into force on June 1, 2015. As of November 15, 2016, 21 geographic indications have been registered, and eight additional applications have been announced on MAFF's website. The 21 geographic indications registered to date all include the geographic place name plus the product name. The United States continues to monitor implementation of the GI Act to ensure consistency with core transparency and due process principles, in particular with respect to the protection of existing trademarks, the safeguarding of the use of generic terms, and the effective operation of objection and cancellation procedures.

The United States continues to work with Japan to address IPR issues through bilateral engagement.

GOVERNMENT PROCUREMENT

Japan is a signatory to the WTO Agreement on Government Procurement (GPA), which obligates Japan to open its government procurement to suppliers from the United States and other GPA members. Japan has also made commitments to the United States under bilateral agreements.

The United States continues to monitor Japan's implementation of these agreements to ensure the greatest possible transparency in tendering processes and opportunity for participation by qualified bidders. The U.S. Government is paying special attention to government procurement associated with high-performance computing; construction projects for the Tokyo 2020 Olympics; major expressway projects; major public buildings; railroad and railroad station projects; urban development and redevelopment projects; planned port facilities expansion projects; major private finance initiative projects; and the projects covered under the 1988 United States-Japan Major Projects Arrangements (MPA, updated in 1991) that have yet to be undertaken or completed.

INVESTMENT BARRIERS

Despite being the world's third largest economy, Japan continues to have the lowest inward FDI as a proportion of total output of any major OECD country. According to OECD statistics, the inward FDI stock at the end of 2015 was only 4.2 percent of GDP in Japan, compared to 35.6 percent on average for all OECD members. Inward foreign merger and acquisition (M&A) activity, which accounts for a large portion of FDI in other OECD countries, also lags in Japan.

While the Japanese government recognizes the importance of FDI to revitalizing the country's economy, its performance in implementing domestic regulatory reforms to encourage a sustained increase in FDI has been uneven. In June 2013, the government of Prime Minister Abe announced its goal of doubling Japan's inward 2012 year-end FDI stock by 2020, and it confirmed this commitment in its revised Japan Revitalization Strategy issued in August 2016. The government is pursuing a range of policies intended to promote this target. Improving prospects for investment in Japan is particularly important given that Japan ranks as having the second-highest rate of return for financial and insurance services FDI among OECD countries (at 11 percent) and the third highest rate of return for FDI overall (at 10 percent), according to the latest OECD statistics.

Prior to the Abe administration, the Japanese government had done little to explicitly encourage inward investment through M&A as a policy priority. The number of annual inbound M&A deals has remained relatively low for an economy the size of Japan, raising questions about the adequacy of the government's measures if its 2020 target is to be achieved. A variety of factors make inbound M&A difficult in Japan, including attitudes toward outside investors, inadequate corporate governance mechanisms that protect entrenched management over the interest of shareholders, cross-shareholdings, aspects of Japan's commercial law regime (*see Commercial Law section*), and a relative lack of financial transparency and disclosure.

ANTICOMPETITIVE PRACTICES

Improving Anti-Monopoly Compliance and Deterrence

Japan's Anti-Monopoly Act (AMA) provides for both administrative and criminal sanctions against cartels and administrative sanctions for non-cartel conduct. Criminal prosecutions, which have the strongest deterrent effect against anticompetitive behavior in other countries, have been few, and penalties against convicted company officials have been weak. The United States has continued to urge Japan to take steps to maximize the effectiveness of enforcement against cartel and bid-rigging violations of the AMA in order to ensure open and competitive markets.

Improving Fairness and Transparency of JFTC Procedures

Japan recently amended the procedures for Japan Fair Trade Commission (JFTC) hearings and appeals from JFTC orders to address concerns as to whether the preexisting system provided sufficient due process protections. The Diet enacted an AMA amendment in 2013, which took effect in April 2015, to allow appeals of JFTC orders directly to the Tokyo District Court. JFTC also adopted in April 2015 the "Regulation on Opinion Hearings Pertaining to Cease-and-Desist Orders and Other Measures," which includes detailed provisions on how parties subject to a cease-and-desist or surcharge payment order may review evidence relied upon by the JFTC and submit evidence and arguments in their defense to a JFTC hearing officer prior to issuance of a final order by the JFTC.

In connection with the amendments, Japan established a cabinet office advisory panel to study additional ways that the JFTC might change its procedures to enhance the transparency and fairness of enforcement

proceedings. In December 2014, the advisory panel issued a report that examined JFTC investigation procedures regarding on-the-spot inspections, depositions, and attorney-client privilege. The panel recommended that the JFTC issue guidelines regarding administrative procedures to enhance the transparency of enforcement proceedings. While the panel recommended that the JFTC clarify its procedures on issues related to on-the-spot inspections (for example, the ability of a firm to make copies of its seized documents), it did not recommend that the JFTC allow the presence of a defense attorney during depositions. On the issue of whether to recognize the right to assert attorney-client privilege (a privilege that is not recognized in Japan) in JFTC investigations, the panel did not ultimately recommend recognition of such a right. The panel recommended that attorney-client privilege in JFTC investigations be considered alongside additional reforms in the future.

In December 2015, in response to the advisory panel recommendations and in an effort to promote the transparency of JFTC investigative procedures, the JFTC published new "Guidelines on Administrative Investigation Procedures under the Antimonopoly Act (Guidelines)." The Guidelines outline JFTC procedures for on-the-spot inspections, treatment of items seized during inspections, and JFTC procedures during depositions. The JFTC plans to review the Guidelines in 2017.

JFTC Independence

The JFTC is an independent administrative agency that is responsible for interpreting and enforcing the AMA. It performs its functions without being directed or supervised by other government ministries. In September 2016, a METI-established research group released a report reviewing AML-related issues in the digital marketplace. The group examined specific business practices and pointed out that certain practices might violate the AMA. The United States will closely monitor matters related to ensuring the JFTC's independence with respect to the interpretation and enforcement of the AMA.

OTHER SECTORAL AND CROSS-SECTORAL BARRIERS

Transparency

Advisory Groups

Advisory councils and other government-commissioned study groups are accorded a significant role in the development of regulations and policies in Japan. However, the process of forming these groups can be opaque, and too often non-members are not uniformly offered meaningful opportunities to provide input into these groups' deliberations. The United States continues to urge Japan to ensure transparency with respect to the formation and operation of advisory councils and other groups convened by the government by adopting new requirements to ensure that ample and meaningful opportunities are provided for all interested parties, as appropriate, to participate in, and directly provide input to, these councils and groups.

Public Comment Procedure

Many U.S. companies remain concerned by inadequate implementation of the public comment procedure by Japanese ministries and agencies. For example, in some cases comment periods appear unnecessarily short, and in some cases comments do not appear to have been adequately considered given the brief time between the end of the comment period and the issuance of a final rule or policy. The United States has stressed the need for Japan to make revisions to improve the system, such as lengthening the standard public comment period for rulemaking.

Commercial Law

Foreign investment into Japan remains constrained by a range of issues, including conditions for using tax-advantaged merger tools for inward-bound investment in Japan; securities law and capital market issues inherent in cross-border stock-for-stock transactions; and corporate governance systems that have not adequately reflected the interests of shareholders. The United States continues to urge Japan to identify and eliminate impediments to cross-border mergers and acquisitions; ensure the availability of reasonable and clear incentives for many such transactions; and take measures to ensure that shareholder interests are adequately protected when Japanese companies adopt anti-takeover measures or engage in cross-shareholding arrangements. The United States also continues to urge Japan to improve further its commercial law and corporate governance systems in order to promote efficient business practices and management accountability to shareholders in accordance with international best practices. 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.

The Abe government has committed to improving corporate governance as part of its economic growth strategy. The revised Companies Act that took effect on May 1, 2015, establishes a "comply or explain" rule that requires companies to appoint at least one outside director to their boards or publicly explain why such an appointment is inappropriate. Alternatively, companies may institute an audit and supervisory committee whose members do not serve as directors.

Taking corporate governance a step further, the Financial Services Agency (FSA) and Tokyo Stock Exchange drafted Japan's first Corporate Governance Code, modeled on OECD and UK principles. The new code, which took effect in June 2015, applies to more than 2,000 listed companies, and aims to increase corporate transparency and management accountability in five broad areas, to encourage a stronger management focus on earnings and shareholder value. The Code requires at least two independent directors and encourages firms to implement a roadmap to ensure that at least one-third of the board is comprised of independent directors. It also has a "comply or explain" requirement for cross-shareholdings and for cases where a company has fewer than two independent directors. Since 2014, the share of Japanese companies with at least two independent directors has tripled to 80 percent. The new Corporate Governance Code complements the Stewardship Code for institutional investors launched by the FSA in April 2014, and together these codes are expected to encourage companies to increase investment, raise dividends, and take on more "smart risk" that can boost Japan's overall growth.

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. In January 2016, one major U.S. automotive manufacturer announced that it would cease all operations in Japan before the end of 2016 due to ongoing weak sales in the Japanese market.

Non-tariff barriers include certain issues relating to certification; unique standards and testing protocols; an insufficient level of transparency, including the lack of sufficient opportunities for input by interested persons throughout the process of developing regulations; hindrances to the development of distribution and service networks; and the lack of opportunities for U.S. vehicle models imported under the preferential handling procedure (PHP) certification program to benefit from financial incentive programs on the same terms as domestic models. These, together with other past and current policies and practices, have had the long-term effect of excluding and disadvantaging U.S. manufacturers in the Japanese market.

Medical Devices and Pharmaceuticals

Japan continues to be an important market for U.S. medical devices and pharmaceutical products. According to figures from the Ministry of Health, Labor and Welfare (MHLW), the Japanese market for medical devices and materials in 2014 was approximately $26.3 billion, an increase of 4.1 percent from 2013. Imported U.S. medical devices held a 22 percent market share in 2015 and were valued at $5.8 billion. (The U.S. market share of medical devices increases to 60 percent when local production in Japan by U.S. companies is included.) Japan's pharmaceutical market was valued at $91.2 billion in 2014, with U.S. imports comprising 6 percent, or $5.6 billion, of the overall market. The total market share of U.S.-origin pharmaceuticals in Japan is estimated to be approximately 20 percent if local production by U.S. firms and compounds licensed to Japanese manufacturers is included.

The government of Japan continues to call for increased promotion of Japan's pharmaceutical and medical device industries. Japan has recently made progress in several areas, including the reduction of lengthy approval periods for medical devices and pharmaceuticals. For medical devices, the New Collaboration Plan to Accelerate Review of Medical Devices, implemented in April 2014, contains performance goals that, if met, will lead to speedier approvals by the end of the program (March 2019). The U.S. Government continues to urge Japan to improve performance goals for product reviews by meeting performance targets and ensuring that Quality Management System audits are completed within the standard review period. For pharmaceuticals, Japan has brought its approval periods in line with, or even faster than, U.S. and European norms. The U.S. Government continues to urge Japan to further harmonize efforts of its key regulatory agencies on international standards in clinical development, multiregional clinical trials, and risk management.

The United States has urged Japan over the past decade to implement predictable and stable reimbursement policies that reward innovation and provide incentives for companies to invest in the research and development of advanced healthcare products and pharmaceuticals. The level of transparency in Japan's drug and medical device reimbursement decision-making processes has generally improved in recent years.

However, U.S. stakeholders have expressed serious concern that some developments have broken with Japan's broader trend of increasing transparency in this sector. In particular, U.S. stakeholders have expressed concerns with transparency regarding the introduction of the Pricing for Market Expansion ("Huge Seller") scheme in April 2016, ad-hoc price revisions to some drugs in 2015 and 2016, and the unusually brief stakeholder consultation period prior to moving toward an annual price revision system in late 2016. The United States urges the government of Japan to follow transparent processes in the development of any measures related to these policies and to provide all stakeholders, including U.S. stakeholders, meaningful opportunities for input.

Nutritional Supplements

The latest estimated figure for Japan's nutritional or dietary supplements market shows a retail sales volume of 1.19 trillion yen (approximately $11 billion), according to UBM Media. Japan has taken steps to streamline import procedures and to open this market, although many significant market access barriers remain. Pursuant to the Abe government's Economic Revitalization Strategy issued in June 2013, Japan's Consumer Affairs Agency (CAA) started implementing a new Food with Functional Claim (FFC) system effective as of April 1, 2015. The FFC system is a third food-related category under the Food with Health Claims system, parallel to other premarket government approval systems, Foods for Specified Health Uses (FOSHU) and Foods with Nutrient Function Claims (FNFC). (These processes apply to both imported and domestic products.) Producers of most nutritional supplements are generally unable to obtain FOSHU or FNFC approval due to FOSHU's costly and time-consuming approval process and the limited range of vitamins and minerals that qualify for FNFC.

Vitamin and mineral products designated for consideration under the FNFC system were initially excluded from the FFC, in part due to strong opposition from consumer groups. Since January 2016, a CAA expert panel has continued to deliberate whether vitamins, minerals, and related nutrients such as botanical extracts can be allowed to seek approval through the new FFC system. The United States will continue to monitor developments in this area.

Cosmetics and Quasi-Drugs

Based on the latest publicly available information as projected by Euromonitor International, Japan is one of the world's largest markets for cosmetics and personal care products. The United States has consistently been the second largest source of cosmetics imported into Japan, consisting of skincare, hair care, makeup preparations, fragrance, and toiletry goods such as pre-and after-shaving products and bath salts. In 2015, U.S. exports were estimated at 47.4 billion yen (approximately $423.6 million), or 19.9 percent of the total import market. Unlike the over-the-counter drug monograph system in the United States, Japan requires pre-market approval for certain products mixed with active ingredients such as "medicated cosmetics" that are classified as quasi-drugs under Japan's Pharmaceutical Affairs Law. The quasi-drug approval process includes requirements that are burdensome and lack transparency, and that do not appear to enhance product safety, quality, or efficacy. In addition, restrictions on advertising claims for cosmetics and quasi-drugs reportedly prevent companies from informing customers of product benefits. Enhanced communication between the U.S. and Japanese governments and industries has led to some improvements in the Japanese regulatory system. Following the implementation of an online customs clearance system effective November 2014, MHLW abolished the requirement to file an Import Notification effective April 2016. Further simplification of import processes and product registration procedures, including the development of specific approval standards for "medicated cosmetics," are currently under discussion. These reforms, if implemented, could help create a more open and competitive market. The United States will closely monitor developments.

Aerospace

Japan is among the largest foreign markets for U.S. civil aerospace products. The civil aerospace market in Japan is generally open to foreign firms, and some Japanese firms have entered into long-term relationships with U.S. aerospace firms. The United States continues to monitor Japan's development of indigenous aircraft.

Military procurement by the Ministry of Defense (MOD) accounts for approximately half of Japan's domestic production of aircraft and aircraft parts and continues to offer the largest source of demand in the aircraft industry. Although U.S. firms have frequently won contracts to supply defense equipment to Japan, in the past many contracts for defense equipment have not been open to foreign bids. The MOD has generally preferred defense systems developed and produced in Japan and has often opted for local development and production of defense products and systems even when a foreign option exists that could fulfill the requirements more efficiently, at a lower cost, and with better interoperability with Japan's allies. However, in June 2016, the U.S. Department of Defense and Japan's MOD signed a memorandum of understanding on reciprocal defense procurement that aims to achieve fair and equitable opportunities for U.S. and Japanese industry to participate in each country's defense procurement. The United States will continue to monitor progress in this area.

Japan is broadening its civil space activity beyond purely scientific pursuits to include more commercial and strategic activities. Although Japan has considered its main space launch vehicle programs as indigenous for many years, U.S. firms continue to participate actively in those space systems. Japan is also developing a regional navigation satellite system known as the "quasi-zenith" satellite system, or QZSS, as

well as high-performance Advanced Satellite with New System Architecture for Observation systems. In December 2015, Japan extended its participation in the International Space Station until 2024.

Japan is an important U.S. Open Skies partner in the Asia-Pacific region. New access became available at downtown Tokyo's operationally-restricted Haneda airport in October 2016, enabling the four U.S. and two Japanese carriers already providing service to the United States from Haneda to expand existing operations.

JORDAN

TRADE SUMMARY

The U.S. goods trade deficit with Jordan was $62 million in 2016, a 53.0 percent decrease ($70 million) over 2015. U.S. goods exports to Jordan were $1.5 billion, up 10.0 percent ($136 million) from the previous year. Corresponding U.S. imports from Jordan were $1.6 billion, up 4.4 percent. Jordan was the United States' 66th largest goods export market in 2016.

U.S. exports of services to Jordan were an estimated $710 million in 2015 (latest data available) and U.S. imports were $574 million.

U.S. foreign direct investment in Jordan (stock) was $228 million in 2015 (latest data available).

The United States-Jordan Free Trade Agreement

Under the terms of the United States-Jordan Free Trade Area Agreement, which entered into force on December 17, 2001, the United States and Jordan completed the final phase of tariff reductions on January 1, 2010. Jordan now imposes zero duties on nearly all U.S. products, with exceptions for alcoholic beverages and mature subject materials. Following consultations under the United States-Jordan Joint Committee, Jordan also endorsed the United States-Jordan Joint Principles on International Investment and Joint Principles for Information and Communication Technology Services.

TECHNICAL BARRIERS TO TRADE

Technical Barriers to Trade

Jordan recognizes and accepts U.S. standards and specifications. However, Jordan has required that imports meet additional product standards. In July 2014, for example, Jordan applied a new energy-saving labeling requirement for household appliances above and beyond that required by international standards. The United States and Jordan have agreed that appropriate U.S. labeling and testing will fulfill this requirement. Some measures with the potential to be viewed as barriers to trade are imposed periodically, such as a 2014 restriction imposed on packaging sizes for poultry available for retail resale.

IMPORT POLICIES

Other Charges

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 increased special taxes on certain goods, changes to which can be unpredictable.

Agriculture

Import licenses, or advance approvals for importation, are required for specific food products by the Ministry of Health and raw agricultural goods by the Ministry of Agriculture. These ministries are the authorities charged with granting these licenses and approvals. The approvals process can be time-consuming and, at times, lacks transparency, an issue the United States continues to urge Jordanian authorities to address.

Import Licenses

In addition to the special licensing and approval requirements for the importation of certain agricultural products, Jordan requires that importers of commercial goods be registered traders or commercial entities. The Ministry of Industry and Trade occasionally issues directives requiring import licenses for certain goods or categories of goods and products in newly emerging or protected sectors. The government of Jordan requires a special import license prior to the importation of telecommunications and security equipment.

GOVERNMENT PROCUREMENT

Jordan is an observer to the WTO Committee on Government Procurement. In 2002, it commenced the process of acceding to the WTO Agreement on Government Procurement (GPA), with the submission of its initial entry offer. Subsequently, it has submitted several revised offers in response to requests by the United States and other GPA Parties for improvements. Negotiations on Jordan's accession continue.

EXPORT SUBSIDIES AND TAXES

Net profits generated from most export revenue will remain fully exempt from income tax except for net profits from exports in the mining sector, exports governed by specific trade protocols, and foreign debt repayment schemes, which are subject to income tax. Under WTO rules, the tax exemption was initially set to expire on December 31, 2015, subject to an annual review. In November 2015, Jordan extended this tax exemption to December 2018. The United States is working with Jordan to develop a WTO-compliant alternative to this program.

In addition, 98 percent of foreign inputs used in the production of exports are exempt from customs duties; all additional import fees are assessed on a reimbursable basis.

Jordan imposes a $50 per ton tax on exports of steel scrap, discouraging its exportation.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Jordan was not listed in the 2015 Special 301 Report. The Jordanian government continues to take steps to provide more comprehensive protection of intellectual property rights. Despite past efforts by law enforcement officials to crack down on unauthorized products, prosecution efforts should be strengthened, particularly with respect to utilizing *ex officio* authority to bring charges in criminal cases.

KAZAKHSTAN

TRADE SUMMARY

The U.S. trade balance with Kazakhstan shifted from a goods trade deficit of $306 million in 2015 to a goods trade surplus of $369 million in 2016. U.S. goods exports to Kazakhstan were $1.1 billion, up 117.7 percent ($601 million) from the previous year. Corresponding U.S. imports from Kazakhstan were $742 million, down 9.0 percent. Kazakhstan was the United States' 73rd largest goods export market in 2016.

The Eurasian Economic Union

The Russia-Kazakhstan-Belarus Customs Union (CU) entered into force on January 1, 2010, when the three States adopted a common external tariff (CET), with the majority of the tariff rates established at the level that Russia applied at that time. When Russia joined the WTO in 2012, the CU adopted Russia's WTO schedule of tariff bindings. On January 1, 2015, Russia, Kazakhstan, and Belarus continued their movement toward regional economic integration with the establishment of the Eurasian Economic Union (EAEU) as the successor to the CU. Armenia joined the EAEU on January 2, 2015, and Kyrgyzstan joined on August 12, 2015.

The EAEU Member States recently signed a new Customs Code, which is expected to be adopted by July 1, 2017. The Member States plan to abolish all customs posts on internal borders within the EAEU, allowing for the free flow of most goods among the Member States, while maintaining some customs posts to monitor particular crossings.

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, having replaced the CU Commission in that role.

The EAEU established by the Treaty on the Functioning of the Customs Union in the Framework of the Multilateral Trading System of May 19, 2011 (the Treaty) incorporates and replaces the CU. As a consequence of its membership in the EAEU, Kazakhstan's import tariff levels, trade in transit rules, nontariff import measures (*e.g.*, tariff-rate quotas, import licensing, and trade remedy procedures), and customs policies (*e.g.*, customs valuation, customs fees, and country of origin determinations) are based on CU/EAEU legal instruments. On these and other issues involving goods, CU Agreements and CU/EEC Decisions establish the basic principles that are implemented at the national level through domestic laws, regulations, and other measures. CU Agreements and CU/EEC Decisions also cover issues such as border enforcement of intellectual property rights, trade remedy determinations, establishment and administration of special economic and industrial zones, and the development of technical regulations and sanitary and phytosanitary measures. The Treaty establishes that WTO rules would take priority in the CU/EAEU legal framework.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Sanitary and Phytosanitary Barriers

Systemic Issues

In addition to adopting the import requirements of the EAEU, Kazakhstan requires any importer or domestic producer of a wide variety of goods to obtain a Certificate of State Registration before the product can be sold in Kazakhstan. The Ministry of National Economy's Committee of Consumer Rights Protection is

responsible for issuing these certificates. Goods subject to this certification requirement include: biologically active supplements, including baby food and formula; equipment and devices for water supply systems; items of intimate hygiene; products for disinfection (except those used in veterinary services); and items designated for contact with food products (except dishes, table amenities, and microwave ovens). The United States continues to work with Kazakhstan to encourage improvements to the EAEU SPS regime and to ensure that Kazakhstan's implementation of the EAEU's SPS measures is consistent with its WTO obligations and is minimally disruptive to bilateral trade.

Agricultural Biotechnology

CU regulations covering agricultural biotechnology products have recently come into force, and Kazakhstan is enforcing them. These regulations require the labeling of both imported and domestically-produced agricultural biotechnology products. As Kazakhstan continues to integrate into the EAEU, it is expected that the policies and views of other EAEU countries will play a greater role in shaping the regulation of agricultural biotechnology in Kazakhstan.

IMPORT POLICIES

Kazakhstan has not duplicated Russian sanctions with respect to U.S., EU, and Turkish goods. However, the Russian sanctions regime has complicated the transit of goods from third countries to Kazakhstan through Russian territory.

Tariffs and Quotas

As a result of adopting the CU CET in 2010, Kazakhstan increased the tariff rate on more than 5,000 tariff lines. As part of its WTO accession, Kazakhstan agreed to gradually lower 3,512 tariff rates to an average of 6.1 percent by 2020. In order to reflect those WTO tariff commitments, on January 1, 2016, Kazakhstan began applying lower-than-CET tariff rates to certain food products, automobiles, airplanes, railway wagons, lumber, alcoholic beverages, pharmaceuticals, freezers, and jewelry. Kazakhstan introduced administrative measures to prevent the re-export of goods released at these lower tariff rates to Armenia, Belarus, Kyrgyzstan, or Russia. In 2016, Kazakhstan introduced a system of electronic invoicing for all payers of VAT on imports. All importers and customs clearance dealers are expected to use the electronic invoicing system by January 1, 2017.

In 2015, the average import tariff for Kazakhstan was estimated at 9.2 percent. Kazakhstan applies a zero rate on approximately 1,800 tariff lines, including livestock, pork, fish products, chemical and pharmaceutical products, cotton, textiles, machinery and equipment, and furniture.

In 2010, Kazakhstan established tariff rate quotas (TRQs) on imports of poultry, beef, and pork to meet its obligations under the CU. In 2012, U.S. exporters raised concerns about the trade-limiting effects of these TRQs and the manner in which they were calculated and allocated. The government of Kazakhstan plans to release new rules for TRQ allocation by early 2017. The volume of TRQs is expected to remain unchanged.

According to amendments to the Tax Code, signed by President Nazarbayev on November 30, 2016, all importers of alcohol products will be required to present guarantees for their intended purposes prior to shipment. These guarantees can be in cash, bank guarantees, or pledges of property. This requirement is scheduled to come into force in 2017 and will apply only to foreign alcohol producers, including EAEU and third countries. U.S. exporters have expressed concern that this measure will create an unnecessary financial and administrative burden.

Licensing

In connection with its membership in the CU/EAEU, Kazakhstan increased the number of goods subject to import or export licensing. Kazakhstan had required export licenses only for precious metals and stones, documents from national archives, and items of cultural value. However, the EEC removed precious metals and stones from this list in May 2015. Products with cryptographic capabilities, including certain commonplace consumer electronic products, are subject to import licensing procedures or a one-time notification requirement. (See the National Trade Estimate for the Russian Federation for more information on the EAEU's import licensing regime for products with cryptographic capabilities.)

Customs Administration

Customs administration practices remain a substantial barrier to trade. Importers report high costs for customs clearance, a lack of transparency and information from customs authorities, and arbitrary interpretation of customs clearance requirements at the border.

EXPORT POLICIES

Kazakhstan maintains a ban on the export of light distillates, kerosene, gasoline, and lumber and waste paper. The ban on light distillates may be lifted in 2019 if the government fulfils its plan to upgrade oil refinery facilities. Bans on the export of ferrous scrap, gold bearing rock, and unprocessed precious metals were introduced in 2013.

GOVERNMENT PROCUREMENT

The lack of transparency and efficiency in government procurement remains a major challenge for local and foreign companies. The government recognizes this and is taking steps to streamline its procurement process. Kazakhstan moved to an electronic procurement system on July 1, 2012. Resident and nonresident companies (if they are registered in Kazakhstan and maintain a physical presence) may participate in electronic tenders once they receive an electronic signature from the Ministry of Justice. The system's performance to date has been poor.

Kazakhstan intends to start negotiations to join the WTO Agreement on Government Procurement (GPA) in 2019. In October 2016, as part of commitments it made when it joined the WTO, Kazakhstan became an observer to the WTO GPA. This observer status will allow Kazakhstan to participate in meetings of the WTO Government Procurement Committee and to understand GPA requirements and procedures. Before 2019, the Kazakhstani government plans to bring government procurement rules and procurement of quasi-sovereign companies into compliance with the GPA.

In December 2015, President Nazarbayev signed a new law on government procurement designed to make tender processes more transparent. The procurement rules under this law came into force in 2016. Pursuant to the law, potential suppliers are able to read and discuss technical statements before a tender and see the documentation and bids of other suppliers. In addition, the law toughened requirements for purchasing from a single vendor and prohibited transfer of services to subcontractors. However, the law still requires pre-qualification for potential suppliers.

Assets of the National Welfare Fund and the government-owned holding company, Samruk-Kazyna, account for about 40 percent of Kazakhstan's GDP. Through share ownership, Samruk-Kazyna manages some of Kazakhstan's largest national companies, including Kazakhstan TemirZholy (the national railway), KazMunayGas (the national oil and gas company), KEGOC (the electrical utility), and their subsidiaries. These enterprises are subject to Samruk-Kazyna's rules for procurement of goods and services, which

describe procedures and stipulate criteria for the evaluation of bids. Potential suppliers must receive a certificate from the National Chamber of Entrepreneurs confirming their status as local producers of goods or services.

On January 28, 2016, Samruk-Kazyna approved new rules on procurement in order to comply with the GPA. These rules cancel bill-back allowances and other forms of preferential treatment given to local providers of goods and services. According to the new rules, however, only qualified suppliers are eligible to participate in Samruk-Kazyna tenders, and a designated Samruk-Kazyna subsidiary ranks potential bidders on a list of qualified suppliers. Samruk-Kazyna maintains that the selection process will be applied evenly to both local and foreign suppliers. Though the new rules have been approved, they have not yet taken effect, and Samruk-Kazyna has not announced an effective date.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To comply with its WTO commitments and attract foreign investment, Kazakhstan has been working to modernize its intellectual property rights (IPR) laws, adopting measures to address trade secret theft. In November 2016, Parliament began considering amendments to Kazakhstan's trademark law that would improve trademark registration and enforcement. Although the United States acknowledges the efforts Kazakhstan has taken to strengthen enforcement of IPR, the effective application of customs controls to eliminate the importation of counterfeit and pirated goods remains a concern. Further, effective enforcement continues to be burdened by the lack of technical expertise by judges in Kazakhstan.

SERVICES BARRIERS

Telecommunications

Kazakhstani law restricts foreign ownership to 49 percent of telecommunications companies that provide long distance and international telecommunication services and those that operate fixed line communication networks (cable, optical fiber, and radio relay). As a result of bilateral negotiations regarding its WTO accession, Kazakhstan agreed that, after a two-and-a-half year transition period from the date of its accession, it will remove this foreign ownership restriction for telecommunications operators, except for the country's main carrier, KazakhTeleCom.

The law "On Communication" and Decree 1499 together require placing and registering Network Control Centers for very small aperture antennas within the borders of Kazakhstan. The U.S. satellite industry has expressed concerns regarding restrictions on the transport of video programming through foreign satellites and restrictions barring foreign firms from providing these services to the government. In its WTO accession commitments, Kazakhstan has agreed not to restrict services provided by foreign satellite operators to companies that hold a license for telecommunication services.

Other

Foreign banks and insurance companies must operate through joint ventures with Kazakhstani companies. However, Kazakhstan has agreed to eliminate the joint venture requirement and to permit direct branching following a transition period of five years after its WTO accession. Kazakhstan's law also restricts foreign ownership in mass media companies, including news agencies, to 20 percent, a limitation that will remain in force after WTO accession.

INVESTMENT BARRIERS

Despite a prolonged period of lower oil prices, over 60 percent of foreign direct investment (FDI) in Kazakhstan continues to be in the oil and gas sector. The July 2016 decision of Tengizchevroil to invest $36.8 billion into a multi-year expansion of the Tengiz field indicates substantial volumes of FDI will continue to flow into oil-related projects. Kazakhstan's WTO accession commitments provide for abolition of local content requirements over time.

On November 9, 2015, Kazakhstan introduced amendments to subsoil use legislation that significantly altered existing local content requirements to meet the country's WTO accession requirements. Subsoil use contracts concluded after January 1, 2016, will no longer contain local content requirements for goods or requirements to support local producers (*i.e.*, the requirement to reduce the stated (not actual) value of bids from Kazakhstani producers of goods by 20 percent to increase their likelihood of winning the tender). However, these requirements will still apply until January 1, 2021, to subsoil use contracts signed before January 1, 2016. The terms of Kazakhstan's accession to the WTO also require that Kazakhstan relax limits on foreign nationals by increasing the "quota" to 50 percent from 30 percent for company executives and from 10 percent to 50 percent for engineering and technical personnel to be foreign nationals from January 1, 2021. Despite these changes, the government, particularly at the regional level, continues to strongly urge international businesses to increase their local content.

The November 2015 amendments to the migration and employment law liberalized foreign workers' access to the local labor market by waiving quotas and work permit requirements for expatriates coming to Kazakhstan on their own looking for work. As a result of the amendments, employers pay the local government for expatriate work permits directly, creating a monetary incentive not to impose bureaucratic obstacles on the issuance process, which had previously been one of the main barriers to employing foreign workers. In order to encourage the employment of highly skilled foreign workers, fees for work permits vary depending on both the sector of economic activity and on worker qualifications; highly skilled workers in critically-designated sectors pay lower fees. The amendments also resulted in a move toward e-service centers, which was expected to speed up the processing of electronic work permit applications from 40 to 5 days, improve transparency, and reduce opportunities for corruption.

The June 2016 amendments to the Expatriate Workforce Quota and Work Permit Rules, which came into effect on January 1, 2017, are anticipated to result in both positive and negative changes, and have caused serious concern among international investors. Positive changes include eliminating special conditions that currently can be imposed on an employer as conditions for obtaining a work permit for foreign labor (*e.g.* requirements to train local personnel or create additional vacancies). The amendments also will: (1) eliminate the requirement that companies conduct a search for candidates on the internal market prior to applying for a work permit, except for intra-corporate transferees; (2) increase the number of possible extensions from two to three for permits for category two (engineering and technical personnel) and three (skilled workers) workers; and (3) reduce the timeframe for the issuing authority to grant or deny a work permit from 15 to seven days. Overall, however, the amendments have caused considerable confusion and contain several negative aspects. The process for obtaining work permits is complicated and contains contradictory rules on intra-company transfers, length of validity of work permits, and requirements for Kazakh language fluency. The maximum term for a work permit has been decreased from three years to one year, although there is the possibility of extension. Additionally, work permits will be valid for one region of Kazakhstan only. The U.S. Embassy and international business associations continue to seek clarification from the government of Kazakhstan regarding these changes, and there are indications that modifications to the new regime are forthcoming.

Sale of Investments

Previously, the government used its discretionary powers to designate subsoil deposits and areas as "strategic." In 2013, the Ministry of Energy exercised the right of first refusal when it decided to buy ConocoPhillips' stake in the Kashagan oil field, which the company had sought to sell to another foreign company. The December 2014 amendments to the 2010 Subsoil Law limit Kazakhstan's right of first refusal when a party seeks to sell any part of its stake in a subsoil project to a smaller category of "strategically significant" projects, and obligate the government to compile the list of such projects based on "strategic" criteria, rather than making determinations on a case-by-case basis.

Contract Issues

The December 2014 amendments to the 2010 Subsoil Law introduced new grounds for unilateral termination of a subsoil use contract – failure to adhere to financial obligations under a subsoil use contract by more than 70 percent for two consecutive years. The failure of a subsoil user to correct more than two previously committed breaches of obligations under a subsoil use contract or project documents is no longer considered sufficient grounds for unilateral termination.

OTHER BARRIERS

Kazakhstan has a burdensome tax monitoring system. Companies report that the system requires them to employ significant resources to comply with cumbersome rules and frequent inspections, and that the actions of tax and regulatory authorities can be unpredictable.

Corruption at many levels of government is also seen as a barrier to trade and investment in Kazakhstan, reportedly affecting nearly all aspects of doing business in Kazakhstan, including customs clearance, employment of locals and foreigners, payment of taxes, and the judicial system.

KENYA

TRADE SUMMARY

The U.S. trade balance with Kenya shifted from a goods trade surplus of $370 million in 2015 to a goods trade deficit of $158 million in 2016. U.S. goods exports to Kenya were $394 million, down 58.3 percent ($550 million) from the previous year. Corresponding U.S. imports from Kenya were $552 million, down 3.8 percent. Kenya was the United States' 101st largest goods export market in 2016.

U.S. foreign direct investment in Kenya (stock) was $323 million in 2015 (latest data available), a 16.8 percent decrease from 2014.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

Pursuant to a Kenyan Cabinet and Presidential decree, on November 21, 2012, the Kenyan Ministry of Public Health ordered public health officials to remove from the market all foods, feed, and seeds derived from agricultural biotechnology and to enact a ban on agricultural biotechnology food and feed imports. In August 2015, Deputy President William Ruto announced that the Kenyan government would lift the import ban on genetically modified products by October 2015. Nevertheless, the government maintained the ban throughout 2016.

In January 2016, Kenya's National Biosafety Authority (NBA) approved a limited environmental release of biotechnology corn seeds for open field trials. In August 2016, Kenya's National Environment Management Authority (NEMA) announced it had approved permits for two trials to move forward. In September 2016, however, Kenya's Cabinet Minister for Health issued an opinion that field trials would violate Kenya's ban on biotechnology foods. Thereafter, NEMA retracted the licenses. The legal status of field trials for biotechnology corn remains unclear.

On December 1, 2016, the Agriculture Committee of Kenya's National Assembly recommended that the ban be upheld until new legislation on safety of agricultural biotechnology foods for human consumption is developed. The committee proposed that the Ministry of Health establish a Food Safety and Control Unit to evaluate biotechnology foods and to issue import permits, a role entrusted to NBA by law. Since the ban was imposed, key stakeholders in Kenya—scientists, universities, some non-governmental organizations, and policy makers, including influential governors and legislators—have launched educational and outreach programs to encourage the government to rescind the decision. Both food aid and commercial U.S. agricultural exports derived from agricultural biotechnology products have been kept out of the Kenyan market because of the ban. The restriction does not affect fully processed products such as edible oils; however, it does impact U.S. exports of semi-processed foods, such as soy for feed and high-value soy products. As the demand for feed inputs rises, the ban is hampering potential U.S. exports of feed ingredients, including soy, feed corn, and distiller dried grains.

The United States continues to support outreach efforts by Kenyan research scientists and private sector stakeholders to disseminate factual information about agricultural biotechnology.

Meat and Meat Products

Kenya maintains complex, non-transparent, and costly requirements for importation of all meat, dairy, and poultry products. These procedures, which have been in place for at least two decades, are based on more than 20 separate statutes implemented by numerous government agencies and include a shipment-by-shipment import permit requirement. Through these procedures, Kenya requires imported meat, poultry, and dairy products to arrive with a standardized sanitary certification and a "Letter of No Objection to Import Permit" (no-objection letter) from the Department of Veterinary Services (DVS) under the Ministry of Agriculture, Livestock, and Fisheries. DVS requires an importer to explain the reason for importation through a "Letter of Application to Import" and specifically address the market need the import would meet before issuing a "no objection" letter. DVS issues the no-objection letter for meat, dairy, and poultry products at its discretion on a case-by-case basis. Although the government of Kenya purports to prohibit imports only on sanitary grounds, DVS has in practice provided other rationales, such as the local availability of a certain product.

Plants and Plant Products

Since 2006, Kenya has banned wheat from the U.S. Pacific Northwest. Kenya has indicated that the reason for the ban is related to concerns over the flag smut fungus. This fungus poses low risk due to extremely low pest prevalence, lack of a clear pest pathway in grain for consumption, and agronomic practices implemented by U.S. exporters. Additionally, Kenya's climate is generally not conducive to development of this disease. USDA continues to seek opportunities to engage the Kenya Plant Health Inspectorate to resolve this issue.

Kenya subjects imported and domestically produced corn to a total aflatoxin limit of 10 parts per billion (ppb) and a 13.5 percent maximum moisture content. The aflatoxin limit is lower than the Codex and U.S. standard of 20 ppb. Further, most U.S. corn has a moisture content higher than 13.5 percent. As a result, many U.S. exports are not permitted. 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.

Kenya also restricts popcorn imports to a six percent maximum moisture requirement. The U.S. limit is 12.5 percent to 15 percent.

Kenya does not permit whole pea imports due to concerns about the *pseudomonas pisi* fungus, but permits the import of split peas. Kenya also bans bean imports due to the occurrence of *corynebacterium flaccumfasciens* bacteria in some parts of the United States and lentils are banned due to the threat of darnel weed. However, darnel weed already exists in Kenya.

IMPORT POLICIES

Tariffs

Kenya has a mostly liberalized economy with no price controls on major products, except in the energy sector, where the Energy Regulatory Commission sets downstream prices on gasoline, kerosene, and diesel fuel. Quantitative import restrictions, as drafted, appear limited to products for which environment, health or safety concerns exist; however, officials exercise discretion to apply these restrictions at times seemingly to protect domestic industries.

According to the WTO, Kenya's average applied tariff rate for all imported products was 12.9 percent in 2015, the most recent data available. Kenya generally applies the East African Community (EAC) Customs

Union's Common External Tariff, which includes three tariff bands: zero duty for raw materials and inputs; 10 percent for processed or manufactured inputs; and 25 percent for finished products. For certain products and commodities deemed "sensitive," Kenya applies *ad valorem* rates above 25 percent. This includes rates of 60 percent for most milk products, 50 percent for 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, the tariffs vary across the five EAC member states. In June, the EAC granted Kenya a one-year waiver to apply at a rate of 10 percent instead of 35 percent on imported wheat. Kenya maintains a 16 percent value-added tax (VAT) and a 1.5 percent Railway Development Levy (RDL) imposed on all imports for domestic consumption. The government of Kenya sometimes waives tariffs when domestic agricultural prices exceed certain levels and there is a need to stabilize prices.

In March 2016, Kenya and other EAC heads of state, in an EAC summit communique, directed EAC partner states to ban the importation of used clothing and footwear to support the development of the EAC's textile and apparel and leather industries. In particular, they directed EAC partner states "to procure their textile and footwear requirements from within the region where quality and supply capacities are available competitively, with a view to phasing out importation of used textile and footwear within three years." In addition, they directed partner states to ensure that "all imported second hand shoes and clothes comply with sanitary requirements, in the Partner States." In June 2016, Kenya doubled the import duty rate on articles of used clothing to 35 percent *ad valorem* (or $0.40/kg, whichever is higher) as a first step to implement the import ban. According to the Secondary Materials and Recycled Textiles Association (SMART), an industry association, Kenya is an important market for U.S. exports of used clothing. SMART estimates that at least 40,000 U.S. jobs in collection, processing, and distribution would be negatively impacted once Kenya and other EAC partner states fully implement the ban on imports of used clothing and footwear.

Previously, the EAC exempted solar and wind energy products from import duties. However, in June 2016, the EAC narrowed the exemption to only those items related to the development and generation of solar and wind energy. The newly imposed duties on spare parts and accessories to solar equipment have reportedly had a negative impact on the business operations of solar home system companies. Some stakeholders have expressed concern that the amendment to the EAC's Exemptions Regime is ambiguous because spare parts and accessories to solar equipment are not defined. In addition, varying interpretations among EAC partner states has led to uncertainty and confusion about what products are exempt from import duties.

The United States continues to engage with the government of Kenya bilaterally, as well as regionally under the U.S.-EAC Trade and Investment Partnership to address and urge a reconsideration of these measures.

The current VAT Act, adopted in 2013, reduced the number of VAT-exempt items from 400 to 27, purportedly to simplify tax administration, enhance tax compliance, and eradicate a backlog of refunds. The 2013 Act went into effect with few specific guidelines, however, resulting in uncertainty surrounding the application of VAT rules. The 2015 amendments to Kenya's VAT rules clarified some items that are VAT exempt, including: aircraft engines, aircraft parts, plastic bag biogas digesters, parts for the assembly of primary school laptop tablets, and goods for use by the Kenya Film Commission or in the construction of industrial and recreational parks subject to specified conditions. These amendments also made clear that VAT refund claims must be submitted within 12 months of purchase.

VAT-exempt companies, including importers, still experience lengthy wait times in receiving their VAT refunds. In September 2014, the Kenyan government commissioned an audit of ballooning VAT refund claims. In October 2016, the National Treasury announced it had made significant progress on the VAT refund issue, having paid out approximately $56 million in outstanding VAT claims during the year. It was not clear, however, what percentage of outstanding claims this amount represented, or whether the audit

had been completed. According to the National Treasury, the government has appropriated approximately $1.2 million per month during the current fiscal year to settle new VAT refund claims.

Disputes over tariffs and taxation are resolved through the judicial system, which is subject to delays and uncertainty. Since June 2015, the Kenya Revenue Authority (KRA) has offered an Alternative Dispute Resolution (ADR) mechanism to provide taxpayers with an alternative, fast-track avenue for resolving some tax disputes.

In December 2015, Kenya ratified the Trade Facilitation Agreement (TFA).

Nontariff Measures

Kenya requires all importers to pay an import declaration fee of 2.25 percent of the customs value of imports and to meet other document requirements or have their goods subject to enhanced inspection. For example, importers must obtain a Certificate of Conformity (CoC) or have their goods inspected at the port of entry, which costs approximately 15 percent of the value of imported goods, and poses a risk of the goods being rejected after the payment of shipping costs. Importers that choose to obtain a CoC must apply for an export certification from a pre-shipment inspection company (SGS or Intertek International) that has a contract with the government. Following inspection or obtaining a CoC, the importer must seek an Import Standardization Mark, a stick-on label to be affixed to each imported item, from the Kenya Bureau of Standards (KEBS). Other required import documents include valid *pro forma* invoices, a Bill of Lading or Airway Bill, and a Packing List from the exporting firm. Kenya asserts that its import controls are necessary to address health, environmental, and security concerns.

GOVERNMENT PROCUREMENT

U.S. firms have had limited success bidding on government tenders in Kenya. There are widespread reports that corruption often influences the outcome of public tenders. Foreign firms, some without proven track records, have won government contracts when partnered with well-connected Kenyan firms. In 2014, the government inaugurated the Integrated Financial Management Information System (IFMIS), which the government claims will improve transparency and accountability in government financial management through the automation of budget, accounting, procurement, and revenue management functions. As part of the IFMIS, the government launched an Electronic Procurement system to automate tenders. In July 2015, the government made use of the Electronic Procurement system mandatory for national and county government institutions, but subsequently suspended the system due to complaints about lack of connectivity. In December 2016, the National Treasury announced it has allocated approximately $76 million to maintain, upgrade, and address challenges with the IFMIS system. Media reported several cases during the year in which IFMIS was allegedly manipulated to favor insiders or to commit procurement fraud.

In January 2016, a new procurement law, the Public Procurement and Asset Disposal Act, came into force, operationalizing Article 227 of the 2010 Constitution and reserving preferences to firms owned by Kenyan citizens and to goods manufactured or mined in Kenya. For tenders funded entirely by the government with a value of less than Ksh 50 million (approximately $575,000), the preference for Kenyan firms and goods is exclusive. Where the procuring entity seeks to contract with non-Kenyan firms or procure foreign goods, the Act requires a report detailing evidence of an inability to procure locally. The Act also calls for at least 30 percent of government procurement contracts to go to firms owned by women, youth, and persons with disabilities. The Act further reserves 20 percent of procurement contracts tendered at the county level to residents of that county.

In May 2015, President Kenyatta announced an initiative, dubbed "Buy Kenyan Build Kenya," to require state ministries, departments and agencies to procure at least 40 percent of supplies locally. Policy guidance to implement this initiative was still pending as of the end of 2016.

Kenya is neither a party nor an observer to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Kenya was not listed in the 2016 Special 301 Report. Over the past year, Kenya has taken steps to improve the protection and enforcement of intellectual property rights (IPR). The Kenyan government has drafted updates to its copyright and trademark legislation, which if adopted, will strengthen IPR protection and enforcement, including by creating legal incentives for Internet service providers to cooperate with copyright holders and by creating deterrent penalties for infringement. Further, in 2015, Kenya allocated more resources to the Anti-Counterfeit Agency (ACA), including opening two new branch offices and hiring additional enforcement officers. However, despite efforts to improve enforcement of IPR, the presence of pirated and counterfeit products in Kenya continues to create health and safety concerns for consumers and impede U.S. business interests. The ACA continues to report an influx of counterfeit products to Kenya, including electronics, pharmaceuticals, pesticides, and soft and alcoholic drinks.

SERVICES BARRIERS

The National Construction Authority Act, which regulates Kenya's construction industry, imposes local content restrictions on "foreign contractors," defined as companies incorporated outside Kenya or with more than 50 percent ownership by non-Kenyan citizens. The Act 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. The Act also contains provisions requiring foreign contractors to hire on the local labor market, unless the National Construction Authority determines the technical skills are not available locally. Regulations implementing these requirements are in process.

The Private Security Regulations Act of 2016, which came into force in May 2016, restricts foreign participation in the private security sector by requiring that at least 25 percent of shares in private security firms be held by Kenyans.

INVESTMENT BARRIERS

In 2015, the Kenyan government repealed regulations that imposed a 75 percent foreign ownership limitation for firms listed on the Nairobi Securities Exchange, allowing such firms now to be 100 percent foreign-owned. Kenya nevertheless imposes foreign ownership limitations of 80 percent and 66.7 percent in the telecommunications and insurance sectors, respectively. The government allows telecommunications companies a three-year grace period to find local investors to achieve the local ownership requirements. In 2015, the government imposed regulations requiring that at least 15 percent of the share capital of derivatives exchanges, through which derivatives such as options and futures can be traded, be owned by Kenyans. A provision of the Companies Act of 2015 purported to require all foreign companies registering to do business in Kenya – whether publicly or privately held – to cede at least 30 percent ownership to Kenyan citizens. The provision was widely criticized by private sector groups and was repealed in October 2016.

The 2010 Constitution prohibits foreigners from holding a freehold land title anywhere in the country, permitting only leasehold titles of up to 99 years. The cumbersome and opaque process required to acquire land raises concerns about security of title, particularly given past abuses relating to the distribution and redistribution of public land.

Kenya has been slow to open public infrastructure to competition because the government considers state-owned companies that control infrastructure as "strategic" enterprises. As a result, reform and partial privatization of the telecommunications, power, and rail sectors are progressing slowly.

The Kenyan government wholly owns the National Oil Corporation and the Kenya Pipeline Corporation, and competition with these companies is limited. State owned enterprises, including Kenya Electricity Generating Company, Kenya Power and Lighting Company (KPL), and the Geothermal Development Company dominate the electricity generation, transmission, and distribution segments of the energy sector. In July, KPL changed its internal procurement rules to source 80 percent of supplies from Kenyan registered companies.

When making their initial investment, foreign investors with foreign staff are required to submit plans for the gradual phasing out of non-Kenyan employees. In considering an application for investment, the Kenya Investment Authority considers the extent to which such investment or activity will contribute to employment creation, acquisition of new skills or technology, and government revenues.

Kenya's legislature is currently considering a Local Content Bill applicable to the oil and gas and other extractive sectors. The bill would require a firm, before applying for licenses and project permits, to submit a "local content plan," which must set forth specific actions the firm will take to give "first priority" to locally produced goods and services, utilize a local workforce, and develop local employment skills. The plan must also include a local research and development plan, a plan for transferring technology to Kenyan firms, and a plan for replacing non-Kenyan employees with Kenyan employees over time. The bill further requires the Kenyan government to "encourage" joint ventures with local firms. The proposed bill gives the Cabinet Secretaries responsible for the extractive sectors a mandate to review and reject applicants' local content plans and to prescribe regulations specifying minimum levels of local content. U.S. business associations have raised concerns over the bill, pointing to its lack of clarity and the possibility that it could run afoul of Kenya's commitments under the WTO. The United States has also raised the issue with the government of Kenya.

A proposed Mining Act would restrict foreign participation in the mining sector. The act would, among other restrictions, reserve the acquisition of mineral rights to Kenyan companies, require 60 percent ownership of mineral dealerships by Kenyans, and require 60 percent Kenyan ownership of artisanal mining companies.

In 2015, the Department of Immigration introduced a new directive making it more difficult for non-Kenyans to obtain work permits. Under the new rules, foreign nationals must apply for alien registration before a work permit can be formally endorsed. These rules have led to long delays in the processing of work permits for non-Kenyans.

BARRIERS TO DIGITAL TRADE

Kenya is considering several new measures that would have a significant impact on the Information and Communications Technology (ICT) sector in Kenya.

The draft ICT Policy requires local equity ownership by international companies providing ICT services in Kenya. It contains vague statements about future policies on data localization and states that preference will be given to Kenyan companies in the award of government tenders. Such requirements would serve as market access barriers for foreign ICT services and prevent Kenyans from taking advantage of best-in-class services.

The draft Computer and Cybercrimes Bill, currently pending in the Kenyan Parliament, does not adopt international standards with respect to liability of Internet intermediaries for activity of third parties. The United States has raised these points with the ICT Ministry, Senate ICT Committee, and the Communications Authority, informing them that these policies could, among other things, severely limit the number of international firms that would be able to operate profitably in Kenya.

The ICT Practitioner Bill, pending in Kenya's Parliament at the end of 2016, would require companies seeking to provide ICT services to obtain a Kenyan registration and certification, and would impose additional, onerous requirements related education, training, registration, and licensing.

OTHER BARRIERS

Access to Credit

In August 2016, President Kenyatta signed into law the Banking Bill 2016. The law caps the maximum interest rate banks can charge on loans at four percent above the base rate set by the Central Bank of Kenya. It further provides a floor for the deposit rate held in interest earning accounts to at least 70 percent of the Central Bank of Kenya base rate. The International Monetary Fund and other observers have warned that the restrictions will result in a contraction in the availability of credit.

Corruption

Corruption remains a substantial trade barrier in Kenya. U.S. firms continue to report that 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 the county level. The government has not implemented anti-corruption laws effectively, and officials often engage in corrupt practices with impunity. While judicial reforms are moving forward, bribes, extortion, and political considerations continue to influence outcomes in civil cases.

Despite efforts to increase efficiency and public confidence in the judiciary, a backlog of cases and continuing corruption – both perceived and real – burden and reduce the credibility of Kenya's judicial system. Companies cite these deficiencies as obstacles to investment because they discourage lending and result in higher interest rates when financing is provided. An industrial court exists in Kenya, but it is plagued by long delays in rendering judgments. As such, foreign and local investors are subjected to lengthy and costly legal procedures.

Export Barriers

Under the Scrap Metal Act 2014, Kenya prohibits the export of any form of scrap metal absent authorization in order to discourage vandalism of infrastructure and to encourage domestic manufacturing that uses scrap metal as an input. The Agriculture, Fisheries and Food Authority Act 2013 (AFFA) prohibits exports of raw agricultural produce such as macadamia, bixa, cashew nuts, and pyrethrum without express authorization from the Cabinet Secretary for Industry, Trade, and Cooperatives.

KOREA

TRADE SUMMARY

The U.S. goods trade deficit with Korea was $7.7 billion in 2016, a 2.3 percent decrease ($647 million) over 2015. U.S. goods exports to Korea were $42.3 billion, down 2.7 percent ($1.2 billion) from the previous year. Corresponding U.S. imports from Korea were $69.9 billion in 2016, down 2.5 percent from 2015. Korea was the United States' seventh-largest goods export market in 2016.

U.S. exports of services to Korea were an estimated $20.5 billion in 2015 (latest data available), and U.S. imports were $11.1 billion. Sales of services in Korea by majority U.S.-owned affiliates were $14.0 billion in 2013 (latest data available), while sales of services in the United States by majority Korea-owned firms were $17.6 billion.

U.S. foreign direct investment (FDI) in Korea (stock) was $34.6 billion in 2015 (latest data available), a 3.3 percent increase from 2014. U.S. direct investment in Korea is led by manufacturing, finance/insurance, and wholesale trade.

United States-Korea Free Trade Agreement

The United States-Korea Free Trade Agreement (KORUS, or the Agreement) entered into force on March 15, 2012. Since then, the United States and Korea have carried out six rounds of tariff cuts and eliminations, creating substantial new market access opportunities for U.S. exporters.

Between 2011 and 2015, overall U.S.-Korea goods and services trade rose from $126.5 billion to $146.8 billion (latest combined data). U.S. goods and services exports have increased overall, with services exports reaching $20.5 billion, up 23.1 percent compared to pre-FTA levels.

For 2016, U.S. goods exports to Korea totaled $42.3 billion, down 2.7 percent compared to the previous year. Manufactured goods, including high-technology, autos, heavy industry, and consumer goods, accounted for the overwhelming majority of U.S. goods exports, reaching $35.7 billion in 2016. U.S. manufactured goods exports to Korea are now at 3.8 percent above pre-FTA levels. In 2016, U.S. agricultural products good exports totaled $761 million, an increase of $174 million over 2015 levels. A number of U.S. farm exports to Korea have recorded double- and triple-digit gains since the FTA came into effect, although compared to pre-FTA levels, overall U.S. agricultural goods exports to Korea are down by 10.9 percent.

The Agreement has brought improvements in the transparency of Korea's regulatory system, strengthened intellectual property protection, helped dismantle non-tariff barriers to autos and other key U.S. exports, and enhanced market access for U.S. exporters of all sizes, including small and medium-sized exporters. KORUS provides meaningful market access commitments across virtually all major services sectors, including improved access for telecommunications and financial services. The Agreement also has improved Korea's business environment for U.S. exporters while strengthening and expanding U.S. ties with a key strategic partner in Asia.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Chemicals – Act on the Registration and Evaluation of Chemicals

The Registration and Evaluation of Chemicals (K-REACH) Act entered into force on January 1, 2015. K-REACH requires manufacturers and importers of chemical substances to register and comply with annual reporting requirements. The United States has raised a number of concerns about K-REACH, centering on the lack of guidance on the ongoing implementation of this law, Korea's lack of transparency during the development of K-REACH's rules and requirements, the insufficient time for companies to implement K-REACH's requirements; and K-REACH's lack of protection for confidential business information. The United States has raised these concerns numerous times, including through KORUS and at WTO TBT committee meetings. The United States remains concerned that Korea's guidance documents concerning K-REACH are not sufficiently detailed, and that implementation timeframes have been too short to enable sufficient consideration of stakeholder input. The United States will continue to engage Korean authorities as appropriate.

In 2016, both the Ministry of Environment (MOE) and the Ministry of Food and Drug Safety (MFDS) began to implement regulations banning the use of certain products containing chloromethylisothiazolinone/methylisothiazolinone (CMIT/MIT) without disclosing its testing parameters or the raw scientific data supporting its determinations on what constitutes a hazard to consumers. Both the United States and the EU allow use of MIT and CMIT in similar products. The United States is urging Korean ministries to base CMIT/MIT regulation and similar biocide regulation on scientific evidence, and to be transparent in disclosing testing parameters and results.

Information Technology Equipment – Cybersecurity Testing Requirements

Korea launched the Network Verification Scheme (NVS) on October 1, 2014. NVS sets forth new Korea-specific requirements for network equipment such as routers or switches procured by Korean government entities and requires agencies to submit procured equipment to the National Intelligence Service (NIS) for mandatory testing. Although Korea is a member of the Common Criteria Recognition Arrangement (CCRA), which sets cybersecurity standards for government-procured IT equipment, NIS does not consider CCRA-certified equipment as compliant with the NVS, absent additional in-country testing. U.S. stakeholders have raised concerns that the NVS ignores Korean commitments in the CCRA. The United States has and will continue to press for greater transparency and acceptance of CCRA-certified equipment without further in-country testing.

Alcohol Labeling

On July 29, 2016, the Republic of Korea notified to the WTO new health warning labels on all alcoholic beverages sold in Korea with messages indicating the health risks of alcohol consumption. One of the labels contains the statement, "alcohol is a carcinogen," thereby asserting a direct link between alcohol consumption and cancer. Korea is the first country in the world to require such a label. Although Korea's WTO notification purported to allow a 60-day comment period, the final warning labels were published halfway through the comment period with an immediate effective date and only a six-month grace period to comply. The United States and stakeholders submitted comments prior to the deadline specified in the WTO notification, but these were not taken into account; the final measure was published before comments were submitted. The United States has raised concerns with Korea's process for developing and notifying this measure, which did not allow for meaningful consultation with trading partners.

Wood Products

In 2014, Korea's National Institute of Forest Service (NIFOS) began publishing standards for 11 wood products without room for acceptance of North American standards widely used in the US, Canada, Brazil, and Chile – 75 percent of the Korean domestic market. Korea has since accepted U.S. standards for structural plywood, but the Korean standard for oriented strand board (OSB), which is based on an ISO quality standard for decorative wood (less expensive wood product) remains a problem because it does not include test procedures or analysis that would address engineering values appropriate for construction purposes. The United States is working with Korea to recognize the U.S. standard for structural OSB, and supports passage of the Foreign Quality Inspection Institute (FQII) Act, which would allow U.S. conformity assessment bodies to become accredited in the Korea market. This would reduce costly duplicative testing and port delays.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

Korea's regulatory system for agricultural biotechnology continues to present challenges to U.S. agricultural exports. The approval process for new genetically engineered events is onerous and protracted due to inefficiencies in the system that include redundant reviews and data requests. For example, approval of new events requires review by up to five different agencies. Korea has indicated a willingness to continue reviewing and considering adjustments to regulatory inefficiencies. The United States will continue to engage with Korea on improving its approval process.

Beef and Beef Products

Prior to 2008, Korea restricted the importation of U.S. beef and beef products over BSE-related concerns. Following a 2008 bilateral agreement to fully reopen Korea's market to U.S. beef and beef products, Korean beef importers and U.S. exporters have operated according to a voluntary, commercial understanding that U.S. beef and beef products imported into Korea will be derived from animals less than 30 months of age, as a transitional measure, until Korean consumer confidence improves. To date, this agreement has operated smoothly. In 2016, the United States exported over $1 billion in beef (including variety meats) to Korea, making Korea the second largest export market for U.S. beef.

Maximum Residue Limits

Korea is in the process of shifting to a new "positive list" system for agrochemical residues and veterinary drugs. Under the new system, Korea will no longer allow imports of food containing agrochemical residues unless the substance has been approved for the commodity in question and a maximum residue level (MRL) has been established. On July 15, 2014, Korea notified the WTO that the positive list would be implemented in December 2016 for tropical fruits, oil seeds, and tree nuts; December 2018 for all other plant products; and December 2020 for meat, poultry, and other animal products.

In the process of making this shift, Korea is requiring the establishment of new import tolerances for agrochemicals and veterinary drugs previously registered for use in Korea, as well as for new substances not yet registered for use in Korea. Although Korea has been actively communicating with stakeholders to address concerns, this process may prove a significant challenge to U.S. exporters of fruit and grain if import tolerances are not set at an appropriate level and in a timely manner. The United States has expressed concerns about this and has sought a delay in implementation of the positive list approach to allow

registrants and evaluators sufficient time to review the scientific information for import MRLs. The issue was discussed at the KORUS SPS Committee meeting held in December 2016, and Korea has delayed the deletion of existing MRLs on tropical fruits, oil seeds, and tree nuts for substances not registered in Korea until the end of 2018. The United States will continue to encourage Korea to maintain MRLs for substances that are currently approved until all necessary MRLs are established at levels supported by scientific data.

In addition, the United States remains concerned that, after a single MRL violation is detected in a shipment of a particular commodity from any exporting country, Korea will increase testing of all shipments of that commodity from any source, including the United States. The U.S. agricultural industry has a strong record of compliance with Korea's food safety standards, and increased testing requirements based on a single third-country violation can be disruptive, especially for trade in products with limited shelf-lives and short shipping seasons. The United States is continuing to work with the Korean government and U.S. producers to address these concerns.

Potatoes

In August 2012, Korea prohibited the importation of fresh potatoes from the states of Idaho, Oregon, and Washington due to the presence of zebra chip in the region. Chipping potato shipments resumed in October 2012 based on Korea's acceptance of a systems approach, however Korea still prohibits the importation of fresh table-stock potatoes from the Pacific Northwest. The United States continues to engage with Korea to remove the import prohibition, and raised this issue at the USDA-Ministry of Agriculture, Food, and Rural Affairs Technical Bilateral in September 2016, as well as at the KORUS SPS Committee meeting held in December 2016.

IMPORT POLICIES

Origin Verification

U.S. exporters and producers have raised concerns that the Korea Customs Service (KCS) has been conducting unduly onerous verifications for claims of preferential tariff treatment under the KORUS FTA. For several agricultural and industrial products, they claim KCS has required excessive and unnecessary documentation during the verification process that has cost U.S. exporters considerable time and money and has put preferential treatment for some U.S. exports at jeopardy. Lack of coordination and inconsistent application of KCS documentation and other verification standards among KCS offices were two other challenges raised by U.S. companies. U.S. companies also claim that KORUS certifications of origin have been rejected by KCS for minor errors and that KCS has limited the ability of companies to make corrections to certifications, thus further jeopardizing preferential tariff treatment for U.S. products.

Since 2013, the United States has worked closely with Korea to resolve such issues and ensure that U.S. exporters and producers receive the benefits under KORUS to which they are entitled. 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. USTR has pressed for the resolution of the verification challenges faced by U.S. exporters within an *ad hoc* Origin Verification Working Group and within the formal committee structure under KORUS. The United States will continue to monitor developments in this area in 2017, including addressing specific cases as they arise, as well as address broader issue relating to proper verification under KORUS.

Express Delivery Services

While U.S. stakeholders report market access for U.S. express delivery services has improved since KORUS entered into force, they have begun to express concern that new clearance infrastructure and associated policies being implemented by KCS could disadvantage foreign express delivery carriers. Since KCS began operating a Common Express Terminal (CET) at Incheon on July 1, 2016, some express delivery service companies have reported increased costs and delays in clearing shipments through customs. KCS requires both foreign and domestic carriers, with the exception of Korea Post, to send shipments selected for inspection to the CET, instead of continuing the practice of inspecting shipments on premises within each foreign carrier's own clearance facility. U.S. stakeholders also have raised concerns about the unique treatment of Korea Post and the fact that rerouting goods for inspection creates significant services delays and adds substantial costs. The United States has raised this issue with KCS and will continue to monitor and work to address the issue in 2017.

Tariffs and Taxes

Under KORUS, Korean tariffs on almost two-thirds of U.S. agricultural exports have been eliminated. U.S. products with no tariff include wheat, corn, soybeans for crushing, whey for feed use, hides and skins, cotton, cherries, pistachios, almonds, orange juice, grape juice, and wine. Other agricultural products receive duty-free access under TRQs, including skim and whole milk powder, whey for food use, cheese, dextrins and modified starches, barley, popcorn, oranges, soybeans for food use, dehydrated and table potatoes, honey, and hay.

To increase the competitiveness of the domestic agricultural and livestock industries, in 2016 Korea announced voluntary, duty-free, most-favored-nation TRQs on a wide range of agricultural commodities, including young eels, whey for feed, manioc pellets for feed, unhulled barley for feed, oats for feed, soybean for oil crushing and oil cake for feed, cotton seed for feed, other sugars, wheat bran for feed, and over 18 other products.

Rice

During the Uruguay Round of multilateral trade negotiations, Korea negotiated a 10-year exception to "tariffication" (the WTO obligation to convert quantitative restrictions to tariffs) for rice in return for establishing a minimum market access (MMA) quota that was set to expire at the end of 2004. In 2005, Korea negotiated a 10-year extension of its exception to the tariffication commitment, along with an increase in its MMA commitment that called for Korea to increase its total annual rice imports over the course of the 10-year extension, from 225,575 metric tons (milled basis) in 2005 to 408,700 metric tons in 2014. The arrangement included country-specific quota commitments to purchase minimum amounts of imports from China, the United States, Thailand, and Australia. The arrangement operated smoothly, and U.S. access to the Korean market for rice improved significantly under the arrangement.

The MMA arrangement expired at the end of 2014, and on January 1, 2015, Korea initiated tariffication under a process at the WTO. This process has not yet been finalized. In the meantime, Korea continues to import 408,700 metric tons of rice annually under its ongoing WTO obligation through a global TRQ, instead of the country specific quotas that were in place. Korea also terminated the MMA-mandated requirement to import a set percentage of the total TRQ as table rice. The United States continues to work closely with Korea to ensure that the new arrangement takes appropriate account of the strong U.S.-Korea trading relationship in rice.

GOVERNMENT PROCUREMENT

Korea has made commitments to open its government procurement to U.S. suppliers under the revised WTO Agreement on Government Procurement (GPA) and KORUS. KORUS provides U.S. suppliers with significantly expanded access to central government procurements through a substantially lower threshold for eligible central government procurement contracts of goods and services compared to the GPA ($100,000 versus $191,000). KORUS does not cover procurement by Korean sub-central government entities and government enterprises. But 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 ($23 million). This threshold is three times higher than the threshold applied by the United States for similar entities. However, for central government procurements of construction services, Korea and the United States apply equivalent thresholds.

Encryption and Security Requirements for Public Procurement of Information and Communications Technology Equipment

Korea and the United States are both members of the Common Criteria Recognition Arrangement (CCRA), under which products certified at any CCRA-accredited laboratory in any member country should be accepted as meeting the certification requirements in any other member country. However, the Korean government requires network equipment such as routers and switches procured by government agencies to undergo additional verification in Korea by Korean government authorities, even if the products received CCRA certification outside Korea. Korea's NIS has managed this process in a nontransparent fashion without public comment periods, and has broadly construed these requirements to apply to any government entity, including schools, local governments, libraries, and museums. U.S. stakeholders have also raised concerns that Korea is expanding the scope of these requirements (including additional verification) to products not normally considered "security" products, such as routers, switches, and IP-PBXes. The U.S. Government has raised this issue with Korea in bilateral consultations and will continue to work with Korea in 2017, including within the CCRA, to address concerns.

Korea applies the Data Protection Standards for Cloud Computing Services (the "CCPA Guidelines'), which recommend data residency and network separation for all public institutions, including educational institutions, both of which severely undermine market access opportunities for foreign cloud service suppliers, as these requirements are inconsistent with most cloud service business models. Although the CCPA Guidelines are only a recommendation, U.S. businesses in Korea claim that this serves as a market access barrier for SMEs and start-ups.

Korea requires network equipment procured by public sector agencies (*i.e.*, government agencies and quasi-government agencies) to incorporate encryption functionality certified by NIS. NIS certifies encryption modules only based on the Korean ARIA and SEED encryption algorithms, rather than the internationally standardized AES algorithm that is in widespread use worldwide. Some U.S. suppliers have been unable to sell virtual private network and firewall systems to Korean public sector agencies due to this restriction. The United States has urged Korea to ensure that equipment based on widely-used international standards has full access to Korea's public sector market.

INDUSTRIAL SUBSIDY POLICY

Established under the Korea Development Bank Act of 1953, the 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 KDB in 2009 as part of its reform of the financial sector, the government subsequently reversed decided that the KDB should be a policy lender to support small and midsized enterprises and strategic industries and, in 2015, the KDB's role of providing public policy financial support to Korea's industries and companies was restored.

The United States is concerned that the Korea Development Bank (KDB) may take action that distorts trade and investment. The KDB is a state-owned enterprise that provides government assistance to favored industries – support that could place foreign competitors at a disadvantage. The United States will continue to monitor the lending policies of the KDB and other government-owned or affiliated financial institutions.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In general, Korea has a strong IPR protection and enforcement regime. Under KORUS, Korea and the United States agreed to strong enforcement provisions for all types of intellectual property and to join key multilateral IPR agreements. Moreover, the Korean government places importance on IPR protection and Korea is a significant creator of intellectual property. Nevertheless, some IPR-related concerns remain, including new forms of online piracy, corporate end-user software piracy, book piracy in universities, and counterfeiting of consumer products. In addition, the United States urges the Korean government to take further steps to ensure that all government agencies fully comply with the Korean Presidential Decree mandating that government agencies use only legitimate, fully licensed software. The United States continues to work with Korea to seek improvements in these areas.

SERVICES BARRIERS

Screen and Broadcast Quotas

In Korea, foreign programs may not exceed 20 percent of terrestrial TV or radio broadcast time or 50 percent of cable or satellite broadcast time, determined on a semi-annual basis. Within those overall quotas, Korea maintains annual quotas that further limit broadcast time for foreign films to 75 percent of all films for terrestrial broadcasts and 80 percent for cable and satellite broadcasts. Foreign animation is limited to 55 percent of all animation content for terrestrial broadcast and 70 percent of all animation content for cable and satellite broadcasts. Foreign-produced popular music is limited to 40 percent of all music content. Another quota, applied on a quarterly basis, limits content from any one country to 80 percent of the quota available to foreign films, animation, or music. KORUS protects against increases in the amount of domestic content required and ensures that new platforms, such as online video, are not subject to these legacy restrictions.

Korea maintains a screen quota for films, requiring that any movie screen show domestic films at least 73 days per year.

The Broadcasting Act contains restrictions on voiceovers (dubbing) and local advertising for foreign retransmission channels. These prohibitions continue to be of concern to U.S. stakeholders, as they diminish the value of such channels in the Korean market.

Legal Services

Over the past five years, Korea has taken certain steps to open its legal services market as outlined in KORUS. The first step involved creating a legal status for foreign legal consultants and allowing foreign law firms to open foreign legal consultant offices (FLC offices) in Korea. The law allows foreign attorneys with a minimum of three years of work experience to provide consulting services on the law of the

jurisdiction in which they are licensed. The second stage, implemented as of March 15, 2014, allows FLC offices to enter into "cooperative agreements" with Korean firms to be able to jointly deal with cases where domestic and foreign legal issues are mixed. The third stage, to be implemented by March 15, 2017, will allow foreign-licensed lawyers and firms to establish joint ventures and hire Korean-licensed lawyers.

On February 4, 2016, the National Assembly amended the Foreign Legal Consultants Act to allow joint ventures in Korea between domestic law firms and law firms from the United States and other countries with similar provisions in their free trade agreements. The Act contains several requirements that are unique to Korea and that discourage U.S. companies from starting joint ventures. The Act limits a foreign law firm's ownership of the joint venture to 49 percent, requires the firms composing the joint venture to have been in operation for three years, and excludes joint ventures from working on litigation, notarization, labor affairs, intellectual property rights, business involving the Korean government, and cases on family relations or inheritance. Although the bill allows foreign law firms to operate joint ventures in Korea for the first time, these provisions undermine the legislation's purpose of facilitating trade in legal services between the two countries. The United States will continue to urge Korea to review its overall approach to opening the legal services market and to ensure Korea complies with its international obligations.

Insurance and Banking

To implement its commitments related to the transfer of information under KORUS and the Korea-European Union Free Trade Agreement, Korea adopted new regulations in 2013 governing the outsourcing of data and IT facilities to allow financial institutions located in Korea to transfer data to affiliates outside Korea and to allow certain data processing and other functions to be performed by affiliates outside Korea. Stakeholders raised concerns about strict new rules and enhanced penalties governing data privacy under the May 2014 Act on Promotion of Information and Communications Network Utilization and Information Protection. In June 2015, the Financial Services Commission, taking into consideration most industry concerns, revised its Regulations on Financial Institutions' Outsourcing of Data Processing Business and IT Facilities to eliminate the approval process for the outsourcing of IT facilities, lift the restrictions on third-party outsourcing or re-outsourcing, establish a broader application of *ex post facto* reporting requirements to processing consumer or corporate transaction data, and abolish the Financial Supervisory Service's security review in the application process. The United States will monitor Korea's implementation of these regulations and continue to work to ensure that KORUS commitments are fully implemented in practice.

Credit and Debit Card Payment Services

U.S. stakeholders have raised concerns that the Financial Services Commission and the Financial Supervisory Service appear to be exerting pressure on financial institutions to steer customers toward domestic brand cards rather than international brands, as well as pursuing other policies that may discriminate against U.S. branded credit and debit card services. The United States will closely monitor developments in the credit and debit card services area, and work with the Korean government to ensure there is no discrimination against U.S. service providers.

Franchising Services

U.S. stakeholders have raised concerns for several years about the activities of the National Commission on Corporate Partnership, now renamed the Korea Commission on Corporate Partnership (KCCP), which imposed restrictions on the expansion of some U.S.-owned restaurant franchises and opened proceedings looking into numerous other sectors as well. The KCCP is a partially government-funded organization, created by Korea's National Assembly, with a mandate to mediate complaints of unfair or unequal

competition between large and small businesses. The KCCP's mission, according to its government-appointed chairman, is to level the playing field between large businesses and SMEs in two ways. First, it annually issues a "win-win scorecard" on how large businesses co-exist with SMEs. Second, and of most concern for U.S. businesses, the KCCP can "designate suitable industries for SMEs."

In 2013, the KCCP designated the family restaurant sector as reserved for SMEs, imposing restrictions that affected U.S. franchising companies in the sector by forcing them to choose between significant geographic restrictions on where they could open new stores or a limit of only five new stores a year nationwide for the next three years. In 2014 the KCCP also opened proceedings looking into U.S.-based restaurant chains and systems integration businesses, potentially affecting significant U.S. investors in Korea. The United States has raised concerns about the KCCP's activities and has urged Korea to consider carefully the effect that the KCCP has on Korea's business climate and on foreign investors. In 2015 and 2016, the KCCP reserved additional sectors for SMEs, but these have not affected U.S. companies. The United States will continue to monitor KCCP's activities closely in 2017 and raise concerns where they arise.

Telecommunications

Korea prohibits foreign satellite service providers from selling services (*e.g.*, transmission capacity) directly to end-users without going through a company established in Korea. Given current investment restrictions and the fact that establishing a local presence may not be economically justified, this prohibition significantly restricts the ability of foreign satellite service suppliers to compete in the Korean market. The United States will continue to raise this issue with Korea in 2017.

INVESTMENT BARRIERS

U.S. investors have on occasion raised concerns about possible discrimination and lack of transparency in investment-related regulatory decisions in Korea, including decisions by tax authorities.

Foreign investment is not permitted in terrestrial broadcast TV operations. For both cable and satellite broadcasting services, foreign participation is limited to 49 percent. As of March 15, 2015, U.S. investors can own channels on a cable or satellite system, but foreign satellite retransmission channels are limited to 20 percent of the total number of operating channels. Although telecommunications services were also limited to 49 percent foreign ownership, in line with its KORUS obligations, Korea now allows U.S. investors to wholly own such service suppliers.

In addition to the restrictions in telecommunications and key services sectors described above, Korea maintains other important restrictions on foreign investment, including a prohibition on foreign investment in rice and barley farming, and a 50 percent foreign equity limitation for enterprises engaged in meat wholesaling; electric power generation, distribution, and sales; and publishing of periodicals other than newspapers (enterprises publishing newspapers are subject to a 30 percent foreign equity limitation).

ANTICOMPETITIVE PRACTICES

The Korea Fair Trade Commission (KFTC) has a broad mandate that includes promoting competition, strengthening consumers' rights, creating a competitive environment for SMEs, and restraining the concentration of economic power. In addition to its authority to conduct investigations, including authority over corporate and financial restructuring, the KFTC can levy sizeable administrative fines for violations of the laws it enforces or for failure to cooperate with investigators. Decisions by the KFTC are appealable to the Korean court system. Pursuant to KORUS implementation, the KFTC instituted a consent decree process in 2014, which it continues to refine. The U.S. Department of Justice and the Federal Trade

Commission signed a Memorandum of Understanding with the KFTC in September 2015 to promote increased cooperation and communication between the competition agencies in both countries.

The KFTC amended its Review Guidelines on Unfair Exercise of Intellectual Property Rights (Guidelines) on March 3, 2016. The Guidelines provide "general principles and specific criteria" to be applied in competition law-based reviews of the exercise of IPR on a range of issues. The U.S. Government and members of industry had expressed concern that a prior version of the amended Guidelines issued in late 2014 could result in unwarranted antitrust enforcement against the holders of patents that had become widely used in an industry. The KFTC took note of these concerns and reflected these concerns in the revised Guidelines.

A number of U.S. firms have raised the concern that the KFTC has targeted foreign companies with more aggressive enforcement efforts, and that KFTC procedures and practices have inhibited their ability to defend themselves during KFTC investigatory proceedings. In January 2017, the U.S. Government probed these issues in detail in discussions with officials from the Korean Ministry of Trade, Industry, and Energy and the KFTC as part of the annual KORUS Joint Committee meetings. Further bilateral meetings are scheduled to ensure Korea's full implementation of its competition-related KORUS obligations

BARRIERS TO DIGITAL TRADE

Data Localization

Movement of Data

Restrictions on the export of location-based data have led to a competitive disadvantage for international suppliers offering innovative interactive services such as traffic updates and navigation directions, since their locally-based competitors typically are not dependent on foreign data processing centers. Korea is the only significant market in the world that maintains such restrictions. Legislation passed in 2014 established a more inclusive committee process for approving the export of cartographic and other location-based data, but Korea has yet to approve any such exports for foreign suppliers.

In 2016, relevant Korean agencies again, for the tenth time, rejected an application for such an export. U.S. stakeholders report that Korean officials are linking such approval to individual companies' willingness to blur satellite imagery of Korea on their global mapping service sites. Korean officials have expressed an interest in limiting the global availability of high-resolution commercial satellite imagery of Korea. It is unclear how limiting such availability through specific services (*e.g.*, online mapping) addresses the general concern, since high-resolution imagery, including for Korea, is widely available as a stand-alone commercial product (and often free of charge). The United States is sensitive to Korea's national security concerns, but is not convinced that Korea's current policy with respect to imagery makes sense, and has offered to consult with Korea to explore alternative avenues for addressing these concerns. The United States believes that access to Korea's mapping service market is a separate issue, and will continue to consult with Korea on opening that market to participation by foreign suppliers. Korea is hosting the Winter Olympics in 2018, drawing international visitors who will expect to have access to globally-marketed location-based services; this event creates additional urgency for solving this issue.

The 2011 Personal Information Protection Act imposes stringent requirements on service providers seeking to transfer customer data outside Korea. The law requires data exporters to provide customers with extensive information about the data transfer, including the destination of the data, any third party's planned use for the data, and the duration of retention. For data transferred to third parties within Korea, less stringent requirements apply. These restrictions pose barriers to the provision of Internet-based services

that depend on third-party data storage and processing services, and effectively privilege Korean third-party services over foreign services.

In April 2016, Korea amended its IT Network Use and Protection Act, which imposes stringent protections on the personal data collected and handled by telecommunications and online service providers. The amendments impose significant penalties for violating data protection standards, including heavy fines for telecommunications and online service providers that transfer personal data cross-border without consent. Failure to obtain consent results in a fine of up to three percent of the revenue related to the transfer.

Facilities Localization

The National Assembly passed the Act on Promotion of Cloud Computing and Protection of Users in March 2015. While the Act's passage was generally viewed as a positive development, the subsequent guidelines released by the Korean government, known as the Data Protection Standards for Cloud Computing Services (CCPA Guidelines), have the effect of favoring local cloud computing providers to the detriment of foreign service providers. The CCPA Guidelines require cloud computing networks serving public sector agencies to be physically separated from cloud computing services consumed by general users, a requirement that has been discredited by security experts for all but the most sensitive applications. Further, these guidelines limit public sector agencies to the use of specific encryption algorithms that are recognized by the government, excluding many widely-used, internationally standardized algorithms. Under the Korean government's definition, over 10,000 institutions are subject to the CCPA Guidelines, including educational institutions, public banks, and public hospitals. While the CCPA Guidelines are only "recommendations," with no penalty for non-compliance, Korean institutions usually follow such guidelines, thereby restricting market access opportunities. U.S. cloud computing providers report that it would not be cost effective for global companies to meet these requirements, leaving Korean providers as the only ones willing to meet these standards. The U.S. Government and industry will continue to monitor this issue closely.

Korea maintains facilities localization requirements with respect to payment gateway services, preventing suppliers from leveraging investments in facilities located outside Korea. While ostensibly designed to ensure that payment data remains in Korea, for privacy purposes, such a requirement is at odds with evolving technologies and services, which increasingly rely on globalized networks.

Other Issues

Under the Regulation on Supervision of Credit-Specialized Financial Business, electronic commerce firms selling goods in Korean won have been prohibited from storing Korean customers' credit card numbers in company information systems. (U.S. electronic commerce firms continue to sell legally into the Korean market from abroad, setting prices in dollars, but are prevented from accepting Korean-branded credit cards.) As a result, U.S. electronic commerce firms that are unwilling to develop Korea-specific payment systems have been prevented from entering the Korean market.

The United States has raised the issue with Korea on multiple occasions, urging it to lift what appear to be unreasonable and unnecessary restrictions. In November 2013, the Korean Financial Services Commission amended regulations to partially address this issue, enabling online digital content stores operating in more than five countries and headquartered abroad to receive "payment gateway" registrations, locate IT facilities offshore, store customer credit card numbers, and allow one-click purchases from mobile devices. This amendment is a positive step that incrementally advances Korean regulation in this area toward global norms. However, U.S. stakeholders have raised concerns regarding slow and unclear implementation of the changes, and some firms have expressed concern that the changes only partially address the underlying

issue of Korea's variance from global norms on electronic payments. The United States will continue to raise this issue with Korea in 2017.

OTHER BARRIERS

Motor Vehicles

Increased access to Korea's automotive market for U.S. automakers remains a key priority for the United States. Upon entry into force of KORUS, Korea immediately reduced the tariff on passenger vehicles from eight percent to four percent, and the remaining four percent tariff on passenger vehicles was eliminated on January 1, 2016. In addition, KORUS contains provisions designed to address nontariff barriers, including provisions requiring Korea to allow U.S. exporters to market cars in Korea built to U.S. safety standards rather than Korean standards, greatly reducing the cost of supplying U.S.-made cars to the Korean market. Korea also modified its key motor vehicle taxes so that U.S. cars are now in the same tax brackets as their domestic competitors. Finally, transparency provisions in KORUS ensure that automakers have sufficient opportunity to participate in the setting of new regulations and adequate time to adjust to changes in new regulations. U.S. automobile exports to Korea increased by 280 percent from 2011 to 2016, from $418 million in 2011 to $1.6 billion in 2016. U.S. exports of automobiles to Korea increased 20 times faster than U.S. automobile exports to the world over this same period. Korea is now the United States' eighth largest export market by value, up from the 17th largest market in 2011.

The 2016-2020 update of Korea's CO2/Corporate Average Fuel Economy (CAFE) emissions and fuel efficiency regulations was finalized and promulgated on December 30, 2014. The updated regulations mandate a CAFE emission target of 97 g/km average carbon dioxide emissions by 2020. Korea reflected stakeholder comments related to the small volume manufacturer threshold (sales of 4,500 or fewer vehicles in 2009), but will gradually reduce the 19 percent leniency factor provided to small volume manufacturers to 8 percent by 2020. To help meet Korea's 2020 CAFE emission targets, industry requested that Korea recognize various off-cycle and eco-innovation credits that are recognized in the United States and the European Union. After consultations with the industry, the Ministry of Environment (MOE) revised and expanded its off-cycle and eco-innovation credits, effective December 30, 2015. As MOE continues to clarify its automotive emissions policies, the United States will continue to engage with Korea to ensure that these policies are implemented in a fair, transparent, and predictable manner, consistent with KORUS. Through the Autos Working Group under KORUS, the United States also is urging the MOE to conduct a mid-term review of its 2016-2020 CO2/CAFE emissions regulations, so that the results of that review will inform policymaker thinking in regard to the anticipated 2021-2025 update.

Repair History Reporting

Pursuant to an amendment of the Motor Vehicle Management Act, Korea requires that all automobile manufacturers or dealers report vehicle repair histories to vehicle purchasers to account for any damage taking place between the manufacturing site and customer delivery. (While not regulated at the Federal level in the United States, 36 states have some type of damage reporting requirement, though these differ in important ways from the requirement in Korea, such as by exempting certain types of damage and establishing *de minimis* levels of damage that would not need to be reported.) U.S. stakeholders raised concerns that this new reporting requirement could create obstacles for imports, as vehicles arriving from overseas often undergo minor reconditioning prior to sale.

U.S. stakeholders requested that Korea's Ministry of Land, Infrastructure, and Transportation (MOLIT) draft subordinate implementing regulations that would clarify the underlying law so that MOLIT would recognize Korean pre-delivery inspection facilities, rather than U.S.-based manufacturing plants, as the

conclusion of the manufacturing process. They also requested that Korea, like the U.S. states, consider establishing a *de minimis* rule on what repairs require reporting. In response to industry feedback, MOLIT commissioned a study on the *de minimis* rule and in June 2016 proposed a revision to these damage disclosure rules that would require manufacturers or dealers to disclose only vehicle damage that is greater than 3 percent of the manufacturer's suggested retail price (MSRP) of the vehicle. MOLIT also indicated that it will allow exclusion from the damage calculation any damaged parts replaced with original equipment manufacturer (OEM) sourced parts, with the exception of OEM bumpers. The American Automotive Policy Council and the Korea Automobile Importers and Distributors Association are requesting MOLIT, like many U.S. states, to set the reporting threshold at no less than 4.5 percent of the MSRP and to allow the OEM exception to also cover bumpers. MOLIT has not yet made a final decision. Because an implementing guideline has not yet been created for this reporting requirement, MOLIT has not yet started enforcing the regulation. The U.S. Government has raised this issue with Korean authorities and will continue to address the issue in 2017.

"*Right to Repair*"

On March 30, 2016, MOLIT announced revised regulations under the Motor Vehicle Control Act, which requires automakers to provide training materials and access to diagnostic tools and security codes to independent automobile repair shops so that the shops can provide levels of service similar that of car dealerships. Many of the revisions were responsive to U.S. stakeholder concerns. The U.S. automobile industry continues to request additional revisions, including clarifications to the manner in which training must be delivered, and changes to the timing of requirements regarding security-related reprogramming and protection of proprietary information. MOLIT allowed a one year grace period for diagnostic tools and security-related services. The United States will closely follow this issue and raise concerns if there are implementation issues in 2017.

Amber Turn Signal Lights

MOLIT on November 1, 2016, asked manufacturers that import vehicles with red turn-signal lights to change the color to amber, contending that drivers could confuse the red signal lights with brake lights and cause traffic accidents. Although MOLIT has acknowledged that there is no prohibition against red turn-signal lights installed on vehicles that qualify as U.S. origin under KORUS and comply with U.S. safety standards, a MOLIT official requested the "voluntary" change in color during a meeting with industry members. According to import manufacturers, the official said that if they are not able to cooperate with this request, MOLIT will "strictly apply its authority to implement the law." The United States will closely monitor MOLIT's actions in 2017 to ensure continued compliance with KORUS.

Motorcycles

Korea's longstanding ban on driving motorcycles on expressways continues, which U.S. stakeholders argue constrains potential sales. Korea views this ban as a necessary safety measure, and has pointed to a 2011 study commissioned by the Korean National Police on the safety of motorcycles on highways. The study highlighted inadequacies in Korea's regulatory and safety practices surrounding the licensing of motorcycle drivers and the proliferation of young, untrained motorcycle riders driving dangerously on city streets. The United States is unaware of any comparison that fit-for-purpose heavy motorcycle riding poses any safety concerns different from smaller, lighter motorcycles and continues to urge Korea to allow large motorcycles on expressways.

Pharmaceuticals and Medical Devices

The United States has urged Korea to seriously consider stakeholders' concerns and ensure that pharmaceutical reimbursement is conducted in a fair, transparent, and nondiscriminatory manner that recognizes the value of innovation. Nevertheless, the U.S. innovative pharmaceutical and medical device industries continue to report concerns regarding the lack of transparency and predictability of Korea's pricing and reimbursement policies and their underlying methodology. These policies continue to generate considerable uncertainty for stakeholders, which depend on long-term planning for the investment decisions that support research and development. In response to these concerns, the Ministry of Health and Welfare (MOHW) announced a new pricing and reimbursement policy on July 7, 2016, which took effect on October 24. MOHW announced a further amendment to this policy on October 24, as well as plans to clarify certain qualifying criteria for companies. Stakeholders have welcomed this new policy, which addresses industry concerns to some degree; but many stakeholders are still concerned that the policy may unfairly disadvantage U.S. exporters. The United States urges Korea to clarify the qualifying criteria for its amended reimbursement policy. Stakeholders in the U.S. medical devices sector also identify pricing and reimbursement concerns, including insufficient transparency and meaningful engagement with government officials; reimbursement decisions that do not sufficiently recognize the value of innovations; and delays in market access. The United States will continue to monitor these issues closely in 2017.

KUWAIT

TRADE SUMMARY

The U.S. goods trade deficit with Kuwait was $16 million in 2016, a 99.2 percent decrease ($1.9 billion) over 2015. U.S. goods exports to Kuwait were $3.3 billion, up 20.3 percent ($557 million) from the previous year. Corresponding U.S. imports from Kuwait were $3.3 billion, down 29.3 percent. Kuwait was the United States' 50th largest goods export market in 2016.

U.S. foreign direct investment (FDI) in Kuwait (stock) was $293 million in 2015 (latest data available), a 25.1 percent decrease from 2014.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Energy Drinks

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

Conformity Assessment Marking

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

Sanitary and Phytosanitary Barriers

In November 2016, the GCC announced that it would implement a December 2016 version of the "GCC Guide for Control on Imported Foods" in October 2017. The United States continues to raise concerns about the Guide, particularly a possible requirement to revise U.S. health export certificates for food and agricultural products destined for GCC countries. The GCC has not provided a scientific justification for its revised certificate statements, some of which may not follow the guidelines of the Codex Alimentarius Commission, the International Plant Protection Convention and the World Organization for Animal Health. The United States continues to request that the GCC delay implementation of the Guide and that experts work to address these concerns.

IMPORT POLICIES

Tariffs

As a member of the GCC, Kuwait applies the GCC common external tariff with a number of country-specific exceptions. Kuwait's exceptions include 417 food and agriculture items that are exempt from customs duties. Tobacco products are currently subject to a 100 percent tariff rate.

Import Prohibitions and Licenses

Kuwait prohibits the importation of alcohol, pork products, used medical equipment, automobiles over five years old, books, periodicals or movies that insult religion and public morals, and all materials that promote political ideology.

All imported meat requires a health certificate issued by the country of export and a halal food certificate issued by an approved Islamic center in that country.

GOVERNMENT PROCUREMENT

The Public Tenders Law (No. 37 of 1964, modified by Laws No. 13 and 31 of 1970 and 1977, respectively) regulates government procurement and requires that any procurement with a value greater than KD 5,000 (approximately $16,500) be conducted through the Central Tenders Committee. Kuwait's government procurement policies require the purchase of local products, where available, and provide a 10 percent price preference for the use of locally produced items, a preference available to all companies operating in the country.

Kuwait is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Kuwait remained on the Special 301 Priority Watch List in 2016. Kuwait was placed on the Priority Watch List in October 2014 as a result of its failure to revise its 1999 copyright law to provide adequate and effective protection of copyrights, and due to a lack of consistent enforcement against intellectual property rights (IPR) violations. Though Kuwait revised its copyright law in May 2016 to address some previously identified shortcomings, it failed to address significant deficiencies, including with respect to remedies available for infringement, treatment of software, and inappropriate distinctions between protections afforded to citizens and non-citizens. In addition, implementing regulations have not been issued, and no criminal cases have yet been prosecuted under the terms of the new law.

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

SERVICES BARRIERS

Banking

Foreign banks were granted licenses to operate in Kuwait under the 2001 Direct Foreign Capital Investment Law. In 2008, the Union of Kuwaiti Banks reorganized its membership structure to include all foreign banks operating in Kuwait and renamed itself the Kuwait Banking Association, which provided foreign

banks additional market access via acceptance in a specialized industry association. Foreign banks are subject to a maximum credit concentration equivalent to less than half the limit of the largest local bank, and are expressly prohibited from directing clients to borrow from offshore branches of their bank or taking any other measures to facilitate such borrowing.

Telecommunications

Although Kuwait's telecommunications industry is technically open to private investment, in practice the government maintains extensive ownership and control of licensing and infrastructure development. Concerns have been raised that Kuwait's telecommunications law gives authorities sweeping power to revoke licenses and to block content with little judicial oversight. The Communication and Information Technology Regulatory Authority was established in 2014 to develop written guidelines, liberalize the telecommunications market and privatize Kuwait's fixed telecommunications network. There are currently three wireless companies, and additional companies may be authorized in the future. While private companies may build cellular towers, the land and permits often are still controlled by the Ministry of Communications or the Municipality.

INVESTMENT BARRIERS

Foreign investment is not allowed in projects involving oil and gas exploration and production. Kuwait allows foreign firms to participate in some midstream and downstream activities in the oil and gas sector, but foreign investors in this sector have faced numerous challenges. Other major barriers to foreign investment 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 $24 million in 2016, a 16.9 percent increase ($3 million) over 2015. U.S. goods exports to Laos were $31 million, up 25.6 percent ($6 million) from the previous year. Corresponding U.S. imports from Laos were $55 million, up 21.6 percent. Laos was the United States' 178th largest goods export market in 2016.

The United States signed a bilateral Trade and Investment Framework Agreement (TIFA) with Laos in February 2016 and will use this dialogue to address bilateral issues, coordinate on ASEAN issues, and advance our WTO agenda.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Sanitary and Phytosanitary Barriers

Laos established its current regulations relating to sanitary and phytosanitary standards in 2012. It continues to refine these regulations and related processes to address the uneven implementation at entry points and is working to strengthen the technical knowledge of enforcement officials. The United States will meet bilaterally with Laos under our TIFA to discuss implementation of these regulations.

IMPORT POLICIES

Tariffs

Laos' membership in the WTO and ASEAN spurred trade liberalization, improved the business environment, and enhanced trade facilitation. Laos' average applied MFN tariff rate is 10 percent (8.3 percent for industrial goods and 20.1 percent for agricultural products), and its average bound MFN tariff rate will be 18.4 percent when all WTO accession commitments come into force in 2023.

Nontariff Barriers

Certain products, including motor vehicles, refined petroleum fuels and oil, natural gas, timber products, cement, and steel, are subject to import licensing.

Customs Procedures

The Lao Customs Department determines customs value based on transaction value according to the WTO Agreement on Customs Valuation. U.S. businesses have raised concerns about irregularities and corruption in the customs clearance process. In response, in 2016, the Lao government implemented a new digital payment system for importers in an effort to speed up the customs clearance process and reduce corruption. Initial feedback from U.S. importers suggests that the new system is working well and has reduced paperwork.

Laos submitted its WTO Trade Facilitation Agreement instrument of acceptance on September 29, 2015.

Taxation

Laos has been implementing a value-added tax (VAT) system since 2013. The standard VAT rate of 10 percent applies to most domestic and imported goods and services, with some limited exemptions. Laos also is seeking to implement excise taxes on some goods such as vehicles to restore revenue lost from tariffs bound under the WTO and ASEAN agreements. U.S. and other foreign companies have raised concerns to the United States and Lao governments about duplicative, arbitrary, or selectively enforced tax provisions. The United States will continue to meet bilaterally with Laos to address these concerns.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Laos was not listed in the 2016 Special 301 Report. With U.S. Government assistance, Laos continues to work to establish an effective system for civil litigation and criminal enforcement of IPR. Although there is increasing public awareness and media coverage in Laos of the harm caused by counterfeit goods and the impact of copyright piracy on local content providers, counterfeit goods and pirated entertainment content continue to be available in Lao marketplaces. In 2016, Laos continued to move forward on accession to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (the Madrid Protocol) and the Hague Agreement Concerning the International Registration of Industrial Designs. In 2017, Laos plans to initiate a comprehensive review of the IPR Law to revise provisions to allow it to accede to these two international treaties.

The United States will continue to meet bilaterally with Laos under our bilateral TIFA and other dialogues to urge Laos to take steps to improve IPR protection and enforcement, including through developing judicial capacity to adjudicate IPR cases and increasing public awareness of the importance of IPR.

SERVICES BARRIERS

Foreign services suppliers continue to face difficulties in a number of service sectors in Laos, including financial, medical, postal, and telecommunications services, as well as some leasing, media, and transportation services. However, Laos opened most other service sectors to U.S. service suppliers through the 2005 United States-Laos Bilateral Trade Agreement.

INVESTMENT BARRIERS

Laos has a challenging investment climate due to corruption, difficulty in enforcing contracts, an underdeveloped judicial system, overlapping and often contradictory regulations, and limited access to financial services. Domestic ownership and partnership requirements vary by industry and administrative processes are often inconsistent or inefficient. The Lao government requires an annually renewable business license, receipt of which is contingent on a certification that all taxes have been paid. However, taxes are often assessed in an unpredictable manner. The United States will continue to urge the Lao government to address these issues.

BARRIERS TO DIGITAL TRADE

Decree 327 on Information Management on the Internet, issued in 2014, creates legal challenges for U.S. Internet services suppliers operating in Laos. Under the decree, "website managers" may be required to actively monitor content posted to their site, and may be held legally liable for the content on their site, even if that content was created by a third party. For websites that depend on user-generated content, such as social networks, customer review sites, and online forums, this decree creates legal exposure and undermines some business models entirely. The United States will continue to meet bilaterally with Laos under our bilateral TIFA and other dialogues to address these concerns.

OTHER BARRIERS

Corruption remains a major barrier for U.S. businesses seeking to operate in, or trade with, Laos. Informal payments to low level officials to expedite administrative procedures are common. However, Laos is seeking to improve the transparency of its domestic lawmaking process. In accordance with the 2012 Law on Making Legislation, the Ministry of Justice opened the online Official Gazette in October 2013 to publish existing and proposed Lao legislation. In addition, the Law on Making Legislation stipulated that existing laws not posted to the Official Gazette by the end of 2014 would be invalidated. However, old laws are still being posted to the online Official Gazette, which has resulted in a legal grey area with respect to the continuing validity of laws promulgated before 2015 but posted to the site after the deadline.

MALAYSIA

TRADE SUMMARY

The U.S. goods trade deficit with Malaysia was $24.8 billion in 2016, a 14.4 percent increase ($3.1 billion) over 2015. U.S. goods exports to Malaysia were $11.9 billion, down 3.3 percent ($410 million) from the previous year. Corresponding U.S. imports from Malaysia were $36.7 billion, up 8.0 percent. Malaysia was the United States' 24th largest goods export market in 2016.

U.S. exports of services to Malaysia were an estimated $2.9 billion in 2015 (latest data available) and U.S. imports were $1.8 billion. Sales of services in Malaysia by majority U.S.-owned affiliates were $7.8 billion in 2014 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were $472 million.

U.S. foreign direct investment (FDI) in Malaysia (stock) was $14.0 billion in 2015 (latest data available), an 8.0 percent decrease from 2014. U.S. direct investment in Malaysia is led by manufacturing, finance/insurance, and professional, scientific, and technical services.

Trade Agreements

The United States and Malaysia have a Trade and Investment Framework Agreement (TIFA). Malaysia also has a network of bilateral and regional trade agreements with Asia-Pacific and other countries. These include China, Chile, Japan, Korea, Australia, India, New Zealand, Iran, Pakistan, and Malaysia is a party to the region-wide ASEAN agreement. Malaysia is negotiating agreements with the 16-member Regional Comprehensive Economic Partnership and the EU.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Meat and Poultry Products – Halal Standards

In January 2011, Malaysia implemented a food product standard, MS1500: 2009, which establishes guidelines on halal food production, preparation, handling, and storage that go beyond internationally-recognized halal standards contained in the Codex Alimentarius. Specifically, the Malaysian standards require slaughter plants to maintain dedicated halal production facilities and ensure segregated storage and transportation facilities for halal and non-halal products. In contrast, the Codex allows for halal food to be prepared, processed, transported, or stored using facilities that have been previously used for non-halal foods, provided that Islamic cleaning procedures have been observed. All domestic and foreign meat (except pork) must be certified as halal by Malaysian authorities. Foreign producers' halal practices must be inspected and approved for conformity with Malaysian standards before the plant is permitted to export to Malaysia.

In December 2014, following an audit in October 2014, Malaysia's Department of Veterinary Services approved one U.S. turkey producer and one U.S. beef producer to export specific products to Malaysia. The United States continues to discuss the *halal* certification issue with Malaysia.

Infant and Follow-up Formula Products

In 2014, Malaysia's Ministry of Health launched an effort to revise and expand its existing Code of Ethics for the Marketing of Infant Foods and Related Products ("Code of Ethics"). The proposed revisions include

restrictions on the use of trademarked brand names and symbols on product labels or packaging, as well as restrictions on educational, promotional, and marketing activities for infant formula products and products for toddlers and young children. The United States has raised questions about the evidence Malaysia used in developing the proposed measure. The draft Code of Ethics is not likely to be finalized until after the first quarter of 2017.

Distilled Spirits

U.S. stakeholders have expressed concern about amendments proposed in late 2015 to Malaysia's food and beverage regulations affecting alcoholic beverages. These amendments, which are not yet in effect, could prohibit the sale of any alcoholic beverage that does not fall into a standardized product category. In addition, the amendments would create a new product category for "compounded hard liquor," which U.S. stakeholders believe may confuse consumers. The United States will continue to encourage the Malaysian government to address the concerns of U.S. stakeholders and ensure prior to implementation that any new regulations are not discriminatory.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

Although biotechnology crops are generally not approved for cultivation in Malaysia, the Malaysian government allowed biotechnological trials of papaya in 2014. The trials are limited to papaya with a delayed ripening effect and must be conducted within the facilities of the Malaysia Agriculture Research and Development Institute. To date, the Malaysian government has not published the results of the trials.

Malaysia permits biotechnology crops to be sold in the Malaysian market only if they have been approved for use in food and feed, and for processing. While Malaysia has approved a few corn and soybean biotechnology events for release on the market, bulk shipments of corn and soybeans may be rejected if a variety that has not yet been approved is detected. In 2013, the Malaysian government published new biotechnology labeling guidelines, including for processed food, but it has not yet begun enforcing them.

IMPORT POLICIES

Almost all of Malaysia's tariffs are imposed on an *ad valorem* basis, with an average applied tariff of 6.1 percent. Duties for tariff lines where there is significant local production are often higher. In general, the level of tariffs is lower for raw materials than for value-added goods. Malaysia charges specific duties on roughly 80 products (mostly agricultural goods) that represent extremely high effective tariff rates. Beverages, alcohol, and wine are subject to an effective tariff of up to 500 percent when import duties and excise taxes are combined.

The Malaysian government maintains tariff-rate quota systems for 20 tariff lines, including live poultry, poultry meat, milk, cream, pork, and round cabbage. These products face in-quota duties between 10 percent and 25 percent and out-of-quota duties as high as between 40 percent and 168 percent.

A large number of Malaysian tariff lines related to import-sensitive or strategic industries, principally in the construction equipment, agricultural, mineral, and motor vehicle sectors, are subject to import licensing requirements.

Import Restrictions on Motor Vehicles

Malaysia continues to impose import restrictions on automotive imports under the Malaysian National Automotive Policy (NAP) that makes a fundamental distinction between "national" cars (*e.g.*, domestic producers Proton and Perodua) and "non-national" cars, which include other vehicles assembled in Malaysia, as well as imports. The system of "approved permits" (APs) confers on permit holders the right to import and distribute cars and motorcycles. The AP system is administered in a non-transparent manner and effectively operates as a cap on the total number of vehicles that can be imported in a given year. Currently, the cap on imported vehicles is set at 10 percent of the domestic market. In addition, Malaysia applies high tariffs in the automobile sector as well as traffic restrictions and noise standards that affect the usage of large motorcycles. The NAP also provides that automotive excise tax be set based on the value of local content, which disadvantages imports of autos and automobile parts in the Malaysian market.

Import Licensing

U.S. stakeholders report Malaysia imposes non-automatic import licensing requirements on eight tariff lines of alloy steel products.

Excise Taxes

Despite amendments to its excise tax regime for beverage alcohol products in 2016, Malaysia continues to assess a lower excise tax on domestic distilled spirits than on imported products.

EXPORT POLICIES

Export taxes

Malaysia taxes exports of palm oil, rubber, and timber products in order to encourage domestic processing. Malaysia is the world's second largest producer and exporter of palm oil, and products made from palm oil. The tax that Malaysia imposes on exports of crude palm oil depends on fluctuations in the market price. In 2016, Malaysia reintroduced export taxes on crude palm oil after a period of low prices. The taxes are imposed when export prices exceed 2,250 RM per ton in order to ensure domestic supply and raise revenue. As of January 2017, the export tax was set at 7 percent of the Free on Board price. Refined palm oil and refined palm oil products are not subject to export taxes.

Export Licensing

U.S. stakeholders report Malaysia imposes non-automatic export licensing requirements on exports of minerals and ores, and for part of 2016 suspended issuance of export permits for bauxite.

FOREIGN EXCHANGE RESTRICTIONS

In December 2016, Bank Negara Malaysia announced new foreign exchange restrictions. Under the policy, exporters are required to convert 75 percent of their export earnings into Malaysian ringgit as a means of deepening the market for the currency, with the goal of reducing exchange rate volatility. All domestic trade in goods and services must be transacted in ringgit only, with no option for settlement in foreign currency. This policy may increase the cost of doing business in Malaysia, particularly for companies that rely on foreign currency in their operations. Although Bank Negara has indicated the possibility of granting approval for specific exporters, on a case by case basis, to retain more than 25 percent of their export proceeds, little information is available about these possible flexibilities granted and whether they are

available to all companies. Bank Negara Malaysia has delayed full implementation of this policy until the first quarter of 2017.

GOVERNMENT PROCUREMENT

Malaysia has traditionally used government procurement contracts to support national public policy objectives, including encouraging greater participation of *bumiputera* (the majority Malay ethic 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 partner before their tenders will be considered.

Malaysia is an observer to the WTO Agreement on Government Procurement, but is not yet a signatory.

EXPORT SUBSIDIES

Malaysia maintains several programs that appear to provide subsidies for exports, distinct from the pioneer status and investment tax allowance programs listed in Malaysia's 2014 subsidies notification to the WTO. In addition, the NAP increased the income tax exemption for high value-added exports of motor vehicles and parts based on the percentage increase in the value added of exports. The United States continues to raise concerns with Malaysia about these and other policies.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Malaysia was not listed in the 2016 Special 301 Report. In recent years, Malaysia has taken a number of steps to enhance its IPR enforcement regime, has acceded to the WIPO Copyright Treaty and the WIPO Performance and Phonogram Treaty, and has enacted legislation to define Internet service provider liability and to prohibit unauthorized camcording of motion pictures in theaters. Despite Malaysia's improved record of IPR protection, we continue to have concerns about some issues including the availability of pirated copyright and counterfeit trademark products in Malaysia, high rates of piracy over the Internet, and continued challenges posed by book piracy. In addition, the United States has urged Malaysia to continue its efforts to improve the protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

SERVICES BARRIERS

Telecommunications

Despite having made only limited WTO commitments in the telecommunications services sector, Malaysia currently allows 100 percent foreign equity participation in a license category of particular interest to foreign suppliers called "applications service providers" (suppliers that do not own underlying transmission facilities). However, liberalization of telecommunications services for network facilities providers and network service provider licenses has yet to be implemented; only 70 percent foreign participation is currently permitted, although, in certain instances, Malaysia has allowed greater equity participation.

Distribution Services

Malaysia allows 100 percent foreign ownership of department and specialty stores. However, foreign-owned larger retailers ("hypermarkets") and locally incorporated direct-selling companies must still have 30 percent *bumiputera* equity. Department stores, supermarkets, and hypermarkets are required to reserve

at least 30 percent of shelf space in their premises for goods and products manufactured by bumiputera-owned SMEs. Malaysia is currently reviewing the guidelines for retailers. The Malaysian government also issues "recommendations" for local content targets, which are, in effect, mandatory.

Legal Services

Amendments to the Legal Professions Act came into force in June 2014 that allow foreign law firms and foreign lawyers to practice in peninsular Malaysia. Licenses may be issued to foreign law firms to operate an international partnership with a Malaysian law firm or as a qualified foreign law firm (QFLF) without partnering with a local firm. Foreign lawyers working in international partnerships or QFLFs must reside in Malaysia for not less than 182 days in any calendar year. The amendments also authorize "fly-in-fly-out" activities whereby a foreign lawyer advising on non-Malaysian law may enter Malaysia for up to 60 days in a calendar year, subject to immigration approval. A foreign lawyer who has been authorized or registered to practice law in Malaysia is not subject to the 60 day limit.

Engineering Services

Foreign engineers are not allowed to operate independently of Malaysian partners or to serve as directors or shareholders of an engineering consulting company. A foreign engineering firm may establish a permanent commercial presence if all directors and shareholders are Malaysian.

Accounting and Taxation Services

All accountants seeking to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants before they may apply for a license from the Ministry of Finance. Citizenship or permanent residency is required for registration with the Malaysian Institute of Accountants.

Financial Services

The Financial Services Act of 2012 removed the previous foreign equity limits of 70 percent for domestic investment banks, insurance companies, Islamic banks, and Islamic insurance operators. In its place, Bank Negara Malaysia introduced a Best Interests of Malaysia test, which operates as a screening mechanism for all licensed or approved business regulated by Bank Negara, including foreign investment in banking and insurance. U.S. stakeholders have expressed concern that administration of the Best Interests of Malaysia test is not transparent and could be used by Bank Negara to unevenly impose certain investment restrictions, including equity caps. Reinsurance companies are required to conduct more than 50 percent of their reinsurance business in Malaysia and must have 5 percent cession and local retention. Bank Negara currently limits foreign banks to eight branches in Malaysia, subject to restrictions. For example, foreign banks cannot set up new branches within 1.5 kilometers of an existing local bank. In addition, Bank Negara considers ATMs as equivalent to separate branches and it also has conditioned foreign banks' ability to offer some services on commitments to undertake certain back office activities in Malaysia.

Audiovisual and Broadcasting

Foreign investment in cable and satellite platforms is permitted through joint ventures with foreign equity capped at 30 percent. No foreign direct investment restrictions apply to the wholesale supply of pay TV programming. Foreign investment in terrestrial broadcast networks is prohibited.

INVESTMENT BARRIERS

As described above, foreign investment in sectors such as retail, telecommunications, financial services, professional services, oil and gas, and mining is subject to certain restrictions. These restrictions include limitations or prohibitions on foreign equity and requirements that foreign firms enter into joint ventures with local partners. Pursuant to the National Land Code, foreigners must obtain prior approval from the relevant state authorities for any acquisition of land for agricultural, residential, or commercial purposes. These authorities may impose conditions on ownership, including maximum thresholds for foreign equity in companies seeking to acquire land. Malaysia also maintains performance requirements that must be met to receive a customs waiver for manufacturing operations in Foreign Trade Zones.

MEXICO

TRADE SUMMARY

The U.S. goods trade deficit with Mexico was $63.2 billion in 2016, a 4.2 percent increase ($2.5 billion) over 2015. U.S. goods exports to Mexico were $231.0 billion, down 2.0 percent ($4.8 billion) from the previous year. Corresponding U.S. imports from Mexico were $294.2 billion, down 0.8 percent. Mexico was the United States' 2nd largest goods export market in 2016.

U.S. exports of services to Mexico were an estimated $31.5 billion in 2015 (latest data available) and U.S. imports were $21.9 billion. Sales of services in Mexico by majority U.S.-owned affiliates were $45.9 billion in 2014 (latest data available), while sales of services in the United States by majority Mexico-owned firms were $8.5 billion.

U.S. foreign direct investment (FDI) in Mexico (stock) was $92.8 billion in 2015 (latest data available), a 3.5 percent increase from 2014. U.S. direct investment in Mexico is led by manufacturing, nonbank holding companies, and mining.

Trade Agreements

North American Free Trade Agreement: The North American Free Trade Agreement (NAFTA), signed by the United States, Canada, and Mexico (the "Parties"), entered into force on January 1, 1994. Under the NAFTA, the Parties progressively eliminated tariffs and nontariff barriers to trade in goods, provided improved access for services, established rules on investment, and strengthened protection of intellectual property rights. After signing NAFTA, the Parties concluded supplemental agreements on labor and the environment.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Energy Efficiency Labeling and Standby Power Usage Regulations

On January 23, 2014, Mexico's National Commission on Efficient Energy Use ("CONUEE") published an energy efficiency measure, NOM-032-ENER-2013 ("NOM-032"), which requires certain testing methods, standby energy consumption limits, and labeling for electronic and electrical equipment. Some industry sources expressed concern NOM-032 imposes additional burdensome and costly requirements on products exported to Mexico, including electronic products which operate at a relatively low wattage because it requires products to undergo testing and certification in Mexico, even if the product is already subject to testing in the United States.

Industry is also following the development of PROY-NOM-29-ENER-2016 ('NOM-029") on proposed energy conservation standards for external power supplies. In particular, industry sources have expressed concerns over the annual testing and certification requirements. A draft of NOM-029 was published in the Mexican Official Gazette on December 5, 2016 and the measure was notified to the WTO TBT Committee on December 7, 2016. CONUEE will consider industry comments before publishing a final regulation.

Alcoholic Beverages

On April 6, 2016, Mexico notified to the WTO its Draft Official Mexican Standard PROY-NOM-199-SCFI-2015, "Alcoholic Beverages – Names, Physical-Chemical Specifications, Commercial Information, and Testing Methods" as G/TBT/N/MEX/302. The United States and U.S. alcohol industries submitted timely comments on this notification on April 29, 2016.

The alcohol industries in the United States have significant concerns with these draft standards. The wine industry is particularly concerned with the maximum and minimum limits for various wine components; the classification system for sugar in wine; definitions of white, red, rose, sparkling, dry, and semi-dry wines; fermentation requirements; allergen labeling requirements; and export certification requirements.

In addition, industry is concerned about the time frame for implementation of these standards. The proposed labeling requirements, in particular, would require a minimum of eighteen months for companies to comply with. Earlier implementation of these requirements would result in significant disruptions in the marketplace.

The United States raised this issue bilaterally with Mexico at the June and November 2016 meetings of the WTO Committee on Technical Barriers to Trade. Mexico has indicated that comments from all stakeholders are under consideration and the standard would be revised with an additional comment period. However, Mexico has not yet provided further updates.

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, for years Mexico 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 agreed to by both the United States and Mexico. On May 19, 2014, Mexico published new import regulations for potatoes in the *Diario Oficial* (the official journal of the Government of Mexico). These new regulations would allow the importation of U.S. potatoes into any part of Mexico. The Mexican Potato Industry Association, CONPAPA, challenged the new import regulations in Mexican courts.

On July 15, 2016, the Peña Nieto Administration issued decrees to reinstate U.S. fresh potato access to areas beyond the 26 kilometer border zone, superseding the 2014 regulations issued by Mexico's Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA) that CONPAPA had blocked with 10 court injunctions. However, CONPAPA sought and obtained from Mexican courts three new injunctions against these decrees as well. USDA, USTR, and SAGARPA, in consultation with their potato industries, continue to work on a solution that would lead to expanded market access for U.S. potatoes to all of Mexico.

Raw Milk

Since May 2012, when Mexico determined that the Hoja de Requisitos Zoosanitarios (HRZ) veterinary import requirements were not applicable to raw milk, U.S. dairy exporters have been unable to ship raw milk for pasteurization to Mexico. Raw milk for pasteurization represents a substantial export opportunity

for several dairy producers who can supply this product to Mexican milk pasteurization plants when the plants are faced with insufficient domestic supplies of raw milk. In 2014, Mexico resumed work on the development of import requirements that would permit the importation of raw milk into Mexico. In 2016, the United States continued to hold discussions with Mexico's National Service for Food Safety and Quality (SENASICA) on Mexico's veterinary import requirements for raw milk intended for pasteurization.

Stone Fruit

California: Under the California Stone Fruit Work Plan, Mexico imposes a high level of direct oversight on the operations of Californian stone fruit producers as a condition for access to Mexico's market. The Mexican government requires numerous inspections by Mexican authorities of the operations of U.S. producers for the presence of oriental fruit moth and other pests. Through ongoing bilateral discussions, the United States and Mexico have sought to reduce this costly and burdensome oversight of U.S. producers. In 2015, both sides agreed to a program whereby full responsibility for export-certification activities would be transferred to the United States over the course of a three-year period. Stage 2 ended with the conclusion of the 2016 export season in early November. Stage 3 of the oversight reduction will begin in May 2017.

Pacific Northwest: Mexico has stated that, due to concerns about the oriental fruit moth, it would only accept peaches, nectarines, and plums from this region if producers permitted on-site inspection and used methyl bromide fumigation, until it could complete a pest risk assessment (PRA). Stone fruit from the Pacific Northwest, poses a low risk of transmission of the oriental fruit moth. Mexico is currently in the process of completing the PRA on stone fruit from this region, which would allow importation without inspections or fumigation. The United States continues to engage with Mexican authorities to reduce burdens associated with the exportation of stone fruit from the Pacific Northwest to Mexico.

IMPORT POLICIES

Tariffs and Market Access

Pursuant to the NAFTA, Mexico eliminated all remaining tariffs on industrial products and most agricultural products imported from the United States on January 1, 2003. On January 1, 2008, Mexico eliminated the remaining tariffs and tariff-rate quotas on U.S. agricultural exports.

Administrative Procedures and Customs Practices

U.S. exporters continue to express concerns about Mexican customs administrative procedures, including insufficient prior notification of procedural changes, inconsistent interpretation of regulatory requirements at different border posts, and uneven enforcement of Mexican standards and labeling rules. Since 2011, numerous U.S. companies, in particular textile and apparel exporters, have reported concerns regarding verifications initiated by Mexico's tax authority, the *Servicio de Administración Tributaria* (SAT), with respect to the NAFTA origin of certain products imported from the United States. In 2012, SAT adopted new procedures to address complaints, including a "selective sampling" procedure implemented on a case-by-case basis, and modified its notification system to ensure that all parties are aware of an audit and have adequate time to respond. After close engagement between the U.S. Embassy and SAT to review cases from textile exporters, pending textile verification audit cases were resolved in mid-2013. The U.S. Government continues to monitor the situation and urge SAT to resolve audit cases in a timely and transparent manner.

On December 5, 2013, Mexico issued new rules that require parties to obtain a license before certain steel products may be shipped into Mexico; these rules were revised on August 11, 2014. Mexico's stated objectives of the import licensing system are to combat customs fraud, improve enforcement of trade

remedy measures, and improve statistical monitoring of steel imports. Because of administrative delays and complicated procedures for the processing of applications by the Ministry of Economy, U.S. steel exporters and their Mexican customers have encountered disruptions in supply chains and additional shipment or demurrage costs, as shipments may not enter Mexico until licenses are issued. The U.S. Government is actively engaged with Mexico to address stakeholder concerns and to reduce or eliminate the burdens of this licensing system on U.S. steel exporters and their Mexican customers. The United States has also raised questions about the application of the Mexican licensing program in the WTO Committee on Import Licensing. The volume of U.S. exports of steel mill products to Mexico during 2016 was 3.34 million metric tons, a 4 percent decrease by volume over 2015. The value of U.S. exports to Mexico in 2016 was $3.66 billion, a 14 percent decrease by value compared to 2015.

In the second half of 2014, Mexico established several new regulations governing the importation of footwear and apparel and textile goods, including the creation of reference prices and the establishment of an import licensing system. According to the Mexican government, the measures were designed to enhance the productivity and competitiveness of Mexican footwear and apparel producers and protect Mexico's domestic footwear and apparel industries from damage caused by the importation of undervalued goods. U.S. exporters expressed a number of concerns with regard to the schemes, including a lack of transparency in how reference prices are determined and uneven enforcement by Mexico's customs and tax authorities. The U.S. Government continues to monitor these schemes and encourages SAT to clarify how requirements are applied.

In the second half of 2016, several U.S. companies expressed concerns about a draft SAT regulation that would impose new requirements on the customs entry process for low-value goods entering Mexico, especially on electronic commerce goods. Such companies expressed concern that these requirements, if enacted, might make it more difficult for companies to use Mexico's informal entry requirements and increase the time it takes to ship goods to Mexico.

Customs procedures for express packages continue to be burdensome. U.S. exporters have highlighted the benefits of harmonizing the hours of customs operation on the U.S. and Mexican sides of the border, but they cite delays stemming from the lack of pre-clearance procedures at some of the border crossings. On October 15, 2015, the U.S. and Mexican governments signed a Memorandum of Understanding that allows for the launch of three cargo pre-inspection pilot programs, two of which began officially in 2016.

In 2012, the Mexican government implemented the *Ventanilla Unica de Comercio Exterior Mexicana* (VUCEM), or Single Window for Trade. Mexican importers and U.S. exporters have experienced some delays and difficulties with the process. An upgraded system launched in 2016.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Mexico was listed on the Watch List in the 2016 Special 301 report. As described in that report, obstacles to U.S. trade in intellectual property-intensive goods and services include the wide availability of pirated and counterfeit goods, via both physical and virtual markets. While there has been progress made on the law enforcement front, overall criminal enforcement of intellectual property rights 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 the lack of sufficient penalties to deter violations. In the 2016 Out-of-Cycle Review of Notorious Markets, the United States identified the Tepito market in Mexico City and the San Juan de Dios market in Guadalajara as notorious markets selling pirated and counterfeit goods.

With respect to geographical indications (GIs), Mexico is currently considering changes to its system of protection in the context of free trade agreement negotiations with the EU. The United States will continue to work with Mexico to ensure that any GI system it adopts is fair and transparent.

The United States also continues to work closely with Mexico to make progress in addressing other trade-related IP issues, and these efforts have resulted in progress. For example, in 2016, Mexico passed legislation establishing an opposition proceeding for trademark applications, a badly needed update to the trademark system. Also in 2016, the Attorney General's Specialized IP Unit subunit dedicated to the investigation and prosecution of Internet-based IP crimes continued to do excellent work.

SERVICES BARRIERS

Telecommunications

A number of important, longstanding market access barriers were removed by a sweeping reform of the telecommunications sector in 2013 and 2014. These barriers included limitations on foreign investment in telecommunications and broadcasting, a weak regulatory agency, and an uncompetitive market dominated by a near-monopolistic player. The telecommunications reform addressed these issues by removing all caps on investment in the telecommunications sector; instituting a new, strengthened, and independent regulator; creating specialized telecommunications courts; and implementing asymmetric regulations to curb the dominance of any company with more than a 49 percent market share.

The removal of these barriers has produced positive results. Due to the improved business climate and new openness of the sector, in 2015, AT&T acquired Iusacell and Nextel Mexico to become the country's third largest carrier, and announced aggressive investment plans which were matched quickly by competitors. Furthermore, since the reforms, consumer prices in the wireless sector continued to decline, with prices down 11.3 percent in March 2016 compared to the previous year. The quality of service and carrier accountability also have improved. Lower prices, however, have not been enough to bring mobile phone and Internet penetration in Mexico up to the levels in Argentina, Chile, and Colombia. In 2016, Mexico's mobile connection base will reach 110.4 million, or 90.3 percent of the population. Despite the improved regulatory framework, new market entrants must still compete with the traditional dominant player, which has maintained more than a 70 percent market share. At this time, there has been no significant change in the relative market shares of Mexico's three main carriers.

Some U.S. companies have expressed concern that, contrary to the spirit of the reform, difficulties persist in the efficient deployment of the telecommunications infrastructure necessary to provide comprehensive and quality services. Permits to install infrastructure such as cell sites must be obtained at a municipal level and the criteria to obtain these permits vary greatly among local governments. U.S. companies have reported a lack of transparency in the decision making process. The Mexican Ministry of Communications and Transportation (SCT) and the Mexican Federal Institute of Communications (IFT) continue to develop a voluntary national framework for the issuing of these permits, which will include incentives for municipalities that adopt it. A draft of these guidelines had not been released as of December 15, 2016, despite original estimates of August 2016.

In 2011, Mexico and the United States signed a bilateral mutual recognition agreement (MRA) regarding conformity assessment for telecommunications equipment that will benefit U.S. manufacturers. The Mexican regulator, the Federal Institute of Telecommunications (IFT), continued efforts to implement the MRA through 2014 and 2015, and Mexico published relevant procedures in early 2016.

Broadcasting

Pay television, which is the primary outlet for foreign programmers, continues to be subject to more stringent advertising restrictions than free-to-air broadcast television, which is supplied by domestic operators. In 2014, Mexico's reformed Telecommunications and Broadcasting Law established advertising guidelines on all media platforms, including radio, broadcast television, and pay television. The new provision in the law with regard to pay television is similar to the prior regulation, permitting pay television programmers to follow the industry's practice since 2001 of inserting up to an average of 12 minutes per hour for advertising without exceeding 144 minutes per day. The law created uncertainty for foreign programmers since the inventory per day granted to pay television programmers is described in minutes per hour as opposed to percentages per day (as the new law provides for on the other platforms). Free-to-air broadcasters are not limited to a number of minutes per hour and are permitted to devote as much as 25 percent of air time to advertising each day.

Televisa has a 62.2 percent share of the pay television market in Mexico, as of 2015, the most recent report available. The company recently underwent an investigation by the Mexican telecommunications regulator, IFT, to determine whether it had substantial market power, *i.e.*, the ability to set prices and restrict supply, in the pay television market. In October 2015, IFT ruled that Televisa did not have substantial market power in pay television and therefore did not require the application of stronger regulations to the company.

The two national broadcasters, Televisa and TV Azteca, control roughly 90 percent of the national television broadcast market, as of 2015, the most recent report available. However, on March 10, 2015, Cadena Tres was announced as the winner of an auction for one of two additional national broadcast networks tendered by the Mexican government to create more competition in the market. The second broadcast network, initially awarded to Group Radio Centro, was cancelled after the winning bidder failed to pay $200 million by the deadline. On November 21, 2016, IFT launched a tender for 148 TV channel concessions in a bid to open up the market, provide greater coverage options and drive competition. The winning bidder announcement is anticipated by December 2017. Foreign investment in the broadcasting sector was historically prohibited in Mexico, but the 2014 telecommunications reform allowed for foreign investment of up to 49 percent. Actual investment is capped at the rate allowed for the investor's country of origin. To further reduce barriers related to competition, Televisa was declared a preponderant agent in the free-to-air television broadcasting market and is therefore subject to tougher regulation, including the requirement to share its broadcasting infrastructure with competitors.

INVESTMENT BARRIERS

While the Mexican government retains ownership of subsoil resources, Mexico's 2013 energy reform allows private companies to explore and extract hydrocarbons and participate in downstream operations, including refining, petrochemicals, transport, retail, and supply, subject to requirements on local content. In 2016, a minimum average local content requirement of 26.1 percent applied to exploration and production activities in shallow waters and on land; the local content requirement will gradually increase 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 complexity and technology requirements. Requirements for deep and ultra-deep water also vary depending the phase of the project (*i.e.*, whether exploration, development, or production). For exploration phase deep and ultra-deep water activities, the Ministry of Economy has set the minimum national content requirements at three percent for the initial four years, six percent for the next three years of exploration, and eight percent for the following three years of exploration. For development phase activities, the minimum local content requirement is 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 utilize international arbitration to resolve certain types of disputes with the government. For investors seeking to resolve such disputes, the only available forum is the Mexican court system.

Certain other sectors or activities, such as ground transportation services and transportation infrastructure, (such as airport management), are closed to foreign participation. Under the Foreign Investment Law, foreigners may wholly own a Mexican freight motor carrier company, but are restricted to carrying only international cargo; foreigners are limited to 49 percent investment in express delivery companies. Mexico also prohibits foreign ownership of residential real estate within 50 kilometers of the nation's coasts and 100 kilometers of its land borders (although foreigners may acquire use of residential property in these zones through trusts administered by Mexican banks). Under the Foreign Investment Law, foreigners can invest up to 49 percent in land for agricultural, livestock, and forestry purposes if they are not in the previously mentioned excluded areas. An interagency 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 which have a value greater than $165 million (adjusted annually).

MOROCCO

TRADE SUMMARY

The U.S. goods trade surplus with Morocco was $844 million in 2016, a 37.6 percent increase ($231 million) over 2015. U.S. goods exports to Morocco were $1.9 billion, up 14.8 percent ($241 million) from the previous year. Corresponding U.S. imports from Morocco were $1.0 billion, up 1.0 percent. Morocco was the United States' 60th largest goods export market in 2016.

U.S. exports of services to Morocco were an estimated $657 million in 2015 (latest data available) and U.S. imports were $585 million.

U.S. foreign direct investment in Morocco (stock) was $304 million in 2015 (latest data available), a 28.5 percent decrease from 2014.

The United States-Morocco Free Trade Agreement

The United States-Morocco Free Trade Agreement (USMFTA) entered into force on January 1, 2006, eliminating duties on 95 percent of bilateral trade in industrial and consumer goods. Duties on most other such goods were phased out in stages over the subsequent 10 years and completely eliminated as of January 1, 2015. Some sensitive agricultural products have longer periods for duty elimination or are subject to other provisions, such as tariff-rate quotas (TRQs). Goods of key U.S. export sectors, such as information technology, machinery, construction equipment, chemicals, and textiles, enjoy either duty-free or other preferential duty treatment when entering Morocco. In addition, the USMFTA includes commitments for increased regulatory transparency and the protection of intellectual property rights as well as the maintenance of labor and environmental laws.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Automobiles

Significant progress was made in eliminating technical barriers to trade in automobiles in Morocco in 2016. In July, the government issued a new implementation decree that allows importation of vehicles that meet the U.S. Federal Motor Vehicle Safety Standards. Previously, only vehicles meeting the United Nations Economic Commission for Europe vehicle standards were allowed to be imported, effectively barring many automobiles produced in the United States from entering the Moroccan market.

Other barriers to automotive trade persist, however. Currently, Morocco requires a third party to certify conformity with relevant standards, instead of allowing self-certification (as the United States does). However, with the issuance of the implementation decree, the government has signaled that it will address this barrier by allowing a “blue ribbon” letter issued by the U.S. National Highway Traffic Safety Administration, combined with compliance data from individual manufacturers, to satisfy requirements for importation. Discussions for implementation are ongoing.

Sanitary and Phytosanitary Barriers

Morocco restricts imports of U.S. poultry and poultry products due to avian influenza and salmonella-related issues. Morocco also restricts imports of U.S. beef and beef products. In 2008, the United States

and Morocco began negotiations on sanitary certificates for poultry and for beef, consistent with international standards. At an October 2016 meeting of the Agriculture and SPS Subcommittee of the USMFTA Joint Committee, Morocco agreed to allow imports of U.S. bovine genetics and pet food. As of the end of 2016, the negotiations with Morocco had not resulted in agreement on a sanitary certificate that would permit the export of U.S. poultry to Morocco.

IMPORT POLICIES

Morocco has undertaken reforms to liberalize its economy as a WTO Member and as a party to several bilateral free trade agreements, including the USMFTA and an association agreement with the European Union, its single largest trading partner.

In order to further boost the flow of bilateral trade, the United States and Morocco signed a bilateral trade facilitation agreement in November 2013. The agreement includes new commitments reflecting practices developed since the USMFTA was signed in 2004 that facilitate the movement of goods. It includes provisions on Internet publication of customs regulations and procedures, automation, transit, transparency with respect to customs penalties, and other initiatives that will improve Morocco's environment for trade in goods.

Agriculture

Pursuant to the USMFTA, Morocco maintains a number of TRQs, including for U.S. durum and common wheat exports. However, the Moroccan government's administration of these wheat TRQs has led to difficulties for U.S. producers attempting to benefit from the preferential access provided under the USMFTA. In fact, in 2012 and 2013, no U.S. wheat was shipped under the TRQs. In marketing year 2014/2015, 10,000 metric tons of U.S. wheat were shipped. While Morocco imported 545,000 metric tons of U.S. wheat in marketing year 2016/2017, this substantial increase was an indirect result of low domestic production due to a drought. The USMFTA provides for an increase of U.S. wheat imports under such circumstances. Imports from the United States are expected to drop when Morocco's domestic wheat production rebounds. At the October 2016 meeting of the Agriculture and SPS Subcommittee under the USMFTA, Morocco reaffirmed its commitment to conduct a review of its wheat import regime in an effort to improve implementation of the TRQs. Discussions with the Moroccan government are ongoing.

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 procurement. U.S. suppliers are permitted to bid on procurements by most Moroccan central-government entities, as well as procurements by the vast majority of Moroccan regional and municipal governments, on the same basis as Moroccan suppliers.

Morocco is not a signatory to the WTO Agreement on Government Procurement, but it is an observer to that Agreement.

SERVICES BARRIERS

Morocco's insurance regulation formally treats foreign and Moroccan companies the same. However, U.S. insurance suppliers have reported that in practice, the regulatory body (part of the Ministry of Economy and Finance) applies an authorization process that has impeded U.S. insurance companies from introducing products that compete with Moroccan firms.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Morocco was not listed in the 2016 Special 301 Report. The Moroccan government has been active in strengthening enforcement of intellectual property rights (IPR), notably copyright through the adoption, in 2016, of WIPOCOS, a software application developed by the World Intellectual Property Organization for the collective management of copyrights in musical works. Despite improvements, U.S. software firms allege that the use of pirated software remains widespread. In addition, U.S. and other multinational firms are concerned about the potential impact on protections for IPR, notably trade secrets, of a recent proposal to alter the "Pharmaceutical Industrial Plant" program.

In January 2015, Morocco and the European Commission concluded an agreement on the protection of geographical indications (GIs). Under the agreement, once it is ratified by the Moroccan and European parliaments, Moroccan GIs receive *sui generis* protection in Europe, and European GIs would receive reciprocal treatment in Morocco. U.S. companies have expressed concern that they were unable to participate in a formal procedure for opposing the GIs before both parties adopted them. It is unclear whether and in what manner European GIs were published for public comment in Morocco. The United States is strongly concerned with Morocco's apparent failure to provide transparency and due process, in addition to the consequential potential impact on market access and the ability of U.S. companies to use their trademarks or common food names in Morocco.

EXPORT RESTRICTIONS

U.S. industry has raised concerns over limitations placed by the Moroccan government on exports of Gigartina seaweed, used for food processing and other industrial applications. The Ministry of Agriculture and Maritime Fisheries issued an order on July 25, 2014, limiting the harvesting of the seaweed. Roughly one month earlier, the Ministry of Industry, Commerce, Investment and the Digital Economy issued a notice to exporters limiting the export of Gigartina seaweed to 300 metric tons (a drop of 900 metric tons from recent export levels). Both harvesting and exports are limited to the same quantities. The export restrictions may affect the ability of U.S. firms to secure sufficient quantities of Gigartina. The Ministry of Agriculture and Maritime Fisheries maintained the restrictions through 2016 to monitor for overharvesting. An interministerial commission will review these restrictions when they expire. The United States raised the absence of a scientific basis for the export restriction with Morocco at the February 2015 meeting of the USMFTA Joint Committee and regularly since that meeting.

OTHER BARRIERS

U.S. firms cite irregularities in government procedures as among the greatest obstacles to trade and investment in Morocco. In particular, these firms point to the lack of efficient and transparent processes for obtaining government permits, land-use approvals, customs procedures, and other government permissions. Companies also note the challenges created by the need to follow rigid protocols and navigate excessive bureaucracy, which leads to long wait times, particularly when dealing with public-sector entities. Morocco's cumbersome tax and employment regimes and property registration procedures also impede business.

Moroccan restrictions on prepayments of imported orders are often problematic for those U.S. exporters who require 100 percent advance payment. Currently, in an effort to avoid an excessive drain on foreign exchange, Moroccan authorities allow Moroccan companies to prepay only 30 percent of a shipment's total value in advance of import. A Moroccan company can prepay 100 percent only for orders under 200,000 dirhams (about $23,000). Some firms use letters of credit to mitigate the effect of these limitations, but these are costly and many U.S. firms report payment delays.

NEW ZEALAND

TRADE SUMMARY

The U.S. goods trade deficit with New Zealand was $484 million in 2016, a 25 percent decrease ($154 million) from 2015. U.S. goods exports to New Zealand were $3.6 billion in 2016, the same as in 2015. Corresponding U.S. imports from New Zealand were $4.1 billion, down 4.7 percent. New Zealand was the United States' 48th largest goods export market in 2016.

U.S. exports of services to New Zealand were an estimated $2.4 billion in 2015 (latest data available), and U.S. imports were $1.9 billion. Sales of services in New Zealand by majority U.S.-owned affiliates were $4.7 billion in 2014 (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 $7.2 billion in 2014 (latest data available), a 5.1 decrease from 2014. U.S. direct investment in New Zealand is led by manufacturing, finance/insurance, and nonbank holding companies.

Trade Agreements

New Zealand has free trade agreements in force with Brunei, China, Hong Kong, Taiwan, Malaysia, ASEAN, Thailand, Singapore, Korea, and Australia. New Zealand is also a participant in the Regional Comprehensive Economic Partnership (RCEP) Asian regional trade negotiations, which include, in addition to New Zealand, the ten ASEAN countries, China, Japan, Korea, India, and Australia. It has also launched FTA negotiations with the European Union.

SANITARY AND PHYTOSANITARY BARRIERS

Turkey Meat and Turkey Meat Products

Since 2011, the United States has been working closely with New Zealand's Ministry of Primary Industries (MPI) in meeting New Zealand's import requirements for turkey meat and turkey meat products. On January 4, 2017, MPI notified the United States of its acceptance of the model veterinary certificate for access of U.S. cooked turkey meat and raw deboned turkey meat. Trade can now commence, once MPI and FSIS have entered the agreed export information into the FSIS export library.

IMPORT POLICIES

Tariff rates in New Zealand are generally low as a result of several rounds of unilateral tariff cuts that began in the mid-1980s. At 2.0 percent, New Zealand has one of the lowest average MFN applied tariff rates among industrialized countries. In the WTO, New Zealand applies zero duty on 49.6 percent of its tariff lines in agricultural goods, and it applies zero duty on 67.2 percent of its tariff lines in industrial goods. In October 2013, New Zealand announced that except where they are reduced through trade agreements, New Zealand tariffs will remain unchanged until at least June 30, 2017.

GOVERNMENT PROCUREMENT

New Zealand acceded to the WTO Agreement on Government Procurement (GPA) in 2015. Through the GPA, New Zealand has committed to open to U.S. suppliers and suppliers from other GPA members its

covered government procurement, and to follow procedures designed to ensure transparency and fairness in procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

New Zealand generally provides strong IPR protection and enforcement. The United States continues to monitor implementation of the New Zealand Patent Act reforms that came into force in September 2014, including provisions related to software. In November 2016, New Zealand passed the Agricultural Compounds and Veterinary Medicines Amendment Act, which extends data protection for innovative agricultural chemical products in New Zealand from five to ten years.

The United States has encouraged the New Zealand government to accede to and implement the World Intellectual Property Organization (WIPO) Performance and Phonograms Treaty and the WIPO Copyright Treaty.

The United States continues to monitor IP-related legislation in New Zealand, including related to implementation of international obligations, and to work with New Zealand to address IP issues.

INVESTMENT BARRIERS

Investment Screening

The New Zealand Overseas Investment Office screens any foreign investment that would result in the acquisition of 25 percent or more of ownership in, or of a controlling interest in, "significant business assets," which are defined as assets valued at more than NZ$100 million (approximately US$67 million). In addition, New Zealand 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, as well as acquisitions of land defined as "sensitive" by the Overseas Investment Act 2005, which includes farmland greater than five hectares, land adjoining the foreshore, and conservation land. With respect to acquisitions of sensitive land, New Zealand may assess a number of factors, including an "economic interests" factor (whether New Zealand's economic interests are "safeguarded") and a "mitigating" factor (whether an overseas investment provides adequate opportunities for New Zealand oversight or involvement).

OTHER BARRIERS

Pharmaceuticals

The Pharmaceutical Management Agency (PHARMAC), created in 1993, determines which medicines to fund for use in community and public hospitals, negotiates prices with pharmaceutical companies, and sets subsidy levels and reimbursement criteria. In 2013, PHARMAC's role was expanded to include the management of community medicines, pharmaceutical cancer treatments, the National Immunization Schedule, management of all medicines used in District Health Board hospitals, and the national contracting of hospital medical devices. Some U.S. stakeholders have expressed concern about aspects of PHARMAC's regulatory process, including lack of transparency, timeliness, and predictability in the funding process and lengthy delays in reimbursing new products.

NICARAGUA

TRADE SUMMARY

The U.S. goods trade deficit with Nicaragua was $1.8 billion in 2016, a 4.8 percent decrease ($92 million) over 2015. U.S. goods exports to Nicaragua were $1.5 billion, up 16.3 percent ($207 million) from the previous year. Corresponding U.S. imports from Nicaragua were $3.3 billion, up 3.6 percent. Nicaragua was the United States' 67th largest goods export market in 2016.

U.S. exports of services to Nicaragua were an estimated $414 million in 2015 (latest data available) and U.S. imports were $604 million.

U.S. foreign direct investment in Nicaragua (stock) was $183 million in 2015 (latest data available), a 8.0 percent decrease from 2014.

Free Trade Agreement

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

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Importation of goods can be delayed due to Nicaragua's labeling requirements, which require product descriptions in Spanish. Translation errors and inaccurate product descriptions can add to delays in getting goods through the customs process.

Law 891 (2014), which is an amendment to Nicaragua's Harmonized Tax Code, prohibits the importation of vehicles that are seven years or older and came into effect in 2015. There are several exceptions to this prohibition, such as for classic or historic vehicles, certain donated vehicles, and certain vehicles used for cargo or public transportation.

Concerns also have been raised with Law 842 (2013), which requires that processed food products must be marked with an expiration date. Although Nicaraguan importers of U.S. products have complained that the law imposes costs on food importers, they are now working with suppliers to include expiration dates in the translated Spanish label as required by Central American Technical Regulation on General Labeling of Prepackaged Food Products (RTCA 67.01.07.10).

Sanitary and Phytosanitary Barriers

Nicaragua is implementing the 2011 Central American Technical Regulation on SPS Measures and Procedures (COMIECO Resolution No.271-2011), which requires the inspection by Nicaraguan authorities of U.S. packing plants that are first time exporters of non-processed products that have high sanitary risks, as determined by the government of Nicaragua. This import requirement was not notified to the WTO by

any of the Central American countries, including Nicaragua. U.S. exporters have complained that this import requirement increases trade costs significantly since the exporters must incur all costs associated with plant inspections, including the travel expenses of Nicaraguan technicians to the United States. To date, this regulation has only affected U.S. seafood exports, but it has potential to affect other non-processed food products.

The Nicaraguan Institute of Agricultural Protection and Safety (IPSA) requires issuance of import licenses for agricultural imports, and the process can be arbitrary. In 2014 and 2015, IPSA did not distribute import licenses for potatoes and onions in a timely manner during Nicaragua's peak production seasons. The United States has requested clarification on the Nicaraguan import requirements for agricultural products and the criteria for the issuance of import licenses. No major concerns were reported in 2016; U.S. exporters of these products did not request licenses during harvest season due to past IPSA practices.

Nicaragua has implemented SPS measures that are not based on science. In May 2016, IPSA rejected U.S. chicken meat, citing the 2009 Central American Technical Regulation on Microbiological Criteria for Food Safety (RTCA 67.04.50:08), which requires the complete absence of salmonella in raw poultry. Nicaragua had previously implemented this regulation through a 2013 Technical Norm for Raw Chicken Ready to Cook, NTON 03-023-12, which includes salmonella standards similar to the ones suggested by international food safety organizations. In response to United States inquiries, the Nicaraguan government clarified in January 2017 that they would apply the 2013 Norm, although they did not remove 2009 Central American standard.

IMPORT POLICIES

Tariffs

As a member of the Central American Common Market, Nicaragua applies a harmonized external tariff on most items at a maximum of 15 percent, with some exceptions. Approximately 95 percent of Nicaragua's tariff lines are at 15 percent or lower. In 2007, in response to rising prices, Nicaragua's Ministry of Industry Commerce and Development (MIFIC) issued a series of ministerial regulations (073-2008) to eliminate or reduce to five percent tariffs on many basic foodstuffs and consumer goods. These regulations were extended for six months, and are currently in force through June 30, 2017.

Under the CAFTA-DR, as of January 1, 2015, all originating U.S. consumer and industrial goods enter Nicaragua duty free. Nearly all textile and apparel goods that meet the Agreement's rules of origin also enter Nicaragua duty free and quota free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

More than half of U.S. agricultural product exports enter Nicaragua duty free under the CAFTA-DR. Nicaragua will eliminate its remaining tariffs on nearly all U.S. agricultural goods by 2020, on rice and chicken leg quarters by 2023, and on dairy products by 2025. For certain products, tariff-rate quotas (TRQs) permit immediate duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period. Nicaragua will liberalize trade in white corn through continual expansion of a TRQ rather than the reduction of the out-of-quota tariff.

Nontariff Measures

Under the CAFTA-DR, all of the Parties, including Nicaragua, committed to improve transparency and efficiency in administering customs procedures.

However, companies report that difficulties with the Nicaraguan Customs Administration, including delays, arbitrary valuation of goods, technical difficulties, and corruption, are significant impediments to trade. U.S. exporters and Nicaraguan importers of U.S. goods have also raised concerns about the tariff classification of their goods by the Nicaraguan Customs Administration and the lack of transparency in customs release procedures.

There are also significant delays at the border. Six government institutions are involved in processing import paperwork. Additionally, many services, such as lab testing for food safety, are available only in Managua, meaning importers often experience delays and additional costs if goods have to be stored in Managua while testing is completed.

The Nicaraguan government levies a "selective consumption tax" of 15 percent or less on some luxury items, with a few exceptions such as yachts and helicopters, for which the tax is zero. Domestic goods are taxed on the manufacturer's price, while imports are taxed on a cost, insurance, and freight (CIF) value. Alcoholic beverages and tobacco products are taxed on the price billed to the retailer.

GOVERNMENT PROCUREMENT

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

The government has established a portal for public contracts, NicaraguaCompra.gob.ni, for firms to obtain information and bid on public contracts. On October 5, 2016, Nicaragua passed the Public-Private Partnerships Law (935/2016) went into effect, which requires competitive and transparent bidding procedures for all public-private initiatives. The United States will continue to monitor Nicaragua's government procurement practices to ensure they are applied in a manner consistent with CAFTA-DR obligations. Nicaragua is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Albanisa, the joint venture of the Venezuelan and Nicaraguan state oil companies that imports and distributes Venezuelan petroleum, provides preferential financing to parties that agree to export their products to Venezuela.

All exporters receive tax benefit certificates equivalent to 1.5 percent of the free-on-board value of the exported goods. Under the CAFTA-DR, Nicaragua may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, Nicaragua may maintain such duty waiver measures for such time as it is an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures. The United States will continue to work with the Nicaraguan government to ensure compliance with Nicaragua's CAFTA-DR obligations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To implement its CAFTA-DR intellectual property rights (IPR) obligations, Nicaragua undertook legislative reforms providing for stronger IPR protection and enforcement. Despite these reforms, the United States continues to be concerned about the piracy of optical media, broadcast media, and trademark

infringement in Nicaragua. The United States has expressed concern to the Nicaraguan government about inadequate IPR enforcement, as well as the need to ensure transparency in procedures relating to the protections for geographical indications. The United States will continue to monitor Nicaragua's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Telecommunications

Under the CAFTA-DR, Nicaragua committed to opening its telecommunications sector to U.S. investors and services suppliers. Nicaragua previously indicated that it was considering legislation to improve competitive conditions in Nicaragua's telecommunication market and strengthen the enforcement capacity of the telecommunications regulator (TELCOR). In May 2015, the government proposed the Law for the Promotion and Development of the National Broadband Network of Telecommunications Services, which would authorize TELCOR to set the maximum rates for telecommunication services, introduce a service regulation tax to be paid by Internet service providers, and establish a single Internet exchange point for the country. The proposed legislation also would require telecommunication service providers to grant the government regulator access to confidential client information and would authorize the creation of a state owned enterprise to develop a National Broadband Network to provide services to all state entities. Private sector opposition to the draft legislation halted the legislation's development, but new legislation for the telecommunication sector is under consideration. The United States will continue to monitor this process.

INVESTMENT BARRIERS

During the 1980s, the Nicaraguan government confiscated some 28,000 properties in Nicaragua. Since 1990, thousands of individuals, including U.S. citizens, have filed claims for the return of their property or to receive compensation through low interest bonds issued by the government. In August 2015, the U.S. Government recognized that Nicaragua had resolved all outstanding U.S. citizen claims that fell under Section 527 of the Foreign Relations Authorization Act of 1994-1995. Other U.S. citizen claims regarding expropriated property remain unresolved. In addition, investors have raised concerns with Law 840 (2013), which specifies that property holders whose land is expropriated or nationalized will receive compensation based on cadastral value (the tax-assessed value of a property established by the national government) rather than on the value determined by the market.

The United States continues to press the Nicaraguan government to resolve all outstanding expropriation claims and improve the investment climate, which suffers from issues including weak governmental institutions, deficiencies in the rule of law, and difficulties with land titling.

The United States will also continue to monitor the situation to ensure the Nicaraguan government fulfills its CAFTA-DR obligations.

OTHER BARRIERS

Some U.S. firms and citizens report corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in Nicaragua. Administrative and judicial decision-making at times appear to be inconsistent, nontransparent, and very time-consuming. Courts have frequently granted orders (called "amparos") that suspend official investigatory and enforcement actions indefinitely, delays that appear intended to protect individuals suspected of white collar crime.

Investors have raised concerns that regulatory authorities are slow to apply existing laws, act arbitrarily, and often favor one competitor over another. Investors also have expressed concern about arbitrariness in

taxation procedures, as well as the frequency and duration of tax audits of foreign investors, which can interfere with normal business operations.

NIGERIA

TRADE SUMMARY

The U.S. trade balance with Nigeria shifted from a goods trade surplus of $1.5 billion in 2015 to a goods trade deficit of $2.3 billion in 2016. U.S. goods exports to Nigeria were $1.9 billion, down 45.5 percent ($1.6 billion) from the previous year. Corresponding U.S. imports from Nigeria were $4.2 billion, up 118.0 percent. Nigeria was the United States' 59th largest goods export market in 2016.

U.S. exports of services to Nigeria were an estimated $2.8 billion in 2015 (latest data available) and U.S. imports were $468 million. Sales of services in Nigeria by majority U.S.-owned affiliates were $1.3 billion in 2014 (latest data available), while sales of services in the United States by majority Nigeria-owned firms were $2 million.

U.S. foreign direct investment (FDI) in Nigeria (stock) was $5.5 billion in 2015 (latest data available), a 12.1 percent increase from 2014. U.S. direct investment in Nigeria is led by mining and manufacturing.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Sanitary and Phytosanitary Barriers

Meat and Meat Products

Nigeria continues to ban imports from any country of all beef, pork, sheep, goat meat and edible offal (fresh, chilled, frozen) as well as edible offal of horses, asses, and mules. Nigeria has indicated that the reason for the ban is the prevention of bovine spongiform encephalopathy (BSE), but the bans apply to all countries, even those without reported BSE cases. Nigeria also bans the import of live and dead poultry (with the exception of day-old chicks) and poultry meat, including fresh, frozen, and cooked poultry meat due to alleged concerns about avian influenza. These bans do not appear to be consistent with international standards, and have led to the import of at least some of these items, most notably poultry, through smuggling.

Import Certificates

Nigeria requires that all food, drug, cosmetic, and pesticide imports be accompanied by certificates from manufacturers and certain national authorities, regardless of origin. These certificates 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, and has contributed to Nigeria's informal import sector.

IMPORT POLICIES

Tariffs

Consistent with the Common External Tariff (CET) of the Economic Community of West African States (ECOWAS), Nigeria applies five tariff bands: zero duty on capital goods, machinery, and essential drugs not produced locally; 5 percent duty on imported raw materials; 10 percent duty on intermediate goods; 20 percent duty on finished goods; and 35 percent duty on goods in certain sectors that the Nigerian government seeks to protect. Under the CET, ECOWAS member governments are permitted to assess duties on imports higher than the maximum allowed in the tariff bands (but not to exceed a total effective duty of 70 percent) for up to 3 percent of the 5,899 tariff lines included in the CET.

Nigeria maintains a number of supplemental levies and duties on imports of certain goods that significantly raise the effective tariff rate paid by importers. For example, Nigeria maintains a combined effective duty (tariff plus levy) of 50 percent or more on 156 tariff lines. These include 15 tariff lines on which the combined effective duty exceeds the 70 percent limit set by ECOWAS, covering tobacco (135 percent for cigars and cigarettes; 85 percent for tobacco and other tobacco products), rice (120 percent), wheat flour (100 percent), and sugar (80 percent).

In October 2013, the Nigerian government announced an Automotive Industry Development Plan (NAIDP), which seeks to expand domestic vehicle manufacturing. The NAIDP imposes a 35 percent levy on automobile imports, which applies in addition to the pre-existing 35 percent tariff, for an effective total *ad valorem* duty of 70 percent. The NAIDP allows companies that manufacture or assemble cars in Nigeria to continue to import two vehicles at the old rate (35 percent tariff only) for every one vehicle produced in Nigeria. In August 2015, a U.S. company announced that it would begin assembly in Nigeria of its most popular model, from semi-knocked down kits sourced from South Africa, in order to take advantage of this allowance. However, in October 2016, the U.S. company suspended importation of the kits because of the recession in Nigeria.

Customs Procedures

Nigerian port practices continue to present major obstacles to trade. Importers report inconsistent application of customs regulations, lengthy clearance procedures, and corruption. These factors can sometimes contribute to product deterioration and result in significant losses for importers of perishable goods. Disputes between Nigerian government agencies over the interpretation of regulations often cause delays, and frequent changes in customs guidelines slow the movement of goods through Nigerian ports. However, some companies have reported reductions in processing times as a result of reduced port traffic due to the slowdown in the Nigerian economy in 2015 and 2016, as well as the following improvements in the Nigerian Customs Service (NCS) clearance process and port infrastructure:

- In December 2014, Nigeria migrated from an outsourced destination inspection system to a Pre-Arrival Assessment Report system, which allows for pre-arrival clearance. This has helped in reducing clearance times at Lagos Ports, according to findings from a recent USAID-sponsored study on the length of time and the cost to trade along the Lagos-Kano-Jibiya Corridor.
- In 2013, Nigeria's Ministry of Finance launched a Single Window Portal, which allows traders to access customs regulations online, submit customs documents electronically, track transaction statuses online, and submit electronic payments for the 12 different Nigerian government agencies involved in the customs clearance process in one location.
- In 2012, the NCS launched the Nigeria Trade Hub as a customs information portal for traders. The NCS Nigeria Import, Export and Transit Process Manual has reportedly also contributed to increased efficiency.
- NCS has implemented an Authorized Economic Operator (AEO) scheme in an effort to fast track cargo clearance for trusted traders and give incentives for traders to comply with clearance procedures.
- The Nigerian Port Authority, through public-private partnership arrangements, has undertaken rehabilitation of port terminals in Lagos and Port Harcourt, deepened water channels, upgraded common user facilities, and removed wrecks from water channels.

Despite these improvements, traders report that infrastructural limitations in and around Nigeria's ports continue to contribute to long queues by both trucks and ships and related delays (*see the section on Other*

Barriers for more information). In October 2016, the Nigerian Senate announced a probe of the NCS for financial irregularities, including with respect to overtime records and its handling of seized cargos.

Nontariff Measures

Nigeria uses nontariff measures in an effort to achieve "self-sufficiency" in certain commodities. For example, in June 2015, the Central Bank of Nigeria (CBN) imposed a series of restrictions that prohibited the use of official foreign exchange to import 41 product categories, including rice, meat, poultry, vegetable oil, and a number of steel products. The CBN indicated that this action was meant to protect and support domestic production, and not solely to maintain the value of its currency and to preserve foreign exchange reserves. These measures have made it difficult for U.S. businesses to export the covered items to Nigeria and for Nigerian companies to source inputs needed for production. In 2016, one U.S. company reported difficulty with the Nigerian Customs Service in importing a covered item despite using privately sourced foreign exchange. The U.S. Government has repeatedly raised concerns regarding this measure both bilaterally and in the WTO.

In 2014, the Nigerian government introduced a frozen fish import quota regime. The government also banned imports of catfish and tilapia species as part of the quota system. The ban does not appear to cover the Pacific Hake (Merluccius productus) species, and the Ministry of Agriculture issued an agreement for a U.S. firm to start exporting Pacific Hake to Nigeria. However, the CBN's foreign exchange restrictions include fish and have stalled U.S. exports of Pacific Hake to Nigeria.

The Nigerian government continues to ban the import of nearly 50 different product categories, citing the need to protect local industries or promote health and safety. The list of prohibited imports currently includes, among other products: cocoa butter, powder, and cakes; pork; beef; frozen poultry; refined vegetable oil and fats; bottled water; spaghetti and other noodles; fruit juice in retail packs; nonalcoholic beverages (excluding energy drinks); bagged cement; all medicaments falling under HS headings 3003 and 3004; soaps and detergents; mosquito repellant coils; sanitary plastic wares; paper board; telephone recharge cards and vouchers; textiles, apparel, footwear, and travel goods; used motor vehicles more than ten years old; most types of furniture; ball point pens; pistols and air pistols; cartridge reloading implements; used clothing; and certain spirits and alcohols.

SERVICES BARRIERS

Telecommunications

In 2013, the National Information Technology Development Agency (NITDA), under the auspices of the Federal Ministry of Communication Technology (MCT), issued the "Guidelines for Nigerian Content Development in Information and Communications Technology" ("the Guidelines"). The Guidelines call on original equipment manufacturers (OEMs) operating in Nigeria to assemble all hardware products locally and direct all government agencies to source and procure all computer hardware only from NITDA-approved original equipment manufacturers. In addition, the Guidelines require companies to use only locally manufactured SIM cards for telephone services and data and to use indigenous companies to build cell towers and base stations. The Guidelines have undermined the ability of U.S. companies to compete in Nigeria's telecommunications sector. The government continues periodically to broadcast its policy to source and procure hardware locally and to press for ICT companies to establish local capacity building programs.

GOVERNMENT PROCUREMENT

The Public Procurement Act 2007 established the Bureau of Public Procurement (BPP) as the regulatory authority responsible for the monitoring and oversight of public procurement in Nigeria. Nigeria requires government entities to allow majority Nigerian-owned companies to engage in competitive bidding for any procurement worth over 2.5 million naira (around $8,000 at the current official exchange rate). Federal Government of Nigeria agencies follow publicly available procurement guidelines and 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 BBP. Both majority foreign-owned and majority Nigerian-owned companies may engage in competitive bidding for procurement of goods worth over 100 million naira (around $320,000 at the current official exchange rate) and services and works worth over 1 billion naira (around $3.2 million at the current official exchange rate). There is a local content margin of preference which varies from project to project but does not exceed 15 percent. In addition, Nigeria offers a preference to majority Nigerian-owned companies as long as their price is within 15 percent of a majority foreign-owned company. Foreign companies may also be subject to a local content requirement (*e.g.*, partnership with a local partner firm or joining a consortium). Corruption and lack of transparency are also major concerns of U.S. companies.

The Nigerian government has made modest progress on its pledge to conduct open and competitive bidding processes for government procurement. The BPP has made a variety of procurement procedures and bidding information publicly available on its website. Reforms have also improved transparency in procurement by the state-owned Nigerian National Petroleum Company. Nigeria's National Assembly operates its own procurement process which has not been subject to BPP oversight and which has lacked transparency. Although U.S. companies have won contracts in a number of sectors, difficulties in receiving payment are not uncommon and can discourage firms from bidding. Supplier or foreign government subsidized financing arrangements appear in some cases to be a crucial factor in the award of government procurements. The Guidelines for Nigerian Content Development in Information and Communications Technology require ministries and development agencies to source and procure all computer hardware only from NITDA approved OEMs.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Nigeria was not listed in the 2016 Special 301 Report. The Nigerian government has taken steps to improve enforcement of intellectual property rights (IPR). For example, the Nigerian Copyright Commission (NCC) continues to carry out raids and seizures of pirated works, including 13 seizures in 12 states, 35 arrests, and the confiscation of approximately $125,000 worth of pirated materials in the first quarter of 2016. However, despite efforts to improve enforcement, the overwhelming volume of pirated and counterfeit goods in Nigeria remains of serious concern, often threatening the health and safety of consumers. As reported in the 2016 Notorious Markets Report, counterfeit automotive parts, pharmaceuticals, business and entertainment software, music and video recordings, and other consumer goods are sold openly. Relevant Nigerian government institutions' lack of sufficient resources and political will to enforce IPR continues to present challenges. In addition, judicial procedures are slow and reportedly compromised by corruption. In August 2016, WIPO selected Nigeria as one of two nations to host a WIPO Africa regional office.

INVESTMENT BARRIERS

Nigeria's investment climate continues to be characterized by weak governmental institutions, corruption, inadequate infrastructure, security challenges, inadequate health care, poor education systems, barriers to

starting businesses, 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 (described further below), pose a major challenge to doing business in Nigeria. These factors hinder Nigeria's ability to compete in regional and international markets, and are reflected in Nigeria's persistently low ranking in indices such as the World Economic Forum's Global Competitiveness Index and the World Bank's 2017 Ease of Doing Business index (improvement in which the government has made a priority).

The foreign exchange restrictions described in the Nontariff Measures section above have negatively impacted investment as well as trade. The measures have hampered some U.S. companies' ability to import finished or semi-finished goods for use in their Nigerian operations. Similarly, the Central Bank of Nigeria has often restricted the repatriation of earnings, causing some businesses to close down or reduce services in Nigeria. These factors have also been a disincentive for new investment, as investors wait for an expected further devaluation of the naira.

BARRIERS TO DIGITAL TRADE

The Guidelines for Nigerian Content Development in Information and Communications Technology also contain provisions that serve as serious barriers to trade in digital products and services.

Data Localization

The Guidelines require all foreign and domestic businesses to store all data concerning Nigerian citizens in Nigeria. This arguably constitutes *de facto* discrimination against foreign businesses that distribute their data storage and processing globally, and also prevents Nigerian businesses from taking advantage of best-in-class cloud computing services. The Guidelines also require that all government data be hosted locally unless officially exempted.

Internet Services

The Guidelines also require ICT companies to use Nigerian companies for the provision of at least 60 percent of all value-added services on their network. This concern is exacerbated by the vague definition of a "value-added service," which is defined in the Guidelines as an "additional or enhanced service that increases the value of an existing product or an offered service."

OTHER BARRIERS

Port congestion and inefficiency

Delays caused by congestion and the poor condition of port access roads, combined with corruption issues, make operations at Nigerian ports among the most expensive in the world. Due to lack of space at Lagos ports, ships often queue for days, and in some cases weeks and months, before being able to berth and discharge their contents (a slight easing of congestion in 2016 can be attributed to reduced port volume, resulting in part from foreign exchange-related import restrictions, as well as the effects of Nigeria's ongoing economic recession). In a December 2015 report on the causes and implications of Nigeria's large informal economy and unrecorded trade, UK-based think tank Chatham House cited port congestion, trucking traffic congestion, and long cargo clearance times of up to several days as disincentives to moving cargo through Nigerian ports as opposed to other ports in the region.

Oil and Gas Sector

In 2010, Nigeria enacted the highly trade restrictive Oil and Gas Content Development Act ("the Act"). This legislation imposed 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—a sector that accounts for roughly 12 percent of Nigeria's GDP. The Act's local sourcing mandate, which applies to an extensive list of goods and services supplied to the oil and gas industry, has been a particular concern of U.S. oil and gas service suppliers. Companies must also create and seek approval for a "Nigerian Content Plan" to demonstrate how they will increase local content in their oil and gas operations. Companies that do not follow a Nigerian Content Plan face large fines or cancelation of contracts. Majority foreign-owned companies operating in the sector must also deposit 10 percent of their annual profit in a Nigerian bank.

Restrictions apply with respect to personnel matters. Nigeria imposes general quotas on foreign personnel, but the quotas are especially strict in the oil and gas sectors, and may apply to both production and services companies. Oil and gas companies must hire Nigerian workers, unless they can demonstrate that particular positions require expertise not found in the local workforce. Positions in finance and human resources are almost exclusively reserved for Nigerians.

Certain geosciences and management positions may be filled by foreign workers with the approval of the National Petroleum Investment and Management Services (NAPIMS). Each oil company must negotiate its foreign worker allotment with NAPIMS. Significant delays in this process, and in the process of approving visas for foreign personnel, present serious challenges to the oil and gas industry.

According to stakeholders, the Act is adversely affecting a diverse range of companies, including operators, contractors, subcontractors, and service suppliers. Majority foreign-owned companies have observed that the Act significantly adds to the cost of doing business in Nigeria.

Corruption

Corruption remains a substantial trade barrier in Nigeria. U.S. firms are frequently disadvantaged in competing with companies that are willing to engage in corruption to secure contracts and other business opportunities. U.S. firms also experience difficulties in day-to-day operations due to inappropriate demands from officials for "facilitative" payments. President Buhari, who was inaugurated in May 2015, has made countering Nigeria's endemic corruption a centerpiece of his administration, and his administration has enhanced the ability of the Economic and Financial Crimes Commission (EFCC) and other anti-corruption agencies to pursue high-ranking officials. Numerous arrests have been made and investigations undertaken, but efforts have been hampered by inter-ministry infighting and partisan politics, including a delay in Senate confirmation of the EFCC's Chair. Questions remain regarding the Nigerian justice system's willingness and capacity to achieve convictions and appropriate sentencing for corruption related crimes.

NORWAY

TRADE SUMMARY

The U.S. goods trade deficit with Norway was $492 million in 2016, a 58.7 percent decrease ($698 million) over 2015. U.S. goods exports to Norway were $3.9 billion, up 9.9 percent ($355 million) from the previous year. Corresponding U.S. imports from Norway were $4.4 billion, down 7.2 percent. Norway was the United States' 44th largest goods export market in 2016.

U.S. exports of services to Norway were an estimated $3.7 billion in 2015 (latest data available) and U.S. imports were $2.6 billion. Sales of services in Norway by majority U.S.-owned affiliates were $8.6 billion in 2014 (latest data available), while sales of services in the United States by majority Norway-owned firms were $1.9 billion.

U.S. foreign direct investment (FDI) in Norway (stock) was $33.6 billion in 2015 (latest data available), a 2.8 percent decrease from 2014. U.S. direct investment in Norway is led by nonbank holding companies, mining, and information.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

With limited exceptions, Norway has effectively banned the importation of agricultural biotechnology products by implementing extremely restrictive policies for crops derived from such technology. For example, farmers are prohibited from cultivating biotechnology crops and using biotechnology feed for farm animals and fish (Norway is the largest producer of farmed salmon in the world). The United States continues to press Norway to recognize the applicable science on the safety of such products and accordingly to open its market to U.S. exports of such products.

Beef and Beef Products

Norway applies regulations developed by the European Union that ban imports of beef from animals treated with hormones, despite the absence of scientific evidence demonstrating that this practice poses any risk to human health.

IMPORT POLICIES

Norway, along with Switzerland, Iceland, and Liechtenstein, is a member of the European Free Trade Association (EFTA). EFTA members, with the exception of Switzerland, participate in the EU single market through the European Economic Area (EEA) accord. Norway has implemented, or is in the process of implementing, most EU trade policies and regulations. As an EEA signatory, Norway assumes most of the rights and obligations of EU Member States, except in the agricultural and fishery sectors. Norway grants preferential tariff rates to EEA members.

Except for agricultural products, Norway’s market is generally open. Norway has continued to dismantle tariffs on industrial products on a unilateral basis. The average most favored nation tariff on nonagricultural products fell from 2.3 percent in 2000 to 0.5 percent in 2013. More than 95 percent of industrial tariff lines are currently duty free.

Agricultural Tariffs and Tariff-Rate Quotas

Norway bound its agricultural tariffs in 1995 as part of its WTO commitments. Tariffication of agricultural nontariff barriers as a result of the Uruguay Round led to the replacement of several quotas on agricultural products with high *ad valorem* or specific tariffs. According to the WTO, in 2015 Norway's simple average applied tariff was 51.2 percent for agricultural goods and 0.5 percent for nonagricultural goods.

Although the EEA accord does not generally apply to agricultural products, it includes provisions on raw material price compensation that are meant to increase trade in processed food. Norway has a special agreement within the EEA framework that results in Norway applying a preferential duty on EU processed food products. The agreement covers a wide range of products, including bread and baked goods, breakfast cereals, chocolate and sweets, ice cream, pasta, pizza, soups, and sauces. Such preferential access for EU suppliers disadvantages U.S. exporters of these processed foods.

Although Norway is less than 50 percent self-sufficient in agricultural production, it maintains tariff rates on agricultural products as high as several hundred percent to protect domestic agricultural interests. Domestic agricultural shortages and price surges are offset by temporary tariff reductions. However, a lack of predictability in tariff adjustments and insufficient advance notification of these adjustments – generally only two to five days before implementation – favor nearby European suppliers and make products from the United States, especially fruits, vegetables, and other perishable horticultural products, very difficult to import. For a number of processed food products, tariffs are applied based on a product's ingredients, requiring the Norwegian importer to provide a detailed disclosure of product contents. Many exporters to the Norwegian market refuse to provide all requested details and, as a result, their products are subject to maximum tariffs.

Agricultural Subsidies

Although agriculture accounts for only 0.5 percent of gross domestic product, support provided by Norway to its agricultural producers as a percentage of total farm receipts in 2015 was 62 percent, the highest in the world according to the OECD. Norway justifies this high level of domestic support based on "nontrade concerns," including food security, environmental protection, rural employment, and the maintenance of human settlement in sparsely populated areas.

Raw Material Price Compensation

Norway maintains a price reduction regime that includes subsidies for using certain domestically-produced raw materials in processed foods. Products for which such subsidies are paid include chocolate, sweets, ice cream (for milk and glucose), and pizza (for cheese and meat). The purpose of the system is to help compensate the domestic food processing industry for the high costs of domestically produced raw materials.

Wines and Spirits

Although U.S. market shares have increased in recent years, it is difficult for U.S. wine exporters to sell in the Norwegian market. The wine and spirits retail market in Norway is controlled by the government monopoly, Vinmonopolet. Obtaining approval to include wines and other alcoholic beverages on Vinmonopolet's retail list is cumbersome, and Vinmonopolet's six-month marketing and product plans for selecting and purchasing wines significantly constrain competitive supply. Products chosen for sale through Vinmonopolet must meet annual minimum sales quotas or they are dropped from the basic

inventory list. Existing wine suppliers benefit from exposure in Vinmonopolet stores, and the market situation for U.S. wines is exacerbated by the strict ban on advertising alcoholic beverages.

GOVERNMENT PROCUREMENT

Norway is party to the WTO Agreement on Government Procurement.

PHARMACEUTICALS

U.S. pharmaceutical companies active in Norway have raised concerns regarding government procurement procedures for pharmaceuticals in Norway, including the lack of detailed information on how winning bidders are selected, the lack of adequate time for participation, and the lack of protection for confidential information that prejudices fair competition.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Although recent legislative developments, enforcement actions, and the increased availability of legal alternatives for obtaining copyrighted works have had a positive effect on reducing Internet piracy, some private sector stakeholders suggest that Norway needs to continue its efforts to combat online piracy. Norway is proceeding with a comprehensive multi-year update to its 1961 copyright law. In 2016, the Ministry of Culture released a Green Paper, held public consultations, and announced plans to present an amended Copyright Act to Parliament in early 2017. While much of the recently passed and proposed legislation is welcomed, stakeholders report that several of the pending reforms may be problematic, such as removal of the prohibition on external assistance for making private copies without authorization as well as extended collective licensing provisions, among other proposed revisions.

SERVICES BARRIERS

Financial Services

For certain types of financial institutions, Norway requires that at least half the members of the board and half the members of the corporate assembly be nationals or permanent residents of Norway or another EEA country.

INVESTMENT BARRIERS

Foreign companies wishing to own or use various kinds of real property must seek prior approval from the government. In the petroleum sector, Norway's discretionary concession process appears to have historically favored Norwegian interests. Direct foreign ownership of hydropower resources is prohibited in Norway, except in rare instances in which the government allows foreign investment up to 20 percent equity.

OMAN

TRADE SUMMARY

The U.S. goods trade surplus with Oman was $675 million in 2016, a 53.4 percent decrease ($773 million) over 2015. U.S. goods exports to Oman were $1.8 billion, down 24.3 percent ($571 million) from the previous year. Corresponding U.S. imports from Oman were $1.1 billion, up 22.2 percent. Oman was the United States' 62nd largest goods export market in 2016.

U.S. exports of services to Oman were an estimated $434 million in 2015 (latest data available) and U.S. imports were $328 million.

U.S. foreign direct investment in Oman (stock) was $1.2 billion in 2015 (latest data available).

The United States-Oman Free Trade Agreement

Upon entry into force of the United States-Oman Free Trade Agreement (FTA) in January 2009, Oman provided immediate duty-free access on nearly all industrial and consumer products, and will phase out tariffs on the remaining handful of products by 2019. In addition, Oman provided immediate duty-free access for U.S. agricultural products for 87 percent of its agricultural tariff lines. Oman will phase out tariffs on the remaining agricultural products by 2019. Textiles and apparel are duty free, providing opportunities for U.S. and Omani fiber, yarn, fabric, and apparel manufacturing. Generally, to benefit from preferential tariffs under the FTA, textiles and apparel must be made from either U.S. or Omani yarn and fabric. The FTA provides a 10-year transitional period for textiles and apparel that do not meet these requirements in order to assist U.S. and Omani producers in developing and expanding business contacts. This provision will expire on December 31, 2018.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Energy Drinks

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

Conformity Assessment Marking

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

Sanitary and Phytosanitary Barriers

In November 2016, the GCC announced that it would implement a December 2016 version of the "GCC Guide for Control on Imported Foods" in October 2017. The United States continues to raise concerns about the Guide, particularly a possible requirement to revise U.S. health export certificates for food and agricultural products destined for GCC countries. The GCC has not provided a scientific justification for its revised certificate statements, some of which may not follow the guidelines of the Codex Alimentarius Commission, the International Plant Protection Convention and the World Organization for Animal Health. The United States continues to request that the GCC delay implementation of the Guide and that experts work to address these concerns.

IMPORT POLICIES

Import Licenses

Companies that import goods into Oman must register with the Ministry of Commerce and Industry. Importation of certain types of goods, such as poultry, livestock, and alcohol, as well as firearms, narcotics, and explosives, requires a special license. Media imports are subject to review for potentially offensive content and may be subject to censorship.

Customs

Companies importing U.S. goods continue to report difficulties in receiving preferential tariff treatment under the FTA for goods that enter Oman over land via the United Arab Emirates, as well as inconsistent application of requirements by the Royal Oman Police Customs Directorate (ROP Customs) for origin marking, segregation, and other documentation, and the lack of any published official guidance in these areas. The United States continues to work with ROP Customs for issuance of official documentation clearly outlining the procedures and information necessary to receive preferential tariff treatment under the FTA.

GOVERNMENT PROCUREMENT

The FTA requires covered entities in Oman to conduct procurements covered by the agreement in a fair, transparent, and nondiscriminatory manner.

Oman provides a 10 percent price preference to tenders that contain a high content of local goods or services, including direct employment of Omani nationals. However, Oman may not apply such price preferences to tenders offering goods and services from the United States in procurement covered by the FTA. For most major tenders, Oman invites bids from international firms or firms pre-selected by project consultants. Suppliers are requested to be present at the opening of tenders, and interested persons may view the process on the Tender Board's website. Some U.S. companies report that tenders' costs can sometimes increase dramatically when award decisions are delayed, sometimes for years, or the tendering is reopened with modified specifications and, typically, short deadlines.

Oman is an observer to the WTO Committee on Government Procurement. In accordance with the commitment in its WTO accession, Oman began negotiations to accede to the WTO Agreement on Government Procurement in 2001, but it has not completed the process.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Oman committed in the FTA to provide strong intellectual property rights (IPR) protection and enforcement. While IPR laws in Oman are generally enforced, online piracy is common. In recent years, U.S. stakeholders have experienced difficulty getting Omani agencies, including the Public Authority for Consumer Protection, the Public Prosecution, the Ministry of Commerce, and the Royal Oman Police, to take enforcement action against pirated software, counterfeit automobile parts, apparel, and other consumer products.

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

SERVICES BARRIERS

Banking

Oman does not permit representative offices or offshore banking.

Legal Services

Non-Omani attorneys, including U.S. attorneys practicing in Oman, are prohibited from appearing in courts of first instance. The United States has raised concerns with Oman about this limitation.

INVESTMENT BARRIERS

Ministerial Decision 5/2010 and ROP Customs announcements limit customs brokerage activities to Omani nationals. The United States has raised concerns about the consistency of this limitation with provisions of the FTA.

Although U.S. investors are permitted to purchase freehold property in designated residential developments, businesses must adhere to more restrictive guidelines when acquiring real estate for commercial purposes. With the exception of certain tourism related property agreements, only companies or enterprises with at least 51 percent Omani shareholding are permitted to own real estate for the purpose of establishing a warehouse or show room, administrative office, staff accommodation, or other building with a similar purpose. Other enterprises, including foreign majority-owned businesses, must seek "usufruct" rights that enable them to exploit, develop, and use land granted by Omani or GCC companies or nationals.

PAKISTAN

TRADE SUMMARY

The U.S. goods trade deficit with Pakistan was $2.2 billion in FY2016, a 19 percent decrease ($531 million) over FY2015. American goods exported to Pakistan were $1.5 billion, up 24 percent ($283 million) from the previous year. Corresponding U.S. imports from Pakistan were $3.7 billion, down six percent from the previous year. Pakistan remained the United States' 61st largest export market in FY2016.

U.S. foreign direct investment (FDI) inflow in Pakistan was $353 million from July 1, 2015-June 30, 2016, a 56 percent increase from the previous 12-month period. FDI net inflows were $41 million over this period, an 80 percent decrease from the $209 million figure over the preceding one.

IMPORT POLICIES

For the first half of 2016, Pakistan's maximum applied tariff rate was 25 percent with six different tariff categories. In the middle of the year, Pakistan reduced the number of tariff categories to five along with a reduction in maximum tariff rates from 25 percent to 20 percent. (These rates are calculated on the weighted average basis from all of the tariffs applied to the items included in that specific tariff slab. Some individual tariff rates may be higher than the rates listed).

Pakistan's average applied MFN tariff rate is 13.4 percent, while its average bound rate is 60 percent.

Despite this recent tariff liberalization, Pakistan continues to protect several local industries through the imposition of high tariff rates. The automobile industry, for example, is one of the most protected domestic sectors in the country. Pakistan imposes higher tariff rates (35 percent) on imports of automobile parts that compete with domestically manufactured products than on imports of automobile parts with no domestic competition (20 percent). However, Pakistan's Automotive Development Policy 2016-2021, passed in March 2016, offers tax incentives to new entrants, aimed at attracting American and European automakers, to establish automotive manufacturing units in Pakistan. These incentives include 1) one-off, duty-free import of plant and machinery to establish an assembly and manufacturing facility; 2) permission to import 100 vehicles of the same variants in the form of completely built units at 50 percent of the prevailing duty for test marketing after establishing the production facility; 3) 10 percent reduction in customs duty for new investors on localized parts for five years against the prevailing 32.5 percent; 4) localized parts for new entrants can be imported at 25 percent duty versus 50 percent duty to current assemblers/manufacturers for five years.

Pakistan grants sector- and product-specific duty exemptions, concessions, and other protections through the promulgation of statutory regulatory orders (SROs). A list of SROs, and other trade policy and regulatory documents, can be found on the Federal Board of Revenue's (FBR) website: http://www.fbr.gov.pk. Cotton yarn, import of construction material, furnace oil, and steel are the main items which have been subject to different SROs recently. The government previously pledged to eliminate the use of SROs through an International Monetary Fund (IMF) program that Pakistan completed in September 2016, but many SROs remain, and the government has not provided a concrete timeline for their removal. The government did, however, remove the FBR's authority to issue new SROs and transferred it to the Economic Coordination Committee, a cabinet-level body in the Prime Minister's office.

Certain goods may be imported only by the public sector or industrial consumers (*e.g.*, active ingredients for the formulation or manufacturing of pesticides). Imports of waste, parings, and scrap of polyethylene

and polypropylene must receive official certification by the exporting country or by a specialized pre-shipment inspection company.

Pakistan restricts the import of second-hand vehicles, watercraft, trawlers, aircraft, and related parts and equipment unless they meet specified conditions, such as prior approval or clearance, certain testing arrangements, or other procedural requirements. While Pakistan maintains that these requirements are for health, safety, security, and environmental reasons, the requirements effectively limit the supply of products into the country.

U.S. food and consumer product exporters have expressed concerns regarding a lack of uniformity in customs valuation in Pakistan. This inconsistency has impacted 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.

Certain U.S. companies have also reported being adversely affected by Customs Rules 389 and 391, which require the placement of a physical invoice and packing list in the shipping container. Such rules could present compliance challenges for other companies whose global supply chains require the use of intermediaries, re-invoicing, or the storage of goods at various points during transit from production to end user. Many companies' invoicing, accounting, and shipping systems do not permit the generation of invoices and packing lists prior to the departure of the goods from the company's production or storage facilities. FBR officials have stated that customs officials have the discretion to impose penalties judicially, keeping in mind peculiarities of companies' invoicing systems, but at least one U.S. company has been fined as a result of these rules. The Pakistani government has shown a willingness to provide a work-around for U.S. companies, and the Embassy has worked with FBR to find a solution.

U.S. importers have also raised concerns about two SROs (420 and 575) that raised the sales tax on imported "finished footwear and apparel" from 5 percent to 17 percent, while domestically produced products continue to be taxed at 5 percent. FBR officials have explained that the tax on domestically produced products will increase to 17 percent in the future, but no timeline has been set.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Pakistan's packaging requirements normally follow Codex Alimentarius Commission (Codex) rules. Pakistan generally accepts packaging material if allowed in the exporting country. A notable exception, however, is vegetable oil. Pakistan requires that refined vegetable oil be imported in bulk for re-packaging, a requirement aimed at encouraging local packaging and saving foreign exchange.

Quality certification, as defined by the Pakistan Standards and Quality Control Authority, is required for certain products, including mineral water, carbonated beverages, edible oils including cooking oil, Portland cements, construction materials containing asbestos, and oil stoves.

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.

Sanitary and Phytosanitary Barriers

Live Cattle, Beef, and Beef Products

Pakistan has not fully recognized the United States' negligible risk status for BSE. In February 2015, Pakistan established import requirements for the import of live cattle from the United States, which received in 2013 a negligible risk status for bovine spongiform encephalopathy (BSE) in accordance with World Animal Health Organization guidelines. On March 2, 2016, more than 300 Holstein heifers arrived in Punjab Province from the United States, representing the first shipment since 1999. Despite permitting the importation of live cattle, however, Pakistan has banned the importation of U.S. beef and beef products, ostensibly over concerns of BSE.

GOVERNMENT PROCUREMENT

The Public Procurement Regulatory Authority is an autonomous body responsible for prescribing and monitoring public sector procurement regulations and procedures. International tender notices must be publicly advertised and sole source contracting tailored to company-specific qualifications is prohibited.

There are no documented "buy national" policies in place in Pakistan. Political influence on procurement awards, charges of official corruption, lack of transparency, judicial intervention, and long delays in bureaucratic decision-making are commonly cited as impediments to government procurement. Suppliers have reported instances in which the government used the lowest bid as a basis for further negotiations, rather than accepting the lowest bid as required by regulation. Pakistan is not a signatory to the WTO Agreement on Government Procurement, but Pakistan has obtained observer status.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Pakistan was moved from the Priority Watch List to the Watch List with an Out-of-Cycle Review in the 2016 Special 301 Report due to the government of Pakistan's significant efforts to implement key provisions of the Intellectual Property Organization of Pakistan (IPO-Pakistan) Act of 2012 and the newfound determination with which Pakistan has approached IPR in recent years. The report cites the establishment of IP Tribunals, public awareness campaigns on IPR protection, and ongoing engagement with stakeholders as key factors in the upgrade.

Despite these improvements, the report notes that Pakistan must do significantly more to improve IPR protection. Counterfeiting and piracy in Pakistan remains significantly high, particularly in the areas of pharmaceuticals, printed materials, optical media, digital content, and software. Furthermore, the United States also maintains longstanding concerns related to copyright, customs enforcement, and protection against the unfair commercial use and disclosure of test and other data generated to obtain marketing approval for pharmaceutical products.

SERVICES BARRIERS

Pakistan generally permits foreign investment in services. Except in certain sectors such as aviation, banking, agriculture, and media, there is no upper limit on the share of equity that foreign investors can hold. In an effort to combat tax evasion, in which companies report operating losses but remit royalties, Pakistan has limited foreign investors' remittance of royalty payments to a maximum of $100,000 for the first payment, with subsequent payments capped at five percent of net sales for the next five years.

Financial Services

Foreign banks that do not have global Tier-1 paid up capital (*e.g.*, 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 a local company in order to conduct banking business. Foreign ownership in the banking sector is limited to 49 percent. The National Insurance Company, a majority state-owned enterprise, has the exclusive authority to underwrite and insure public sector firms, assets, and properties. The government has discretion to grant exemptions to this requirement. Private sector firms may seek foreign reinsurance facilities to meet up to 65 percent of their re-insurance needs.

Telecommunications

In February 2016, the United States and Pakistan resolved a three-year dispute over international termination rights, resulting in the FCC's removal of a Stop Settlement Payments Order. Prior to this, USTR had expressed concerns about a directive of the Ministry of Information and Technology (MOIT) that ordered all carriers in Pakistan licensed to terminate international traffic to assign their rights to terminate international calls to the incumbent carrier, the Pakistan Telecommunications Company Limited (PTCL). This directive resulted in the PTCL charging termination rates that were 400 percent higher than rates charged when the market for these services was competitive. In February 2015, the MOIT withdrew this directive, and the Pakistan Telecommunications Authority issued an order directing operators to ensure "fair competition while negotiating with the foreign operators for terminating international traffic." The FCC noted in its 2016 memo that competitive conditions on the United States-Pakistan route had improved sufficiently. The United States will continue to work with Pakistan to ensure that it fulfils its obligations to maintain an open and competitive telecommunications sector.

BARRIERS TO DIGITAL TRADE

Pakistan periodically blocks access to websites deemed to be blasphemous or immoral. These blockages are frequently applied on an unnecessarily broad basis, restricting access to entire services. Such blockages undermine the value of these services to their customers, and impose costs on local firms that depend on these services for their own business. YouTube was blocked from September 2012 to January 2016; it was unblocked when, after extensive negotiations, Google agreed to launch a localized version of the site that allows the government of Pakistan to request the removal or blockage of specific content. WordPress, a website platform, was temporarily blocked for several days in 2015 with little explanation from the authorities. Pakistan has also intermittently blocked both Facebook and Twitter, and Facebook is routinely asked by the government to censor material deemed to be blasphemous.

OTHER BARRIERS

Corruption and a weak judicial system have been cited as further substantial disincentives for investors. In 2002, Pakistan's Cabinet approved the National Anti-Corruption Strategy (NACS) that identified areas of pervasive corruption and recommended the implementation of reforms to combat corruption. The NACS recognized the National Accountability Bureau (NAB) as the sole federal anticorruption agency. In 2009, the Supreme Court directed the National Assembly to pass new legislation to update the executive ordinance establishing the NAB, but the National Assembly has yet to pass such legislation.

Contract enforcement can be difficult for U.S. and other foreign investors in Pakistan. Parties pursuing legal remedies in the Pakistani judicial system may face significant delays and unpredictable outcomes in the country's overloaded courts. Lack of enforcement of the court's rulings is also a significant problem.

Pakistan has been under significant pressure from the IMF to increase tax revenue. Unwilling to broaden the country's tax base, the government has leaned on large companies, especially multinational firms, to increase revenues. In 2015 and 2016, U.S. companies experienced increased pressure from the Federal Board of Revenue to prepay anticipated tax liabilities. In at least one case, the Pakistani government assessed prospective tax rates significantly above historical rates. Although small and medium-sized U.S. companies have not seen their tax burden increase substantially, they have expressed concern that many of their local competitors do not pay taxes at all. The U.S. Government has engaged Pakistan at the highest levels on issues of unfair or subjective taxation, and the U.S. Government continues to reinforce the importance of Pakistan broadening its tax base.

Pakistani laws allow 100 percent repatriation of profits, although there have been reports of U.S. and other companies having difficulty repatriating profits and assets from Pakistan, generally coinciding with the government's focus on maintaining strong foreign currency reserves. Pakistan's 18th Amendment to its constitution, passed in 2010, gives the country's provinces the authority to levy taxes and regulate some sectors of the economy. While intended to provide provinces with greater autonomy, the move has also complicated Pakistan's investment climate, as the delineation of federal and provincial responsibilities is often unclear.

The government of Pakistan is in the process of reviving its biotechnology regulatory system. The Plant Breeders' Rights Act is moving through the legislative process, and the Act would establish intellectual property protection for foreign and domestic seeds. Similarly, the Biosafety Act was reactivated in 2016 on an emergency basis after six years in abeyance, but it still faces further review from the courts and the federal government. While progress is being made, lack of a regulatory system certainly has dampened innovation and has discouraged foreign, domestic, and government organizations from introducing new technologies that would boost yields and improve farmer livelihoods.

PANAMA

TRADE SUMMARY

The U.S. goods trade surplus with Panama was $5.7 billion in 2016, a 20.9 percent decrease ($1.5 billion) over 2015. U.S. goods exports to Panama were $6.1 billion, down 19.8 percent ($1.5 billion) from the previous year. Corresponding U.S. imports from Panama were $408 million, down 0.1 percent. Panama was the United States' 34th largest goods export market in 2016.

U.S. exports of services to Panama were an estimated $1.6 billion in 2015 (latest data available) and U.S. imports were $1.3 billion. Sales of services in Panama by majority U.S.-owned affiliates were $2.1 billion in 2014 (latest data available), while sales of services in the United States by majority Panama-owned firms were $182 million.

U.S. foreign direct investment in Panama (stock) was $4.1 billion in 2015 (latest data available), a 12.2 percent decrease from 2014. U.S. direct investment in Panama is led by nonbank holding companies, finance/insurance, and wholesale trade.

Trade Promotion Agreement

The United States-Panama Trade Promotion Agreement (TPA) entered into force on October 31, 2012. The TPA includes important disciplines relating to market access, customs administration and trade facilitation, technical barriers to trade, government procurement, services, investment, telecommunications, electronic commerce, intellectual property rights, and labor and environmental protection. The parties also signed an agreement regarding "Sanitary and Phytosanitary Measures and Technical Standards Affecting Trade in Agricultural Products," which is incorporated into the TPA. That agreement entered into force in December 20, 2006.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Sanitary and Phytosanitary Barriers

The Panamanian Food Safety Authority (AUPSA) was established by Decree Law 11 in 2006 to issue science-based sanitary and phytosanitary (SPS) import policies for agricultural and food products entering Panama. In the last two years, AUPSA, as well as other parts of the government, have implemented or proposed measures that appear to be aimed at restricting market access, as well as to increase AUPSA's ability to limit the import of certain agricultural goods. The United States is monitoring these activities and pressuring Panama to avoid unnecessary restrictions on trade.

In November 2016, the National Assembly's Commission for Agricultural Affairs initiated a debate on draft Bill 188 of 2015, which would assign to AUPSA additional functions that could be used to intervene in import trade of agricultural products. President Varela partially vetoed this bill in May 2015, due to questions about whether it unduly restricts trade and market access. However, the previously vetoed provisions resurfaced in the National Assembly in January 2017 as a result of pressure from local producers. The Draft measures include changes to AUPSA's decision-making structure to allow for industry input on import rules and regulations; introduction of domestic purchase requirements as a pre-condition for import quota access for certain commodities such as rice; and introduction of seasonal tariff rate quotas to coincide with domestic harvest season. The United States will continue to monitor developments on the bill and engage with Panama.

On July 16, 2015, Panama's Ministry of Agricultural Development issued Resolution No. OAL-135-DM-2015 to ban the entry or movement of imported potatoes and onions for human consumption into areas where domestic production takes place. The United States has been raising concerns about the scientific basis for this measure with Panama and will continue to do so.

According to a 2001 Ministry of Health decree, all salt sold in Panama for human consumption must have between 20 and 60 parts per million (ppm) of iodine to avoid iodine deficiency related diseases. On August 2, 2016, AUPSA issued Resolution No. 048-AG-2016, cancelling the sanitary registration for all imported non-iodized salt for human consumption that did not comply with the 2001 decree. AUPSA also ordered a nationwide recall of these salts. A number of U.S. gourmet salt products exported to Panama (Kosher, Pink Himalayan, rock salt, etc.) are specialty salts that do not contain iodine and were removed from the market. The United States has engaged with Panama on this issue, urging Panama to amend the 2001 decree to recognize changes in the market with regard to specialty and gourmet salts.

In January 2016, AUPSA issued a resolution on raw materials and food additives and a resolution on processed and packaged foods. These two resolutions had the potential to impose burdensome requirements and raised concerns under the United States-Panama 2006 Agreement Regarding Certain SPS Measures and Technical Standards Affecting Trade in Agricultural Products. Panama repealed the two resolutions in November 2016, taking into account U.S. concerns.

Technical Barriers to Trade

On July 8, 2016, Panama notified to the World Trade Organization quality requirements for onions. The United States is consulting with stakeholders and working with Panama to resolve concerns that the requirements are overly prescriptive and onerous and may serve as a barrier to trade.

IMPORT POLICIES

Tariffs

The first tariff reduction under the TPA took place on October 31, 2012, upon entry-into-force, and subsequent tariff reductions occur on January 1 of each year; the sixth round of tariff reductions took place on January 1, 2017. Over 87 percent of U.S. exports of consumer and industrial products to Panama became duty free immediately upon entry into force of the TPA. The remaining tariffs on consumer and industrial products will be phased out over the course of 10 years. The TPA provides for immediate duty-free treatment upon entry-into-force for over half of U.S. agricultural exports to Panama (by value). The TPA also provides for duties on most other agricultural goods to be phased out over a 5 year to 12 year period following the entry into force of the TPA, with duties on the most sensitive products phased out over 15 years to 20 years. The TPA created expanded market access opportunities for some of the most sensitive agricultural products through tariff-rate quotas, which provided immediate duty-free access for specific quantities of certain agricultural products. This access has risen as quotas increased and over-quota duties phased out over the course of the applicable implementation period.

Panama's average MFN tariff on industrial and consumer goods is relatively low, at about 7.6 percent, although tariffs on some products are as high as 81 percent. Panama's average MFN tariff on agricultural goods is 12.2 percent, but some agricultural imports face tariffs as high as 260 percent. However, the TPA rates are applied to U.S. products.

Nontariff Measures

In addition to tariffs, all goods and most services sold in Panama, except for foods and feeds, are subject to a seven percent value-added tax (ITBMS). In the case of imported goods, the ITBMS is levied on the cost, insurance, and freight value, as well as on import duties and other handling charges, which artificially inflates the tax compared to domestic products. The ITBMS is higher for cigarettes and alcohol. Pharmaceuticals, foods, school supplies, goods that will be re-exported, and all products related to transactions occurring in any free zone when using endorsable documents, are exempt from the ITBMS. In 2012, the government introduced an excise tax on vehicle sales, which varies from 5 percent to 25 percent based on the value of the vehicle.

On February 4, 2016, Panama's National Customs Authority issued Resolution No. 050 on customs valuation for potatoes, rice and onions. Among other requirements, the resolution requires that every importer of these products submit the documents for customs valuation 15 working days prior to the arrival of a shipment. When the importer cannot do so, the product is detained at port for more than 15 working days, resulting in high storage and refrigeration costs. The United States is working with Panama to evaluate these requirements and ensure they do not serve as an unnecessary barrier to trade, particularly with regard to the systemic nature of the measure as it is applies to all imports of the covered products. The United States is also monitoring the implementation of Resolution No. 050 to help ensure that trade is not unjustifiably disrupted, particularly with regard to the detention of the goods at the port of entry, while customs valuation is pending. Due in part to U.S. efforts, U.S. export volumes of these products have been at above-tariff rate quota levels since entry-into-force of the TPA.

Importing entities are required to hold a license to operate in Panama in order to import manufactured goods into the country. The license may be obtained through Panama's online business registration service, "Panama Emprende." Importing entities holding such a license are not required to have a separate import license for individual shipments, except for imports of certain controlled products such as weapons, medicine, pharmaceutical products, and certain chemicals.

GOVERNMENT PROCUREMENT

In December 2015, Panamanian government officials indicated that, in an effort to increase participation by U.S. and other international companies, Panama was examining how to improve the delivery method for information on public tenders. This would include improving the Panama Compra online portal and increasing the lead times to announce upcoming major tenders. The reviews are still ongoing and the United States continues to monitor developments.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The government of Panama is making efforts to strengthen the enforcement of intellectual property rights (IPR). A Committee for Intellectual Property, comprised of representatives from five government agencies (Colon Free Zone, Offices of Intellectual Property Registry and Copyright under the Ministry of Commerce and Industry, Customs, and the Attorney General), under the leadership of the Ministry of Commerce and Industry, is responsible for development of intellectual property policy in Panama.

In 2012, Panama updated its legislative framework in order to implement the requirements of the TPA, which called for improved standards for the protection and enforcement of a broad range of IPR. These include enhanced protections for patents, trademarks, undisclosed test or other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos, and further deterrence of piracy and counterfeiting. While challenges remain, *e.g.*, in the areas of trademarks (opposition proceedings), government use of unlicensed software,

and deterring piracy and counterfeiting, the United States is engaging closely with Panama to ensure the effective implementation of all TPA obligations.

INVESTMENT BARRIERS

While Panama maintains an open investment regime and is generally receptive to foreign investment, U.S. investors and individual property holders have raised concerns about property disputes. Many of these disputes appear to stem from the general lack of titled land in Panama and inadequate government administration of the property system. Although Panama enacted a law in 2009 (Law 80) that attempted to address the lack of titled land in certain parts of the country, some of the decisions taken by the National Land Authority established by the law have reinforced investors' concerns regarding government administration, corruption, and the ability of the judicial system to resolve these types of disputes.

OTHER BARRIERS

Corruption

President Juan Carlos Varela, inaugurated on July 1, 2014, has pledged to pursue reports of corruption, for example, by increasing transparency in tendering for government procurement and ensuring that government tenders are awarded transparently and fairly. In December 2014, the government cancelled a contract in the energy sector that was awarded by the previous administration on the grounds that the tendering had not been transparent. The Varela Administration has also pursued legal cases against former government officials for embezzlement and misappropriation. Following the release of the "Panama Papers" in May 2016, President Varela installed an independent commission of experts to review Panama's legal and financial practices.

While Panama has domestic anticorruption mechanisms, such as asset forfeiture, protection for witnesses and whistleblowers, and conflict-of-interest rules, the general perception is that anticorruption laws could be applied more rigorously, and that government enforcement bodies and the courts could do more to pursue and prosecute those accused of corruption, particularly in high profile cases. Panama ratified the United Nations Convention against Corruption in 2005 and the Organization of American States Inter-American Convention against Corruption in 1998, but there is also a perception that Panama could do more to implement the conventions and respond to official recommendations.

Concerns remain regarding the competence and independence of the judicial system, based on decisions that call into question its susceptibility to influence. Examples range from the previously-cited disputes on property titling, to reports of significant punitive damages being imposed on the owner of a trademark registered in Panama after attempting to enforce the trademark. 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 $1.8 billion in 2016, a 34.8 percent increase ($471 million) over 2015. U.S. goods exports to Paraguay were $2.0 billion, up 30.7 percent ($466 million) from the previous year. Corresponding U.S. imports from Paraguay were $157 million, down 3.2 percent. Paraguay was the United States' 57th largest goods export market in 2016.

U.S. foreign direct investment (FDI) in Paraguay (stock) was $134 million in 2015 (latest data available), a 6.9 percent decrease from 2014.

SANITARY AND PHYTOSANITARY BARRIERS

Sanitary and Phytosanitary Barriers

In March 2015, Paraguay's National Animal Health and Quality Service (SENACSA) recognized the status of the United States as a country with a "negligible risk for BSE," according to the World Organization for Animal Health. This was the first step in a process to end Paraguay's 2003 ban on imports of U.S. live cattle and fresh, frozen, and processed beef and beef products due to the detection of bovine spongiform encephalopathy (BSE) in the United States. In July 2016, SENACSA approved health certificates for U.S. live cattle and beef imports, which allows live cattle from the United States to be imported into Paraguay without restriction. However, the approval to import fresh/frozen and processed beef and beef products is still pending SENACSA's recognition of equivalency for the U.S. beef inspection system. The United States will continue to engage with SENACSA to gain access to the Paraguayan market for U.S. beef exports.

IMPORT POLICIES

Tariffs

Paraguay is a founding member of the MERCOSUR common market, formed in 1991. MERCOSUR's full members are Argentina, Brazil, Paraguay, and Uruguay. Venezuela was suspended as a full member from MERCOSUR in December 2016. MERCOSUR's Common External Tariff (CET) averages 11.5 percent and ranges from zero percent to 35 percent *ad valorem*. Paraguay's average bound tariff rate in the WTO is significantly higher at 33.5 percent. Paraguay's applied import tariffs tend to be much lower than the CET, ranging from zero percent to 30 percent, with an average applied tariff rate of 9.8 percent in 2015. Paraguay is permitted to maintain a list of 649 exceptions to the CET until December 31, 2019.

According to current MERCOSUR procedures, any good imported into any member country must pay the CET to that country's customs authorities. If the product is re-exported to any other MERCOSUR country, the CET must be paid again to the second country upon importation there. Thus, for any U.S. good imported into landlocked Paraguay via any other MERCOSUR country, all of which have ocean ports, the CET is effectively doubled.

The MERCOSUR Common Market Council moved toward the establishment of a Customs Union with its approval of a Common Customs Code (CCC) in August 2010 and its Decision 5610 in December 2010 to adopt a plan to eliminate the double application of the CET within MERCOSUR. Thus far, only Argentina has ratified the CCC. The CCC is still pending approval by the Paraguayan congress.

Nontariff Barriers

Paraguay requires import licenses on personal hygiene products, cosmetics, perfumes and toiletries, textiles and clothing, shoes, insecticides, agrochemicals, soy grains, barbed wire, wire rods, and steel and iron bars. Licensing is non-automatic and requires review by the Ministry of Industry and Commerce. Imports of personal hygiene products, cosmetics, and perfumes and toiletries also require a health certification and therefore must undergo a review by the Ministry of Health. The import license process usually takes 10 days, but for goods that require a health certification, it can take up to 30 days. Once issued, the health certifications are valid for 30 days.

Paraguay prohibits the importation of used cars over 10 years old and used clothing. Also, seasonal restrictions on some agricultural products (*e.g.*, tomatoes, bell peppers, and onions) are sometimes implemented to protect local producers.

Customs Procedures

Paraguay requires that specific documentation for each import shipment (*e.g.*, commercial receipt, certificate of origin, and cargo manifest) be certified by either the Paraguayan consulate in the country of origin or by the Ministry of Foreign Affairs in Paraguay, subject to payment of a fee. These consularization requirements are both burdensome and costly for U.S. exporters.

Paraguay also requires all companies operating in the country to contract the services of a customs broker. Customs broker fees are standardized by Paraguayan law.

GOVERNMENT PROCUREMENT

Paraguay's Public Contracting Law stipulates that all public contracting at the national and local levels with a value in excess of approximately $6,000 must be done via the National Directorate for Public Contracts. Foreign firms can bid on tenders deemed "international" and on "national" tenders through the foreign firms' local legal agents or representatives. Paraguayan law gives preference to locally produced goods in public procurements open to foreign suppliers, even if the domestic good is up to 20 percent more expensive than the imported good. Paraguay's public procurements have historically been associated with corruption allegations, although the government is making efforts to enhance transparency and accountability, including through the creation of an Internet-based government procurement system.

Paraguay is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Paraguay was removed from the Special 301 Watch List in 2015 pursuant to an Out-of-Cycle Review. The United States and Paraguay signed a Memorandum of Understanding (MOU) on Intellectual Property Rights (IPR) in June 2015, under which Paraguay committed to take specific steps to improve its IPR protection and enforcement environment. Additionally, the MOU solidifies bilateral cooperation in which the United States supports Paraguay's efforts to strengthen the legal protection and enforcement of IPR. The United States is encouraged by the work of the National Directorate of Intellectual Property and Paraguay's efforts to improve administrative and border enforcement activities. Nevertheless, issues remain that affect market access for U.S. firms that rely on IPR. For example, U.S. firms remain concerned about the level of enforcement against piracy and counterfeiting, particularly under the criminal code, in areas such as Ciudad del Este (which has been named to USTR's Notorious Markets List for several years including in the 2016 Notorious Markets List). They also remain concerned about judicial inefficiency in IPR cases; lack of protection against unfair commercial use of, as well as unauthorized disclosure of, and

reliance on, undisclosed test or other data submitted to the government by agrochemical or pharmaceutical companies; the use of unlicensed software by the government; and the theft of pay-TV signals and related trafficking of satellite decoder devices.

INVESTMENT BARRIERS

Under Paraguayan law, foreign companies must demonstrate "just cause" to terminate, modify, or decide not to renew contracts with Paraguayan distributors. Severe penalties and fines may result if a court determines that the foreign company ended the relationship with its distributor without first having established that such "just cause" exists. This requirement often leads to expensive out-of-court settlements. The law has impeded foreign investment because of concerns that Paraguayan companies may unreasonably threaten expensive litigation.

Judicial uncertainty and corruption mar Paraguay's investment climate. Many investors find it difficult to adequately enforce contracts and are frustrated by lengthy bureaucratic procedures. The government of Paraguay has taken steps in recent years to increase transparency and accountability, including the passage of its Access to Information Law, but corruption and impunity continue to affect the investment climate.

PERU

TRADE SUMMARY

The U.S. goods trade surplus with Peru was $1.8 billion in 2016, a 51.5 percent decrease ($1.9 billion) over 2015. U.S. goods exports to Peru were $8 billion, down 8 percent ($696 million) from the previous year. Corresponding U.S. imports from Peru were $6.2 billion, up 23.7 percent. Peru was the United States' 32nd largest goods export market in 2016.

U.S. exports of services to Peru were an estimated $3.9 billion in 2015 (latest data available) and U.S. imports were $2.9 billion. Sales of services in Peru by majority U.S.-owned affiliates were $3.6 billion in 2014 (latest data available), while sales of services in the United States by majority Peru-owned firms were $5 million.

U.S. foreign direct investment in Peru (stock) was $6.9 billion in 2015 (latest data available), a 6.4 percent increase from 2014. U.S. direct investment in Peru is led by manufacturing, wholesale trade, and information.

Trade Agreements

United States-Peru Trade Promotion Agreement

The United States-Peru Trade Promotion Agreement (PTPA) entered into force on February 1, 2009. The PTPA is a comprehensive free trade agreement that resulted in the significant liberalization of trade in goods and services between the United States and Peru. Under the PTPA, Peru immediately eliminated most of its tariffs on U.S. exports, with all remaining tariffs phased out over time periods ranging from 5 to 17 years. The PTPA also includes important disciplines with respect to customs administration and trade facilitation, technical barriers to trade, government procurement, services, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Labeling Requirements for "Unhealthy" Prepackaged Food Items

The "Act to Promote Healthy Eating among Children and Adolescents" includes a mandatory front-of-pack warning statement on food labels for prepackaged foods that surpass an established threshold for sugar, sodium, and saturated fats, and for all food products that contain trans-fats. The Act also establishes restrictions on advertising and promoting such food products to children and adolescents. Peru's Ministry of Health notified to the WTO TBT Committee implementing regulations for the Act in 2014, and it notified amended implementing regulations in 2016. The United States submitted comments and raised concerns about the measure at the November 2016 WTO TBT Committee meeting, and will continue to engage with the Peruvian government on this issue, as appropriate.

Sanitary and Phytosanitary Barriers

Moratorium on Agricultural Biotechnology

On November 3, 2011, the Peruvian Congress approved Law 29,811, which immediately initiated a 10-year moratorium on the importation or production of products derived from agricultural biotechnology, as a result of concerns that these products may adversely affect the environment. Peru has not supported the moratorium with a risk assessment as called for in an implementing regulation issued in November 2012 (Supreme Decree 008-2012), or any other scientific justification.

U.S. Government efforts to address concerns related to the moratorium have included discussions with Peruvian government officials and business associations. The issue also was raised by the United States at each annual meeting of the PTPA Standing Committee on Sanitary and Phytosanitary Measures from 2012 through 2016.

IMPORT POLICIES

Tariffs

According to the WTO, Peru's average bound WTO tariff rate was 30.9 percent in 2015, and its average MFN applied tariff rate was 2.8 percent. More than 80 percent of U.S. exports of consumer and industrial products enter Peru duty-free under the PTPA. All remaining tariffs on U.S. consumer and industrial goods exports to Peru will be phased out by 2018. More than two-thirds of current U.S. agricultural exports enter Peru duty free; the remaining tariffs on U.S. agricultural exports to Peru will be phased out by 2025. In accordance with its PTPA commitments, Peru has eliminated its price band system on several agricultural products with the United States.

Non-Tariff Measures

The government of Peru has eliminated many of Peru's non-tariff barriers, and under the PTPA it subjects remaining measures, including subsidies, to additional disciplines.

Peru currently restricts imports of certain used goods, including used clothing and shoes (except as charitable donations), tires, and cars and heavy trucks (weighing three tons or more) over five years old. A 30 percent excise tax applies to used cars and trucks (compared to 6 percent for new cars). However, if used cars and trucks undergo refurbishment in an industrial center in the south of the country (that is, those located in Ilo, Matarani, or Tacna) after importation, the new car excise tax applies.

The effective tax rate on imported spirits is higher than the tax assessed on domestically-produced Pisco products, which places distilled spirits produced in the United States at a competitive disadvantage.

Peru currently requires that biopharmaceutical companies submit a "Batch Release Certificate" issued by the competent authority of the country of origin. The U.S. Food and Drug Administration does not issue such certificates for all types of biological pharmaceuticals. As a result, this requirement adversely affects market access for some biologics produced in the United States. Supreme Decrees No.011-2016-SA, establishing registration processes for biologic pharmaceutical products, and 013-2016-SA, establishing registration processes for biosimilar pharmaceutical products, entered into force on August 25 and August 28, 2016, respectively. Although these decrees eliminate loopholes that previously enabled registration of products as biosimilars without clinical data, in competition with verified biologics and biosimilars, Peru's slow process to register and provide marketing approval for pharmaceutical products will continue to hamper market access.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Peru remained on the Watch List in the 2016 Special 301 Report. Pirated and counterfeit goods, including counterfeit medicines, remain widely available in Peru. Piracy over the Internet is a growing problem, especially with respect to music, software, and video content (movies and television programs). Rights holders report that Peru is a major source of unauthorized "camcorded" films, and administrators of notorious Spanish-language websites are based in Peru. Other challenges include inadequate resources for law enforcement, lack of coordination among enforcement agencies, the need for improved border measures, and the need for prosecutorial and judicial reforms.

The United States has worked with Peru to ensure that Peru implements its obligations under the PTPA, including to provide for statutory damages, to establish limitations on liability for Internet service providers within the parameters of the PTPA, and to protect against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for agricultural chemical products. The United States continues to work with Peru to address intellectual property issues through PTPA implementation and bilateral engagement.

GOVERNMENT PROCUREMENT

The Ministry of Defense and the Ministry of the Interior are using or are proposing to use a government-to-government (G2G) procurement method in some non-defense related procurements. The G2G procurement method requires the government of the foreign vendor to assume responsibility for performance of the contract. Since the U.S. Government has no authority to assume such responsibilities on behalf of a U.S. company, the G2G approach could effectively excludes U.S. firms. The United States continues to engage with GOP on G2G procurements to ensure all PTPA covered procurements are applied consistent with the agreement's obligations.

Additionally U.S. firms continue to identify corruption as a significant problem in the government procurement process.

OTHER BARRIERS

Both U.S. and Peruvian firms remain concerned that executive branch ministries, regulatory agencies, the tax agency, and the judiciary often lack the resources, expertise, or impartiality necessary to carry out their respective mandates. U.S. and Peruvian investors also have expressed concerns about reinterpretation of rules by La Superintendencia Nacional de Aduanas y de Administración Tributaria (SUNAT), Peru's customs and tax agency, as well as the imposition of fines by SUNAT perceived by investors to be disproportionate.

THE PHILIPPINES

TRADE SUMMARY

The U.S. goods trade deficit with the Philippines was $1.8 billion in 2016, a 23.3 percent decrease ($542 million) over 2015. U.S. goods exports to the Philippines were $8.3 billion, up 4.5 percent ($355 million) from the previous year. Corresponding U.S. imports from the Philippines were $10 billion, down 1.8 percent. Philippines was the United States' 31st largest goods export market in 2016.

U.S. exports of services to the Philippines were an estimated $2.5 billion in 2015 (latest data available) and U.S. imports were $5.4 billion. Sales of services in the Philippines by majority U.S.-owned affiliates were $3.9 billion in 2014 (latest data available), while sales of services in the United States by majority Philippines-owned firms were $47 million.

U.S. foreign direct investment (FDI) in the Philippines (stock) was $4.7 billion in 2015 (latest data available), a 3.8 percent increase from 2014. U.S. direct investment in Philippines is led by manufacturing, professional, scientific, and technical services, and nonbank holding companies.

The United States and the Philippines meet regularly under the bilateral Trade and Investment Framework Agreement (TIFA) to address issues and consider ways to deepen economic relations. The Philippines has preferential trade agreements with a range of trading partners, including China, Australia, and New Zealand, which have eroded the competitiveness of U.S. products in the Philippines. The Philippines also is party to the ASEAN trade agreement, under which it has eliminated tariffs on approximately 99 percent of all goods from ASEAN trading partners.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Toy Standards

The Philippine Congress has been considering three bills related to toy safety over the last several years, and these bills were reintroduced in August 2016 in the new Congress. Two bills, which are based on earlier legislation previously passed by the Philippines House of Representatives—but not by the Senate—are under consideration by the House of Representatives again. The third bill, under consideration by the Philippines Senate, is based on an earlier draft of the previous legislation passed by the House. The House bills would regulate the importation, sale, and manufacture of children's toys and related products. U.S. stakeholders have expressed concern that the bills do not establish an age limit on "childcare articles," which could potentially extend the application of the regulation to products intended to children of all ages, while international standards limit the definition of childcare articles to children age three and under. The bill would also direct the Philippines Food and Drug Administration to prepare a list of potentially harmful chemicals and substances used in the production of children's products, including antimony, arsenic, cadmium, chromium, lead, mercury, and phthalates. The United States will monitor this issue to determine whether the list developed differs from the international standard (ISO 8124), on which the existing Philippine national standard for toys is based.

Sanitary and Phytosanitary Barriers

Meat Handling Regulations

The Philippines maintains a two-tiered system for regulating the handling of frozen and freshly slaughtered meat for sale in local "wet" markets. Under this system, the Philippines imposes more burdensome requirements on the sale of frozen meat, which is primarily imported, than it does on the sale of freshly slaughtered meat, which is only from animals raised domestically. The United States continues to press the Philippine government to remove the unscientific requirements placed on frozen meat.

Import Clearance

The Philippine Department of Agriculture (DA) requires importers to obtain a sanitary and phytosanitary permit prior to shipment of any agricultural product and to transmit the permit to the exporter. This requirement adds costs, complicates the timing of exports, and prevents the transshipment to the Philippines of products intended for other markets. It also prevents an exporter from reselling an imported product if the importer refuses to accept delivery or abandons the shipment. On November 23, 2016, the DA announced that it was revoking existing permits and suspending issuance of new permits. Permit holders were required to go through a lengthy validation process for existing permits. The DA took this action without prior notification or consultation with importers and did not make the details of the validation process available in advance to importers who held existing permits. Starting December 1, 2016, the process for new permits now includes a requirement that permits be signed by the Secretary of Agriculture or his or her Chief of Staff, introducing further delays in issuance. The United States continues to work with the Philippine government to ensure that the new process does not hamper trade.

Agricultural Biotechnology

In December 2015, the Supreme Court of the Philippines struck down a 2002 administrative order that outlined the rules and regulations for importing and releasing into the environment genetically engineered crops. The Court's ruling imposed a temporary ban on biotechnology imports until the Department of Agriculture could draft new regulations conforming to the decision. A Joint Department Circular drafted by an interdepartmental working group was approved in March 2016, and replaced the old biotechnology regulations.

On August 18, 2016, the Philippine Supreme Court reversed its December 2015 decision. However, the Joint Department Circular remains in place and the import of genetically engineered crops requires the approval of five agencies The United States is working the Philippine government to ensure that the process is transparent and the renewals are approved expeditiously.

IMPORT POLICIES

Tariffs

The Philippines' simple average MFN applied tariff is 6.3 percent. Six percent of its applied tariffs are 20 percent or higher. All agricultural tariffs and 61.9 percent of non-agricultural tariff lines are bound under the Philippines' WTO commitments. The simple average bound tariff in the Philippines is 23.5 percent. Products with unbound tariffs include certain automobile, chemical, plastic, vegetable textile fiber, footwear, headgear, fish, and paper products. Applied tariffs on fresh fruit, including grapes, apples, oranges, lemons, grapefruits, and strawberries, as well as on processed potato products, including frozen fries, are between 7 percent and 15 percent (except dates and figs, which have a 3-percent MFN tariff),

whereas bound rates are much higher at 35 percent and 50 percent. Tariffs on fresh potatoes remain applied and bound at 40 percent.

High in-quota tariffs for agricultural products under the Philippines' tariff-rate quota program, titled the Minimum Access Volume (MAV) system, significantly inhibit U.S. agricultural exports to the Philippines. Under the MAV system, the Philippines imposes a tariff-rate quota on numerous agricultural products, including sugar, corn, coffee and coffee extracts, potatoes, pork, and poultry products. In-quota tariffs range from 30 percent to 50 percent. Sugar has the highest in-quota tariff at 50 percent, followed by rice, coffee, poultry, and potatoes at 40 percent. The in-quota tariff for corn is 35 percent, while pork and raw coffee have in-quota tariffs of 30 percent. Since 2005, the Philippines has maintained MAV levels at its Uruguay Round commitments despite dramatically increasing demand in the Philippine market for products subject to the MAV. The Philippine government increases in-quota volumes of affected MAV commodities in times of shortages, but because of its lack of predictability, the practice does not serve to relax the Philippines' restrictive agricultural import regime.

Quantitative Restrictions

The Philippine National Food Authority (NFA) controls rice imports through quantitative restrictions and provides price support to rice growers. The NFA's stated objectives are to achieve self-sufficiency and to ensure sufficiently high and stable food prices to enhance farm incomes and alleviate rural poverty. The NFA's policies have contributed to the sector's lack of competitiveness by reducing incentives for farmers to minimize production costs and improve efficiency.

Pursuant to Annex 5 of the WTO Agreement on Agriculture, the Philippines had maintained a rice quota of 350,000 metric tons (MT), but that special treatment expired on June 30, 2012. In July 2014, the WTO approved an extension of the Philippine rice quantitative restrictions until 2017. The 2014 to 2017 extension is covered by a waiver of the Philippine obligation to convert quantitative restrictions on agricultural imports into tariff measures. In exchange for the extension, the Philippine cut its MFN rice import tariff from 40 percent to 35 percent, and increased the MAV quota from 350,000 MT to 805,200 MT.

In connection with the WTO approval of the extension of rice special treatment, the United States and the Philippines reached a bilateral agreement on Philippine agricultural concessions in June 2014. As part of this agreement, the Philippines reduced tariffs on a variety of agricultural products, including buttermilk, cheese, grapes, frozen potatoes, poultry, and walnuts, covering over $66 million of U.S. agricultural exports to the Philippines.

Although the Philippine National Economic and Development Authority has announced that the Philippines will not seek to extend the quantitative restrictions on rice beyond the July 1, 2017 expiration date, the Department of Agriculture has stated it will pursue a two-year extension to prepare farmers to compete with other ASEAN rice-producing countries. With expiration of the rice QR, the United States may to lose concessions granted as part of the 2014 bilateral concessions agreement. The United States will continue to closely monitor this situation and the potential impacts on the agricultural trade concessions obtained in 2014

Automobile Sector

The Philippines continues to apply high tariffs on finished automobiles and motorcycles, including a 30-percent tariff on passenger cars; tariffs of 20 percent to 30 percent on vehicles for the transport of goods; and tariffs of 15 percent to 20 percent on vehicles for the transport of persons, depending on vehicle weight. New vehicle imports from ASEAN countries and Japan benefit from preferential tariffs under the ASEAN

Free Trade Agreement and the Japan-Philippines Economic Partnership Agreement, respectively. The Philippines continues to extend duty-free treatment on imports of capital equipment, spare parts, and accessories by motor vehicle manufacturers and other enterprises registered with the Board of Investments.

Motor vehicle production is a priority sector under the Philippine Motor Vehicle Development Program. This program, implemented by the Board of Investments, is designed to spur exports and encourage local assembly through low tariffs on components. A 1-percent tariff applies to completely knocked-down kits imported by participants registered under the program. The policy also prohibits the importation of used motor vehicles.

The manufacture and assembly of motor vehicles, parts, and components is also a preferred activity under the 2014-2016 Philippine Investment Priorities Plan (*see Subsidies section below*). In 2015, the Board of Investments implemented a six-year Comprehensive Automotive Resurgence Strategy program that aims to revive the automotive industry by providing approximately $600 million worth of fiscal incentives to domestic carmakers and parts manufacturers. Registered participants must comply with performance-based terms and conditions, including minimum output a of 200,000 car units within the program period and domestic production of body shell and large plastic parts assemblies.

Customs Barriers

Reports of corruption and irregularities in customs processing persist, including undue and costly delays (*e.g.*, irregularities in the valuation process, 100-percent inspection and testing of some products, and customs officials seeking the payment of unrecorded facilitation fees). In particular, despite a firm commitment to the United States from the Bureau of Customs to use transaction values to assess duties on imports, as provided for in the WTO Customs Valuation Agreement, importers have reported that the Bureau of Customs continues to use reference prices for valuation of meat and poultry. The Bureau of Customs has reportedly assigned a single reference value for all "other" pork offal (jowls, ear base, tongue, etc.), which does not reflect actual prices. Traders have reported that reference prices are frequently well above the transaction prices, which has the effect of imposing an artificially high tariff.

In May 2016, the Philippine Customs Modernization and Tariff Act became law, mandating the automation of nearly all customs transactions and the modernization of customs operations. The law also increased the *de minimis* value to PhP10,000 (approximately $205) from PhP10.00 (approximately $0.20) to minimize importation and customs administration costs.

GOVERNMENT PROCUREMENT

Philippine government procurement law imposes a countertrade requirement of 50 percent of the value of the supplier's supply contract for procurements of imported equipment, materials, goods, and services over $1 million in value, with penalties for nonperformance of these obligations. However, the Philippine government has not enforced this requirement during the past few years.

The Philippines is not a signatory of to the WTO Agreement on Government Procurement.

SUBSIDIES

The Philippines offers a wide array of fiscal incentives for export-oriented investment, particularly investment 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 exemption from corporate income tax for four years, renewable for a maximum of eight years; after the income-tax-holiday

period, payment of a 5-percent special tax on gross income in lieu of all national and local taxes; exemption from duties and taxes on imported capital equipment, machinery, spare parts and supplies, and raw materials; domestic sales allowance of up to 30 percent of total sales; exemption from wharfage dues, imposts, and fees; zero VAT rate on local purchases, including telecommunications, electricity, and water; and exemption from payment of local government fees (*e.g.*, mayor's permit, business permit, health certificate fee, sanitary inspection fee, and garbage fee). Additionally, under the Export Development Act (Republic Act No. 7844), exporters are entitled to tax credits, starting from 2.5 percent for the first 5-percent increase in annual export revenue, and additional 5 percent and 7.5 percent for the next two succeeding 5-percent increases in annual export revenues. More than 15-percent revenue increase is entitled to 10-percent tax credit. However, this incentive is not available for exporters already receiving an income tax holiday or VAT exemption or whose local VAT rate is below 10 percent.

The Philippine government also offers incentives to companies for investment in less-developed economic areas and in preferred sectors, as outlined in the Board of Investment's Investment Priorities Plan. The incentives include income tax holidays; tax deductions for wages and certain infrastructure investments; tax and duty exemptions for imported breeding stock and genetic materials; and tax credits on local purchases of breeding stock and materials. An enterprise with less than 60 percent Philippine equity may receive incentives if its projects are classified as "pioneer" under the Omnibus Investments Code. Pioneer status can be granted to Board of Investments-registered enterprises engaged in the production of new products or using new methods, producing goods deemed highly essential to the country's agricultural self-sufficiency program, or producing or utilizing non-conventional fuel sources. Firms with more than 40 percent foreign ownership that export at least 70 percent of production and Filipino-owned firms (defined as firms with more than 60 percent Filipino ownership) that export 50 percent of production also qualify for incentives under the Omnibus Investments Code.

The Philippines has not filed a subsidy notification under the WTO Agreement on Subsidies and Countervailing Measures since 1997. The United States has met bilaterally with the Philippines to urge it to submit a WTO subsidies notification and to offer technical assistance. In 2010, the Philippines became subject to the WTO prohibition of export subsidies under Article 3.1(a) of the Subsidies Agreement, having graduated from the Annex VII(b) list of developing countries exempted from the prohibition. In its last WTO Trade Policy Review in 2012, the Philippines maintained that it does not provide export subsidies.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Philippines was not listed in the 2016 Special 301 Report, and there have been significant improvements in the Philippine IPR environment in recent years. Nonetheless, U.S. rights holders report some concerns, including increasing online piracy, counterfeit drugs, and weak provisions in patent law that may preclude the issuance of patents on certain chemical forms unless the applicant demonstrates increased efficacy. They have expressed concerns about the continued availability of pirated and counterfeit goods in the Philippines, slow investigation of IPR-related cases by the Department of Justice, and judicial inexperience in handling IPR enforcement cases, both civil and criminal. The United States has also been monitoring the development of new regulations related to geographical indications. The United States continues to engage bilaterally with the Philippines to address these concerns.

SERVICES BARRIERS

Telecommunications

Philippine regulators have defined telecommunications services as a public utility, which under the Philippine Constitution limits foreign-equity ownership in telecommunications companies to 40 percent. Foreigners may not serve as executives or managers of telecommunications companies, and the number of

foreign directors allowed is tied to the proportion of foreign investment in the company. The United States has urged the Philippines to reclassify telecommunications outside of the utility definition, as it has done for electricity generation. However, efforts to liberalize the foreign investment regime in the telecommunications sector suffered a setback in 2013 when the Philippine Securities and Exchange Commission, based on a 2011 Philippines Supreme Court ruling, upheld an expansive interpretation of what constituted a utility. This action effectively limited foreign ownership to levels set out in the Philippines' GATS schedule.

The Philippines also applies the public utility designation to value-added services, which is particularly burdensome to service suppliers and inconsistent with international practice. Finally, foreign equity in private radio communications is limited to 20 percent, and foreign ownership of cable TV and all other forms of broadcasting and media is prohibited.

Insurance

While the Philippines' GATS commitments only bind foreign ownership in the insurance sector to 51 percent, in practice the Philippines permits up to 100-percent foreign ownership. Regulations issued in January 2015 by the Philippine Insurance Commission that implement revised capital requirements and a phased 2016-2022 capital/net worth build-up program no longer impose higher capitalization requirements based on the degree of foreign equity.

Generally, only the state-owned Government Service Insurance System may provide insurance for government-funded projects. A 1994 order requires sponsors of build-operate-transfer projects and privatized government corporations to secure their insurance and bonding from this insurance system at least to the extent of the government's interest.

The Insurance Code provides that all insurance companies operating in the Philippines, before entering into outward foreign reinsurance arrangements, first seek to cede excess risks to other insurance companies authorized to do business in the country. Insurance companies operating in the country must also cede to the industry-controlled Philippine National Reinsurance Company at least 10 percent of outward reinsurance placements.

Banking

Although qualified foreign banks may own up to 100 percent of domestically incorporated banks or enter the market as foreign branches, ownership restrictions apply to non-bank investors. Foreign individuals and non-bank enterprises may not own more than 40 percent of the total voting stock in a domestic commercial bank, nor own more than 60 percent of the voting stock in a thrift or rural bank.

Banks that seek entry as foreign branches cannot open more than five sub-branch offices each. The Philippine Central Bank ensures that majority Filipino-owned banks control at least 60 percent of the total banking system assets.

Other Financial Services

Republic Act 10881, passed into law in July 2016, lifted the 60-percent foreign ownership ceiling for financing and securities underwriting companies, the 40-percent foreign ownerships cap for insurance adjustment firms, and the majority Filipino ownership requirement under the 2007 Lending Company Regulation Act, which covers credit enterprises not clearly under the scope of other laws.

Audiovisual Services

The Philippine Constitution prohibits foreign investment in mass media.

Advertising

The Philippine Constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers must be Philippine citizens.

Public Utilities

The Philippine Constitution limits foreign investment in the operation and management of public utilities to 40 percent. Philippine law defines "public utility" to include a range of sectors, including water and sewage treatment, electricity transmission and distribution (not electricity generation), telecommunications, and transport. 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.

Professional Services

The Philippine Constitution limits licensing for the practice of professions to Philippine citizens. As dictated by the Foreign Investment Negative List, only Philippine citizens can practice in the following professions: pharmacy, radiologic and x-ray technology, criminology, and forestry. Foreigners are allowed to practice those professions not specifically prohibited under the Philippine Constitution, if their country allows reciprocity for Philippine citizens. These include professions such as medicine, nursing, dentistry, accountancy, architecture, engineering, criminology, teaching, chemistry, environmental planning, geology, interior design, landscape architecture, and customs brokerage.

Express Delivery Services

Foreign equity participation in the domestic express delivery services sector is limited to 40 percent.

Retail Trade

Philippine law restricts foreign investment in small retail ventures to Philippine nationals. Foreigners may own larger retail ventures subject to several requirements, including paid-up 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 retail stores elsewhere or have at least one outlet with capitalization of $25 million or more. For retailers of high-end or luxury products, the minimum investment in each retail store is $250,000, and the net worth of the parent company must exceed $50 million.

Foreign retailers are prohibited from engaging in trade outside their accredited stores, such as through the use of carts, sales representatives, or door-to-door selling. Retail enterprises with foreign ownership exceeding 80 percent of equity must offer at least 30 percent of their shares to local investors within eight years of the start of operations through public offering of stock.

INVESTMENT BARRIERS

The Philippines has significant restrictions on foreign investment. The Foreign Investment Negative List enumerates foreign investment restrictions in two parts: List A details restrictions mandated by the Constitution or in specific laws, and List B sets out restrictions mandated by the government for reasons of national security, defense, public health and morals, and the protection of small- and medium-sized

enterprises. Foreign investment in sectors from the negative list may be prohibited outright (*e.g.*, mass media, practice of professions, small-scale mining) or subject to limitation (*e.g.*, natural resource extraction and construction or repair of locally funded public works). The current list was issued in May 2015. The Philippine Securities and Exchange Commission monitors corporations' compliance with the foreign equity restrictions mandated under the Foreign Investment Negative List.

The Philippine Constitution prohibits foreigners from owning land in the country, but allows for a 50-year lease, with one 25-year renewal. An ambiguous deed and property system can make it difficult to establish clear ownership of leased land, however, and an inefficient judiciary results in land disputes that can extend indefinitely. U.S. investors report that these disputes can be a particularly significant barrier to investment in mineral exploration and processing sectors.

Trade-Related Investment Measures

The Board of Investments imposes a higher export performance requirement on foreign-owned enterprises (70 percent of production) than on Philippine-owned companies (50 percent of production) when providing incentives under the Investment Priorities Plan.

BARRIERS TO DIGITAL TRADE

Internet Services

Philippine regulators occasionally have required cloud service providers to obtain a value-added telecommunications services license, and these licenses are only available to Filipino companies. Removing limitations on foreign participation in the information communication technology sector has been a longstanding U.S. request, and given the importance of cloud computing to U.S. companies, the restrictions severely limit commercial opportunities for U.S. firms. The United States will continue to press the Philippines to address these issues.

Cloud services companies also may be hampered by government procurement rules. In January 2017, the Department of Information and Communications Technology (DICT) released a circular requiring government agencies to procure cloud services from cloud service providers accredited by *GovCloud*. *GovCloud* is a public service cloud infrastructure set up by DICT for use of Philippine government agencies.

OTHER BARRIERS

Corruption is a pervasive and longstanding problem in the Philippines. 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 about the lack of transparency in judicial and regulatory processes. Concerns also have been raised about courts being influenced by bribery and their improperly issuing temporary restraining orders to impede legitimate commerce. The United States will continue to urge the Philippines to address these issues.

QATAR

TRADE SUMMARY

The U.S. goods trade surplus with Qatar was $3.8 billion in 2016, a 31.4 percent increase ($900 million) over 2015. U.S. goods exports to Qatar were $4.9 billion, up 16.7 percent ($706 million) from the previous year. Corresponding U.S. imports from Qatar were $1.2 billion, down 14.3 percent. Qatar was the United States' 40th largest goods export market in 2016.

U.S. foreign direct investment in Qatar (stock) was $8.5 billion in 2015 (latest data available), a 3.2 percent decrease from 2014.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Energy Drinks

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

Conformity Assessment Marking

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

Sanitary and Phytosanitary Barriers

In November 2016, the GCC announced that it would implement a December 2016 version of the "GCC Guide for Control on Imported Foods" in October 2017. The United States continues to raise concerns about the Guide, particularly a possible requirement to revise U.S. health export certificates for food and agricultural products destined for GCC countries. The GCC has not provided a scientific justification for its revised certificate statements, some of which may not follow the guidelines of the Codex Alimentarius Commission, the International Plant Protection Convention and the World Organization for Animal Health. The United States continues to request that the GCC delay implementation of the Guide and that experts work to address these concerns.

IMPORT POLICIES

Tariffs

As a member of the GCC, Qatar applies the GCC common external tariff with a number of country-specific exceptions. Qatar's exceptions include tariffs on alcohol (100 percent) and tobacco (150 percent), as well as wheat, flour, rice, feed grains, and powdered milk. In addition, Qatar applies a 20 percent tariff on the import of iron bars and rods, steel, and cement, a 30 percent tariff on urea and ammonia, and a 15 percent tariff on imports of musical records and instruments.

Import Licensing

Qatar only issues import licenses to Qatari nationals, and requires such a license for the importation of most products. Qatar has on occasion established special import procedures through government-owned companies to address increases in demand.

Only authorized local agents are allowed to import goods produced by the foreign firms they represent in the local market.

The Qatar Distribution Company, a subsidiary of the national air carrier Qatar Airways, has sole authority to import pork, pork products, and alcohol.

Documentation Requirements

The Qatari Embassy, Qatari Consulate, or Qatari Chamber of Commerce in the United States must authenticate import documentation for imports from the United States. This consularization requirement is both burdensome and costly to U.S. exporters. Imported beef and poultry products require a health certificate and a halal slaughter certificate issued by an approved Islamic authority.

GOVERNMENT PROCUREMENT

Qatar's new procurement law entered into force in June 2016. The law is intended to establish a more transparent and efficient procurement system by eliminating the Central Tendering Committee and establishing a new procurement department under the authority of the Ministry of Finance that is charged with regulating and standardizing government procurement. In late 2016, the Ministry of Finance launched an online procurement portal, where all government tenders are published. The new law requires that 30 percent of goods and services be sourced from local small and medium enterprises.

Qatar provides a 10 percent price preference for goods with Qatari content and a 5 percent price preference for goods containing GCC content. Tenders for the procurement of goods, construction workers' services, and services contracts for which the value does not exceed QR 5,000,000 ($1,369,863) are restricted to the participation of commercially registered suppliers, contractors, and local services providers. Additionally, the Qatari Ministry of Finance requires all ministries and government agencies, public corporations, and other institutions that receive government support to give a preference to Qatari products when procuring goods to meet day-to-day operational requirements.

Qatar is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

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

SERVICES BARRIERS

Airline Subsidies

In January 2015, three U.S. air carriers approached U.S. officials alleging that the government of Qatar has provided market-distorting subsidies to its airline since 2004. The U.S. Government takes these claims seriously, and has solicited information from the diverse range of aviation industry stakeholders regarding these allegations and related policy implications. The matter remains under review at this time.

Agent and Distributor Rules

Only Qatari entities are allowed to serve as local agents or sponsors. However, exceptions are granted for 100 percent foreign-owned firms in the industrial, tourism, education, health, and agricultural sectors. Additionally, some Qatari ministries waive the local agent requirement for foreign companies that have contracts directly with the Qatari government.

Banking

Although foreign banks are permitted to open branches and authorized to conduct all types of business in the Qatar Financial Center (QFC), including provision of Islamic banking services, foreign banks are reportedly informally "advised" not to offer services related to retail banking business. Laws and regulations applied to foreign banks registered in the QFC differ from the ones adopted by the Qatar Central Bank and more closely resemble international standards. There are 18 retail banks in Qatar.

INVESTMENT BARRIERS

Law 13 of 2000 on the Organization of Foreign Capital Investment Law currently requires foreign investors to have a Qatari partner with at least a 51 percent share in any investment. Foreign ownership of residential property is limited to select real estate projects. Foreigners can receive residency permits without a local sponsor if they own residential or business property, but only if the property is in a designated "investment area."

The Qatari government approved legislation in 2016, which has not yet entered into force, which will allow foreign investors 100 percent ownership in certain sectors of the economy, provided that they have a Qatari services agent. The government will identify the covered sectors once the law enters into force. The new legislation also will allow foreign investors to own up to 49 percent of the shares of companies that are listed on the Qatar Stock Exchange, subject to approval by the Ministry of Economy and Commerce; if the Cabinet approves, foreign investors will be allowed to own more than 49 percent of the shares. The new legislation will not apply to companies or individuals that have a special agreement or franchise with the Qatari government allowing the exploration, use, or management of a natural resource, unless the law's provisions do not contradict the agreement or franchise.

RUSSIA

TRADE SUMMARY

The U.S. goods trade deficit with Russia was $8.7 billion in 2016, a 6.1 percent decrease ($564 million) over 2015. U.S. goods exports to Russia were $5.8 billion, down 18.2 percent ($1.3 billion) from the previous year. Corresponding U.S. imports from Russia were $14.5 billion, down 11.3 percent. Russia was the United States' 38th largest goods export market in 2016.

U.S. exports of services to Russia were an estimated $4.7 billion in 2015 (latest data available) and U.S. imports were $2.4 billion. Sales of services in Russia by majority U.S.-owned affiliates were $12.0 billion in 2014 (latest data available), while sales of services in the United States by majority Russia-owned firms were $633 million.

U.S. foreign direct investment in Russia (stock) was $9.2 billion in 2015 (latest data available), a 0.8 percent decrease from 2014. U.S. direct investment in Russia is led by manufacturing, information, and wholesale trade.

Membership in the World Trade Organization

On August 22, 2012, Russia became the 156th Member of the WTO, and on December 14, 2012, following the termination of the application of the Jackson-Vanik Amendment to Russia, the United States and Russia consented to the application of the WTO Agreement between the two countries. In December 2016, pursuant to section 201(a) of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012, USTR issued its annual report "2016 Report on the Implementation and Enforcement of Russia's WTO Commitments." (This report is available at http://www.ustr.gov).

The Eurasian Economic Union

On January 1, 2010, the Russia-Kazakhstan-Belarus Customs Union (CU) entered into force when the three States adopted a common external tariff (CET), with the majority of the tariff rates established at the level that Russia applied at that time. When Russia joined the WTO in 2012, the CU adopted Russia's WTO schedule of tariff bindings. On January 1, 2015, Russia, Kazakhstan, and Belarus continued their movement toward regional economic integration with the establishment of the Eurasian Economic Union (EAEU) as the successor to the CU. Armenia joined the EAEU on January 2, 2015, and Kyrgyzstan joined on August 12, 2015. The Eurasian Economic Commission (EEC) is the supranational body charged with implementing external trade policy for Member States and with coordinating economic integration among Member States, having replaced the CU Commission in that role.

The EAEU established by the Treaty on the Functioning of the Customs Union in the Framework of the Multilateral Trading System of May 19, 2011 (the Treaty) replaces the Customs Union format and incorporates it. As a consequence of its membership in the EAEU, Russia's import tariff levels, trade in transit rules, nontariff import measures (*e.g.*, tariff-rate quotas, import licensing, and trade remedy procedures), and customs policies (*e.g.*, customs valuation, customs fees, and country of origin determinations) are based on the CU/EAEU legal instruments. On these and other issues involving goods, CU Agreements and CU/EEC Decisions establish the basic principles that are implemented at the national level through domestic laws, regulations, and other measures. CU Agreements and CU/EEC Decisions also cover issues such as border enforcement of intellectual property rights, trade remedy determinations, establishment and administration of special economic and industrial zones, and the development of

technical regulations and sanitary and phytosanitary measures. The Treaty establishes the supremacy of the WTO rules in the CU/EAEU legal framework.

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. Manufacturers of telecommunications equipment, oil and gas equipment, and construction materials and equipment, in particular, have reported serious difficulties in obtaining product approvals within Russia. Other Member States of the EAEU are in the process of adopting similar requirements.

Alcoholic Beverages – Conformity Assessment Procedures, Standards, and Labeling

Russian regulations on alcoholic beverages continue to raise trade-related concerns. At the national level, there has been a long-standing requirement to register alcoholic beverage products with the Federal Supervisory Service for Protection of Customers Rights and Human Well-Being (Rospotrebnadzor). Since 2013, Russia's Federal Service for the Regulation of the Alcohol Market (FSR) has maintained additional notification requirements for both existing and new-to-market alcoholic beverages sold in the Russian market. Much of the information required by the FSR as part of the additional notification requirements appears duplicative of information required by Rospotrebnadzor in the registration process.

Russia also recently adopted new product standards for whiskey, rum, brandy, liqueurs, and vodka. Although described as voluntary, it is not clear whether those standards will, in fact, be applied as mandatory standards, and whether they will be applied to imports. In addition, the EEC has been working on a draft regulation on Alcoholic Product Safety, which has raised concerns with respect to labeling, inclusion of expiration dates for alcoholic beverages, certification requirements, definitions, and duplicative registration requirements. Following discussions at the WTO in 2016, the Russian delegate assured WTO Members that the draft EEC regulation had been substantially revised, but a revised text has not been notified under the Technical Barriers to Trade (TBT) Agreement. The United States will continue to work to ensure that Russia's and the EAEU's alcoholic beverages control regime is consistent with its WTO commitments and urge Russia and the EAEU to adopt international standards or guidelines for such products.

Pharmaceuticals

Although the Russian Duma approved amendments to the Federal Law on Circulation of Medicines, details on the associated regulatory regime for biologics and biosimilars have not yet been issued, creating uncertainty in the market. U.S. stakeholders have also raised concerns that the registration process for orphan drugs lacks clarity and is too vague to implement. Finally, Russia's Good Manufacturing Practices (GMP) regime for pharmaceutical production has raised concerns that foreign manufacturers face stricter rules than do Russian producers, and that Russia has an insufficient number of GMP inspectors, raising the risk that some drugs will lose market access because of a backlog of inspections. The United States will continue to monitor these issues to determine whether specific market access concerns arise.

Toys

The U.S. toy industry has raised concerns regarding the EAEU's technical regulation "On Safety of Toys" which contains standards that deviate from international standards. In addition, the EAEU is considering amendments to the regulation that would mandate pre-market evaluations. According to the toy industry, the draft regulation does not provide any details concerning how the pre-market evaluations would operate, the standards for approval, or how the experts making the evaluation would be selected. The United States will continue to monitor the EAEU's regulations concerning toys to ensure their consistency with Russia's TBT commitments.

Medical Devices

According to U.S. stakeholders, shifting registration requirements for medical devices have led to confusion and delays in bringing products to the Russian market. In 2012, Russia introduced new registration procedures requiring that by the end of 2013, all medical devices, including those previously approved for use in Russia, be re-registered with Roszdravnadzor, the Russian regulatory body in charge of medical devices. Due to objections from the U.S. Government and stakeholders concerning the short deadlines, as well as to delays in re-registration, the deadline has, according to industry, been extended until 2021. U.S. stakeholders have noted further that EAEU registration requirements for medical devices, now applicable in Russia, contain inadequate definitions, insufficient transition periods, and duplicative reporting requirements, raising questions for U.S. companies as to when and how to register medical devices with the Russian government.

Transparency

The United States has continued to emphasize to Russia the importance of timely notifications to the WTO of draft technical regulations to enable other WTO Members to provide comments prior to finalization. Although Russia has notified numerous technical regulations to the WTO, it has not notified measures related to new registration requirements for alcoholic beverage products; certain technical standards and regulations governing the required installation of GLONASS-compatible navigational systems in civil aircraft; or revisions to amendments to the EEC's regulations governing food labeling. The United States has used a variety of fora, including WTO TBT Committee meetings and inquiry point requests, to urge Russia to notify proposed technical regulations and conformity assessment procedures. In response, Russia notified some proposed technical regulations and conformity assessment procedures in a reasonable period of time.

In addition, the United States has raised concerns about the comment periods provided by Russia and the EEC on draft technical regulations to ensure that the United States and interested parties have adequate time to comment. The United States will continue to urge Russia to identify and use a single inquiry point and to notify at an earlier stage proposed technical regulations and conformity assessment procedures (including proposed amendments) that may have a significant effect on trade. The United States also continues to remind Russia of its obligation to take into account comments submitted by other WTO Members.

Sanitary and Phytosanitary Barriers

As noted below, Russia has banned imports of most agricultural products since August 2014. Notwithstanding the resulting virtual cessation of trade, the issues discussed below remain market access barriers.

Beef and Beef Products

Currently, Russia bans imports from the United States of uncooked beef from cattle over the age of 30 months due to concerns about bovine spongiform encephalopathy (BSE). Russia has imposed this ban despite the World Organization for Animal Health's (OIE) determination that the United States poses a negligible risk for BSE and therefore should not be subject to age restrictions. Furthermore, Russia's BSE requirements have effectively closed the Russian market to preclude any U.S. cooked beef. Similarly, Russia's listing requirement (discussed below) works to deny market access for ground beef from the United States. The United States will continue to urge Russia to open its market fully to U.S. beef and beef products based on sound science, the OIE guidelines, and the U.S. BSE negligible risk status.

In addition, in 2013, Russia adopted a zero-tolerance policy for beta-agonists and trenbolone acetate, standards that are more stringent than Codex's maximum residue levels for beef. At this time, the United States is not aware of any risk assessments for these products. Although the United States has established a "Never Fed Beta Agonists Program," the Russian prohibition on these hormones continues to preclude U.S. exporters' access to the Russian market. Russia has also adopted a near zero tolerance for tetracycline residues in beef, a standard more stringent than Codex's MRL, but again appears to have failed to provide WTO Members with a risk assessment that conforms to international guidelines. The United States will continue to press for the removal of these barriers to exports of U.S. beef and beef products.

Milk and Milk Products

In 2014, the United States and CU concluded negotiations on a United States-CU veterinary certificate for heat- treated milk products. Nevertheless, Russia has effectively banned the importation of U.S. dairy products since September 2010, when Rosselkhoznadzor (Russia's Federal Service for Veterinary and Phytosanitary Surveillance) instructed customs officials to allow shipments only from exporters on Rosselkhoznadzor-approved lists, raising questions regarding Russia's compliance with its international obligations. (The EEC has now extended this listing requirement to most agricultural products. See below.) This directive also appears to be inconsistent with EAEU legislation eliminating the requirement that a foreign producer be included on an approved list in order to be eligible to export dairy products to the EAEU. The United States continues to work with Russia and the other EAEU Members to eliminate the listing requirement for exporters of low-risk products, including heat-treated dairy products.

Pork and Pork Products

Russia maintains near-zero-tolerance levels for tetracycline-group antibiotics, a standard that is more stringent than Codex's maximum residue levels (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 align its tetracycline standards with Codex standards. However, to date, Russia has yet to pursue either approach. Russia's adoption of a zero-tolerance for both beta-agonists and trenbolone acetate (described above) has similarly deterred most U.S. pork and pork products from re-entering the Russian market. The United States will continue to press for the removal of these barriers to exports of U.S. pork and pork products.

Russia also requires U.S. pork to be frozen or tested for trichinosis, a requirement that constitutes a significant impediment to exports of U.S. fresh and chilled pork to Russia. The United States does not consider these requirements related to trichinosis to be necessary because U.S. producers maintain stringent biosecurity protocols that limit the existence of trichinae in the United States to extremely low levels in commercial swine. The United States will continue to work with regulatory authorities in Russia to resolve this trade concern.

Live Pigs and Products from Blood Derived from Swine

Due to concerns about reports of porcine epidemic diarrhea (PED) in the United States, as of May 30, 2014, Russia has banned imports from the United States of live swine and products of swine blood that have not been subjected to heat treatment. In June 2014, the United States requested that the trade restrictions be rescinded, offering to add a "60-day PED free" statement to the current bilateral export certificate for live swine as well as testing of pigs for PED during isolation, but the restrictions remain in place.

Poultry

Russian regulations place an upper limit on the amount of water content in chilled and frozen chicken, despite calls by stakeholders and the U.S. Government to adopt the alternative of requiring labeling regarding water content. In addition, Russia continues to ban the importation and sale of certain frozen poultry for use in baby food and special diets, but has not provided the United States with risk assessments that conform to international standards to support these various regulations related to poultry. The United States will continue to work with regulatory authorities in Russia to resolve these trade concerns.

Notwithstanding Russia's broad ban on imports of various agricultural products, in 2015, Russia banned all imports of U.S. poultry meat based on unsubstantiated claims that it had detected harmful and restricted substances in U.S. poultry products and concerns over proposed changes in the poultry inspection system at certain U.S. poultry establishments. In 2015, Russia also banned imports of non-heat treated poultry products from the United States and imposed additional temporary restrictions on shipments (including transshipments) of live birds, poultry products, and hatching eggs due to detection of Highly Pathogenic Avian Influenza (HPAI), despite having made previous commitments to regionalize HPAI-related bans.

Moreover, in June 2015, Russia suspended any movement or transit through the territory of the Russian Federation of live poultry, poultry products, and hatching eggs (except for Specific Pathogen Free eggs) shipped from the United States. This transit ban, which Russia imposed without providing a valid scientific justification, has adversely impacted U.S. poultry trade with other EAEU countries that have lifted HPAI-related restrictions, in particular Kazakhstan.

Pet Food and Animal Feed

Russia requires a veterinary certificate to ship pet food and animal feed to Russia, as well as either a letter from the producer attesting to the absence of feed derived from agricultural biotechnology or a copy of the agricultural biotechnology registration provided by the Russian Ministry of Agriculture. Russia also requires that inputs for pet food or animal feed imported from a third country must include an official certificate endorsed by a veterinary official of that country's national animal health agency. Additionally, Russia restricts the use of most U.S. ruminant-origin ingredients in pet foods and animal feeds, further impeding access for U.S. exports to this market and limiting the variety of available U.S. products.

Agricultural Biotechnology

On July 3, 2016, Russia amended its legislation governing agricultural biotechnology. The amendments prohibit cultivation of genetically engineered (GE) plants and the breeding of GE animals on the territory of the Russian Federation, prohibit the importation of GE planting seeds, strengthen state control and monitoring of processing and importation of GE organisms and products derived from such organisms, and establish the penalties (beginning July 1, 2017) for violations of this federal law. This law effectively suspends the development of any system to approve agricultural biotechnology for cultivation, but permits research.

With regard to approvals for GE food and feed products, although Russia has a registration system, the United States continues to have concerns with how it is implemented. The United States is particularly concerned that Russia imposes a five-year time limit on registrations for GE feed products whereas registrations for GE food products are effective for an unlimited period. The application fee costs on average $100,000, and applies to the first registration of food and feed products, and to the subsequent re-registration of feed products. This fee, in the view of U.S. stakeholders, is excessive. Furthermore, Russia still does not have a system for approval of GE crops containing stacked events and products containing these crops. Rospotrebnadzor has developed a system for approval of stacked events for food crops, but there is no progress in the development of an approval system for feed.

Zero-Tolerance for Veterinary Drugs and Pathogens

Russia maintains a zero-tolerance policy for residues of those veterinary drugs that Russia has not approved, many of which are commonly used in U.S. animal production. Findings of veterinary drug residues during Russian border inspection of U.S. meat products have resulted in trade disruptions, including the de-listings of U.S. beef, pork, and poultry facilities as approved sources for exported product to Russia. Russia similarly maintains a zero-tolerance policy for all food products, including raw meat and poultry, for *Salmonella*, *Listeria*, coliforms, and colony-forming units of aerobic and anaerobic bacteria. Such a policy is unwarranted with regard to raw products because food safety experts and scientists recognize that these pathogens are often closely associated with raw meat and poultry products and cannot be removed from the product. The United States is not aware of a risk assessment from Russia to justify its more stringent standards.

Systemic Issues

In addition to the product-specific issues discussed above, U.S. exporters continue to face systemic issues related to the export of agricultural products to Russia. Russia and the EAEU require veterinary certificates to include broad statements by U.S. regulatory officials that the products satisfy EAEU sanitary and veterinary requirements, including meeting certain chemical, microbiological, and radiological standards. These requirements are problematic because many EAEU sanitary and veterinary requirements appear excessively restrictive and appear to lack scientific justification. Similarly, Russia requests U.S. exporters to submit certifications stating that the United States is free from various livestock diseases, even where there is no risk of transmission from the product in question. In other cases, Russia requires export certificates for products for which certifications are unnecessary. For example, Russia requires phytosanitary attestations for shipments of certain plant-origin products destined for further processing, such as corn for popcorn, even though such processing removes any potential risk. The United States is also concerned with Russia's failure to remove certain veterinary control measures for lower risk products, which could raise concerns under Russia's WTO obligations.

Russia, pursuant to an EEC regulation, allows imports of most products under veterinary control (*e.g.*, meat, poultry, dairy, and seafood) only from facilities on a list approved by all EAEU Member States. The United States has worked with Russian and other EAEU authorities to narrow the scope of products subject to this listing requirement, with some success, but much of this work remains ongoing. Pursuant to a bilateral agreement signed in November 2006, Russia agreed to grant U.S. regulatory officials the authority to certify new U.S. facilities and recertify U.S. facilities that have remedied a deficiency. In practice, however, Russia has not consistently recognized the authority of U.S. regulatory officials to certify additional U.S. facilities, and there have been delays in responding to U.S. requests to update the list of approved U.S. facilities.

The EAEU has competence for facility inspections and approvals. The United States worked with Russian and EAEU authorities to negotiate a new EAEU inspection regulation that allows the EAEU to accept the certification of additional facilities provided by SPS authorities in third countries that certify new facilities.

However, implementation of this regulation has lacked predictability and transparency because EAEU Member States often continue to insist on conducting their own inspections prior to approval of a facility, without providing any rationale. The United States will work closely with Russia to ensure that the EAEU inspection regulation is implemented fully.

IMPORT POLICIES

On August 6, 2014, Russia issued an order banning certain food and agricultural imports from the United States, the European Union, Canada, Australia, and Norway for a period of one year. The list of banned food includes certain beef, pork, poultry, fish and seafood products, fruits and nuts, vegetables, some sausages, and most prepared foods. In June 2015, Russia amended the list of products covered by the ban and expanded the list of countries whose products were banned, adding Albania, Montenegro, Iceland, Liechtenstein, and Ukraine (The ban did not apply to agricultural products from Ukraine until January 1, 2016, the date on which Ukraine implemented the Deep and Comprehensive Free Trade Agreement with the EU.) In June 2016, Russia extended the ban until December 31, 2017. Russia has stated that the ban is justified on the basis of national security concerns. Russia also subjected many transit shipments of banned goods to Kazakhstan and Kyrgyzstan to additional scrutiny, raising the cost of the transit of goods through Russia to these countries.

Tariffs, Customs Issues and Taxes

Although Russia implemented the fourth round of annual tariff reductions in August 2016 as required by its WTO commitments, the implementation of some of its other tariff commitments has raised concerns. One source of concern stems from Russia's implementation of decisions of the EEC (the EAEU body responsible for administering the CET). In particular, pursuant to these decisions, Russia appears to have changed the type of duty on certain tariff lines by augmenting the *ad valorem* rates with an additional minimum specific duty (thereby creating a "combined tariff"). Under WTO rules, the resulting combined tariff must not exceed Russia's bound tariff commitments. In August 2016, a WTO panel found that Russia had applied tariffs in excess of its WTO bound rates through this mechanism, and the Dispute Settlement Body in September adopted the report and recommended that Russia bring its tariff measures into conformity with WTO rules. Russia has indicated its intention to implement the panel's recommendations.

In addition, in August 2016, Russia took the final step to join the WTO Information Technology Agreement (ITA) by notifying its modified WTO tariff schedule to reflect fully its ITA commitments.

A requirement that all customs duties, excise taxes, and value-added taxes on alcohol be paid in advance of customs entry using a bank guarantee (or other type of deposit) is a longstanding customs challenge faced by importers of alcoholic products. Russian Customs often requires bank guarantees far in excess of the actual tax liability of the covered goods, especially for lower-value products. Russian law permits the Customs Service to set the bank guarantee at the highest amount that could be due if the actual amount due cannot be calculated; however, stakeholders claim that information sufficient to calculate a more accurate (and usually lower) bank guarantee amount is generally available to Russian Customs. In addition, stakeholders have reported that refunds or releases of these guarantees are sometimes delayed for seven to nine months. Further, some Russian Customs posts have interpreted EAEU rules to require both an EAEU bank guarantee as well as a Russian bank guarantee, effectively re-establishing the double bank guarantee that Russia agreed to eliminate during its WTO accession negotiations. The advance payment requirement for duties and taxes, the frequent demand for duplicative bank guarantees, and the long delay in bank guarantee refunds may limit trade volumes due to the amount of money that importers must dedicate to guarantees.

U.S. stakeholders have raised concerns that the practice of Russian Customs of assessing tariffs on the royalty amounts for the domestic use of imported audiovisual materials, such as TV master tapes, DVDs, and digital cinema packs represents a form of double taxation because royalties are also subject to withholding, income, value-added (VAT), and remittance taxes. U.S. consumer goods companies have also reported that Russian customs authorities calculate customs duties not just on the value of the physical carrier medium, but also on royalty value of the copyright or patent protected content contained on the medium (*i.e.*, on the value of the proceeds of the authorized licensed use of a copyright- or patent-protected work). U.S. companies contend that this methodology leads to inflated valuations for tariff purposes. Of further concern is Russia's rebate of VAT on payments for the "right to use" cinema products. The VAT payments on royalties paid for screening "Russian" movies (as defined in the Russian tax code) can be rebated but not VAT payments on royalties for screening U.S. (or other non-Russian) films. This practice increases the cost of screening U.S. films.

U.S. stakeholders have raised concerns about the administration of Russia's copyright levy system. Russia collects a levy on both domestically produced and imported products that can be used to copy material protected by copyright for personal use (*e.g.*, video recorders, voice recorders, and photocopy machines). Those levies are provided to an accredited royalty collecting society for distribution to rights holders. However, the list of domestically produced products on which the levies are paid appears to differ from the list of imported products on which the levies are paid. In addition, the reporting and payment systems also appear to differ. Russian Customs provides information on imports to the Ministry of Culture, which in turn provides the information to the collecting society to verify the payment of the levies by importers; by contrast, domestic manufacturers pay based on sales, and self-notify. Further, although Russia accredited a collecting society to undertake the collection of levies and distribution of royalties, U.S. stakeholders have raised concerns regarding the lack of transparency in this process. The legitimacy of that collecting society has also been challenged in Russian courts, creating uncertainty as to its credibility and reliability. U.S. officials have raised concerns about these issues with Russia's Ministry of Culture and the Ministry of Economic Development and Trade.

U.S. stakeholders report that Russia does not publish all regulations, judicial decisions, and administrative rulings of general application on customs matters. In addition, U.S. exporters report that customs enforcement varies by region and port of entry and that changes in regulations can be frequent and unpredictable, adding to costs and delays at the border. U.S. officials have pressed Russia to improve transparency in this area and ensure compliance with WTO commitments.

Import and Activity Licenses

Although Russia simplified its licensing regimes when it became a WTO Member, the processes to obtain an import or activity license remain burdensome and opaque. For example, in its WTO accession protocol, Russia committed to undertake certain reforms to its import licensing regime for products with cryptographic functionalities ("encryption products"). However, U.S. exporters report that Russia continues to limit the importation of encryption products through the use of import licenses or one-time "notifications." Stakeholders have raised concerns regarding the process for importing consumer electronic products considered "mass market" products under the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies ("Wassenaar Arrangement"). A simple notification process is supposed to apply to these products; however, the EAEU regulations governing the definition of "mass market" products do not accurately reflect the definition of such products under the Wassenaar Arrangement or Russia's WTO commitments. Moreover, the Russian requirements to meet the definition of "mass market" are burdensome and appear to go beyond what is required under the EAEU regulations. As a result, U.S. exports of encryption products, particularly common consumer electronic products, continue to be impeded.

In addition, in 2012, Russia amended the regulations governing activity licenses for the distribution, among other activities, of encryption products. In doing so, Russia reasserted control over many consumer electronic products that had previously not needed an activity license to distribute. Because an activity license to distribute encryption products is required to obtain an import license for encryption products, the 2012 amendments impose an additional indirect burden on the importation of such products.

Importers of U.S. alcoholic products have, over the years, faced uncertainty with regard to Russia's regulatory regime (see the section on *Alcoholic Beverages – Conformity Assessment Procedures, Standards, and Labeling)*. For example, when Russia became a WTO Member, it abolished the requirement to obtain an import license for alcohol. However, Russia's Federal Service for the Regulation of the Alcohol Market (FSR) still requires an activity license to warehouse and distribute alcohol in Russia, and stakeholders assert that the difficulty and expense involved in obtaining this license is disruptive to trade. The process is burdensome and expensive, and the license is valid for only five years. Several U.S. exporters have experienced months of delays and expended thousands of dollars seeking to bring their warehousing practices into conformity with relevant regulations after inspections raised compliance issues. As importers of U.S. alcoholic products seek to renew their activity licenses, the United States will work to ensure that Russia's alcohol warehouse licensing provisions are WTO consistent, transparent, and not unnecessarily burdensome.

Import licenses or activity licenses to engage in wholesale and manufacturing activities are also necessary for the importation of pharmaceuticals, explosive substances, narcotics, nuclear substances, equipment to be used at nuclear installations and corresponding services, hazardous wastes (including radioactive waste), and some food products (*e.g.*, unprocessed products of animal origin). The process for obtaining these licenses is often unpredictable, nontransparent, time-consuming, and expensive. Similarly, Russia's opaque and burdensome activity licensing regime allows it to control access to many sectors, such as mining. U.S. officials have raised concerns about these import licensing issues with Russian and EAEU officials.

Automotive and Vehicle Recycling Fees

Since 2012, Russia has imposed a "recycling fee" on automobiles and certain other wheeled vehicles that requires importers and manufacturers in Russia of automobiles and certain other wheeled vehicles to pay a fee, determined by the age, total mass, and engine size of the vehicle, intended to cover the cost of recycling the automobile at the end of its useful life. Rates range from 3,400 rubles to 9.2 million rubles (approximately $52 to $141,000 in 2016) for new vehicles and from 5,200 rubles to 35.72 million rubles (approximately $80 to $550,000) for used vehicles. In fact, the fee was increased by, on average, 65 percent for vehicles produced or imported after January 1, 2016, to account for the depreciation of the ruble. Although the fee is imposed on both domestic producers and importers, concerns remain regarding the overall level and calculation of the fee for heavy duty commercial vehicles. Moreover, industry stakeholders assert that the Russian government offers a variety of subsidies to offset the recycling fee based on criteria that ensure only domestic producers receive the offset subsidies.

Import Substitution Policies

In 2016, Russia continued to accelerate its promotion of import substitution and called for more local content across a variety of sectors. (See the section on *Service Barriers* for more information.) Russian government officials, including President Putin, have signaled that import substitution is now a central tenet of Russian economic policy.

The medical device and pharmaceutical industries (see section on *Technical Barriers to Trade* above) are examples of sectors in which localization policies have been developed and implemented over several years. In December 2015, Russia expanded its import substitution plan for the information technology (IT) sector

to identify 16 specific steps to support the domestic IT sector, such as mandating preference in government procurement for Russian-produced technology; the creation of an IT import substitution center; and reduced insurance premiums for domestic IT firms. In addition, there are currently sectoral import substitution proposals for defense, health care, consumer goods, oil and gas equipment, solar energy products, light industry, textiles, optical fiber, and agriculture. Initially, the Russian government implemented these preferences primarily through government procurement (see the section on *Government Procurement* for more information), but in 2015 extended the mandated preferences to purchases by state-owned enterprises (SOEs).

Since implementing the import ban on certain agriculture products (see section on *Sanitary and Phytosanitary Barriers* above), government officials have pressed for greater food self-sufficiency. For heavy machinery, the Minister of Industry and Trade has called for increasing the share of machinery and tool equipment produced domestically from the current 10 percent to 60 percent by 2020. Pharma 2020, the government's pharmaceutical industry development plan, calls for Russian manufacturers to account for at least 50 percent of total domestic sales (based on value) by 2020. In November 2015, Russia extended the "three's-a-crowd" localization policy to bar foreign drugs from competing in government tenders if there are two equivalent drugs available from an EAEU Member State (with limited exceptions). Other healthcare-related policies that discriminate against U.S. exporters in favor of domestic producers include a reimbursement system that allows only domestic companies to request annual adjustment of prices registered by the Ministry of Health and a 15 percent price preference for Russian (and Belarusian) companies in federal and municipal procurement auctions. In February 2015, Russia barred foreign medical device manufacturers from participating in government tenders for a specific list of medical devices (mostly low-technology goods) if two producers from an EAEU Member State participated in the tender. In December 2016, the Russian government expanded the list of covered goods to include 86 additional products (such as gauze and cotton dressings, glucometers, defibrillators, and certain types of tomography scanners).

The Ministry of Economic Development and the Ministry of Industry and Trade set the parameters for determining what constitutes domestic telecommunications equipment, and therefore what equipment could be used in specified applications or projects. The localization level depends on the scope of the research activities and technological operations carried out in Russia, resulting in localization levels from 60 percent to 70 percent. Moreover, to qualify, a company manufacturing telecommunications equipment must be a Russian resident and at least 50 percent owned by a Russian party or entity. In addition, the manufacturer must have the legal rights to the technologies and software, possess its own production base, manufacture printing boards, and carry out final assembly of the telecommunications equipment in Russia.

Russia developed a global navigation positioning technology called GLONASS as an alternative to the U.S. GPS system. Russia's Ministry of Transport issued a rule in March 2012 requiring that GLONASS-compatible satellite navigation equipment be installed on all Russian-manufactured aircraft, with varying deadlines depending on the use, age, and size of the aircraft, but on all aircraft no later than 2016. In addition, any foreign-manufactured aircraft listed in a Russian airline's Air Operator Certificate must have GLONASS or GLONASS/GPS compatible satellite navigation equipment installed by January 1, 2018, or earlier, depending on the size of the aircraft. Because U.S. aircrafts are not currently configured for GLONASS, modifications to the aircraft would be necessary to meet this new rule. Similarly, in the automotive sector, the EAEU technical regulations require that the ERA-GLONASS Emergency Response System (ERS) be installed in all new vehicles (whether produced in the EAEU countries or imported) starting in 2017 (but implementation has been delayed until December 31, 2019). The manufacturers and importers with vehicle type approval certificates until the end of 2016 will be exempted from this requirement for the duration of the validity of the certificates (*i.e.*, three years).

In 2015, the Russian government began to extend its local content requirements beyond government procurement to purchases by state-owned or -controlled enterprises. For example, amendments to Russia's law governing SOE purchases expressly favor Russian-produced products, including by granting the Russian government the authority to establish plans and tender rules for the purchase of specific Russian goods, works, and services. Other amendments established a Government Import Substitution Commission with responsibility for determining which types of machinery and equipment for large investment projects by SOEs, state corporations, or certain private businesses must be sourced locally. In November 2015, the Russian government issued a decree extending additional controls over the purchasing decisions of 35 of Russia's largest state-owned or -controlled enterprises, including Gazprom, Rosneft, and Aeroflot. As a result, the selected SOEs' purchases of pharmaceutical, high technology, and innovative products must be coordinated with the recently established Federal Corporation on Development of Small and Medium Business to ensure that small and medium enterprises (SMEs) can increase their share in procurement from large government-owned corporations. Because U.S. SMEs cannot easily enter the Russian market, these quotas will effectively favor domestic SMEs. Beyond these specific procurement restrictions, Russian law further recommends that SOEs follow the more restrictive procurement rules that govern federal and municipal procurement (see the section on *Government* Procurement for more information).

Russia appears committed to continue its policies of import substitution. It has introduced a program for "Special Investment Contracts" (SICs) to focus on creating or modernizing its industrial capabilities, particularly for those products that Russia does not currently produce. Special Investment Contracts are intended to attract investment to Russian industries and to promote localization by foreign companies. These contracts require a minimum level of investment ($11.5 million), guarantees of a certain production volume, and a percentage of localization over the life of the contract (up to 10 years). Participation in a SIC allows companies to participate in certain Russian subsidy programs designed for domestic manufacturers, as well as entitle those firms to certain tax incentives.

EXPORT POLICIES

Although Russia has eliminated export duties on a few products, it maintains export duties on 240 types of products for both revenue and policy purposes. For example, a variety of products are subject to export tariffs, such as certain fish products, oilseeds, fertilizers, non-ferrous metals, hides and skins, and wood products. Russia has indicated that it intends to eliminate gradually most of these duties, except for products deemed strategically significant, such as hydrocarbons and certain scrap metals. However, in 2016, Russia extended its export ban on certain raw hides and skins through January 18, 2017, and introduced export duties on certain chemicals and anodes of the platinum group of metals. In February 2015, Russia imposed a fixed export duty on wheat, but later reduced that duty rate to zero. However, because the reduction is only temporary (until July 2018), Russia retains the ability to reinstate the export duty expeditiously if the need arises, contributing to uncertainty in the market. In addition, Russia expanded the list of products that are "essentially significant for the domestic market" and hence for which exports could be restricted or banned to include a variety of ferrous steel and non-ferrous scrap. Because Russia is a major source of scrap on global markets and a major steel producer, this addition contributed to the uncertainty of the availability of Russian ferrous scrap for export to global markets and caused concern among U.S. stakeholders of possible market distortions.

Historically, Russia has maintained high export duties on crude oil to encourage domestic refining. Although Russia committed to cut its export duties on oil and oil products to the level of Kazakhstan as part of the process to establish the EAEU, in late 2015, the Russian government suspended the planned duty reductions for at least one year in order to gain extra revenue in light of economic pressures. Amendments to the Tax Code signed into law on November 24, 2014, and known as "the tax maneuver," will gradually reduce export duties on oil and light oil products and increase the mineral extraction tax and export duties for refined products to compensate for the resulting loss of federal budget revenues. The change will make

domestic crude more expensive for domestic refiners. Separately, the government maintains a 30 percent export tax on natural gas.

Stakeholders claim that Russia has placed higher rail freight rates on certain raw materials intended for export, contrary to its commitment to eliminate discrepancies in such rates by July 1, 2013. Since June 2015, there were no changes to rates or notifications sent to the WTO of elimination of differential freight rates.

SUBSIDIES

In January 2015, Prime Minister Dmitry Medvedev signed the government "Plan of Priority Measures to Ensure Sustainable Economic Development and Social Stability in 2015," (with recent amendments added in August 2016) commonly known as the Anti-Crisis Plan. The plan was designed to support import substitution programs, small and medium-size enterprises, and exports of non-commodity goods, and to reduce the cost of credit for businesses in key sectors and to provide funds for social programs. As part of the plan, the Russian government has identified 199 "backbone" companies to be first in line for government support, including loan subsidies, due to their size and importance to the Russian economy. The list included public, private, and foreign companies from a broad range of sectors, which together generated 70 percent of Russia's GDP in 2013 and employed 20 percent of the workforce. An analysis from the Audit Chamber (a permanent supreme body of external public audit accountable to the Federal Assembly of the Russian Federation) published in November 2016 found that the government has accomplished only half of the 122 action items, while a total of 19 action items are still pending. The total funding appropriated from the federal budget for the FY2016 was 464 billion rubles (approximately $8 billion). In 2016, the Russian government extended $30 million in subsidies to domestic producers (including foreign companies that qualify as domestic tax residents) of agricultural machinery.

Gazprom, a publicly listed, but state-controlled Russian company currently has a monopoly on exports of pipeline natural gas produced in Russia and charges higher prices on exports of natural gas than it charges to most domestic customers. U.S. stakeholders have raised concerns that Russia's natural gas pricing policies effectively operate as a subsidy to domestic industrial users in energy-intensive industries such as the steel and fertilizer industries (which use natural gas as an input). Stakeholders have also raised concerns about government subsidies to Russia's uranium enrichment industry, which they claim has allowed Rosatom, an SOE, to expand its production capacity in the face of a global surplus.

GOVERNMENT PROCUREMENT

In its WTO Protocol, Russia committed to requesting observer status in the GPA and to beginning negotiations to join the GPA within four years of its WTO accession. Russia became a GPA observer in May 2013, and on August 19, 2016, informed GPA Members of its intent to initiate negotiations to join the GPA. When it joined the WTO, Russia committed that its government agencies would award contracts in a transparent manner according to published laws, regulations, and guidelines.

Russia has adopted certain local content requirements that it argues are not subject to the national treatment obligations of the General Agreement on Tariffs and Trade (GATT) and General Agreement on Trade in Services (GATS) because they relate to federal or municipal government procurement. Given the breadth of the government's role in the economy and the scope of the "Buy Russia" policies, such measures impede trade because U.S. exports are excluded from a broad section of the Russian economy.

Government procurement restrictions began in earnest in 2014 when Russia established a 15 percent preference for a variety of goods (including, *inter alia*, certain food products, pharmaceuticals, steel, machinery, and medical products) produced in the EAEU in purchases for government use. In addition,

Russia banned states and municipalities from purchasing foreign-made automobiles, other vehicles, and machinery, and banned procurement of a broad array of consumer goods produced outside the EAEU. On December 31, 2014, President Putin signed the Industrial Policy Law, which specifically promotes import substitution and restricts government procurement (and SOE purchases) of foreign-made products. The law went into effect on June 30, 2015, and provided a framework for the support of innovative product manufacturing, research and development subsidies, and infrastructure projects as well as implementation of the "Buy Russia" law. The law also includes provisions for financial and material support for Russian companies to boost their export potential.

To implement the Industrial Policy Law, Russia has established "local content" requirements for a variety of industrial product sectors, including machine tools, automotive, special mechanical engineering, photonics and lighting, electrical-technical, cable, and heavy machinery. As a consequence, for example, some types of metalworking equipment must contain from 20 to 50 percent domestic parts, with increasing targets each subsequent year. In 2015, Russia reaffirmed the ban on government procurement of a wide range of foreign-made machinery (*e.g.*, machinery used in the construction and raw material extraction industries) and certain vehicles (*e.g.*, emergency service vehicles, bulldozers, and excavators). In addition, Russia banned government procurement of numerous foreign-made medical devices and health-related disposable goods if fewer than two companies from the EAEU submitted a bid; as noted above, the list of covered medical devices was expanded in 2016. In August 2016, the Russian government also established a ban on a list of certain food and dairy products from non-EAEU Member States for government and municipal procurement including, fresh and frozen fish, fish products, canned fish, salt, beef, pork, veal, poultry, cheese, cottage cheese, rice, butter, and sugar.

Similarly, pursuant to amendments to Russia's national procurement law, in 2016, Russia created a registry of Russian software; foreign-made software not on the list will no longer routinely qualify for government and municipal procurement, unless there is no similar domestically produced software available. In July 2016, the Russian government went a step further and issued an order that approved a three-year plan to switch government agencies to Russian office software. In late September 2016, Russia imposed a ban on the procurement of a range of over 100 types of foreign-made radio-electronic products and components for state and municipal needs when there are at least two bids for similar items manufactured in Russia or an EAEU Member State. In addition, Russia has created a Government Commission on Import Substitution with the mandate to support the production of priority goods, works, and services that are not currently produced in Russia. *(See the section on Import Substitution Policies for more information.)*

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Russia remained on the Priority Watch List in the 2016 Special 301 Report. The Report identifies online piracy, failure to allocate adequate resources to intellectual property rights (IPR) enforcement, manufacture of and trade in counterfeit goods, and the absence of transparency as some of the significant obstacles to adequate and effective protection of IPR in Russia. Multinational and U.S. companies continue to report counterfeiting in the areas of consumer goods, distilled spirits, agricultural chemicals and biotechnology products, and pharmaceuticals. In 2015, Russian courts began to implement the antipiracy legislation passed in November 2014, which resulted in permanent blocking of 33 pirate websites, including the notorious, high-traffic Russian torrent website Rutracker.org, which has been listed in the USTR's Notorious Markets Report. However, more sophisticated Internet users still manage to access the blocked website through various anonymizing tools and "mirror" sites and, as noted in the 2016 Notorious Markets Report, the site remains one of the most popular in the world as well as a top site in Russia. Finally, in the pharmaceutical industry, Russia has substantially reduced the effectiveness of its regulatory protection of test and other undisclosed data, and its system is not transparent.

SERVICES BARRIERS

Russia's services market is largely open to U.S. services suppliers, including in areas such as financial services, education, legal services, and distribution.

However, specific problems remain in particular areas. For example, Russia continues to prohibit foreign banks from establishing branches in Russia. Moreover, the Central Bank of Russia (CBR) established the National System of Payment Cards (NSPC) in July 2014 to handle the processing of all domestic credit card transactions; the NSPC also launched a domestic credit card "Mir". This new procedure has introduced additional technical costs for foreign-based credit card companies, which must now transmit data for all transactions within Russia through the NSPC system, undermining a key competitive advantage foreign payments suppliers had (relying on self-owned global processing platforms located outside of Russia). There are also concerns about the potential conflict of interest because the state regulator (the CBR) owns the domestic competitor (Mir).

In addition, the ability of foreign service suppliers to provide services to public utilities and certain energy-related services remains limited. Although Russia raised the limit on foreign capital in the insurance sector from 25 percent to 50 percent, a lack of transparency regarding the issuance of licenses, among other issues, hinders foreign investment in the market. Stakeholders report that the process for an individual or a company to obtain a license to provide an insurance service remains difficult, and limitations on the form of commercial establishment adversely affect some sectors. For example, Russia has not yet amended its legislation to reflect its WTO commitment to remove the limitation on sales of biologically active substances to pharmacies and specialized stores only.

INVESTMENT BARRIERS

While Russia has prioritized improving its investment climate, U.S. and other foreign investors continue to cite issues, such as corruption, that act as barriers to investment. Russia's foreign investment regulations and notification requirements can be confusing and contradictory, and have had an adverse effect on foreign investment as a result. In addition, notwithstanding the creation of an Anti-Corruption Council and the enactment of significant anticorruption legislation, some internationally recognized corruption indices suggest there has been little progress in reducing corruption. Further obstacles to investment in Russia include inadequate dispute resolution mechanisms, weak protection of minority shareholder rights, the absence of requirements for all companies and banks to adhere to accounting standards consistent with international norms, and problems with enforcing the rule of law.

The 1999 Investment Law ("the Law") contains broadly defined provisions that give Russia considerable discretion to prohibit or limit foreign investment in a potentially discriminatory fashion. For example, the Law permits the government to circumscribe investors' rights for "the protection of the constitution, public morals and health, and the rights and lawful interest of other persons, and the defense of the state." Although the Law includes a "grandfather clause" that protects certain investment projects (those that existed as of 1999, have greater than 25 percent foreign capital participation, and total investment of more than $41 million) against certain changes in the tax regime or new limitations on foreign investment, a lack of corresponding tax and customs regulations means that effective protection afforded by this clause is, at most, very limited.

Russian law places two primary restrictions on land ownership by foreigners. First, foreign persons or entities may not own land located in border areas or other specifically assigned; second, foreign citizens and foreign legal entities cannot own more than 50 percent of a plot of agricultural land (though foreign companies are permitted to lease agricultural land for up to 49 years).

Pursuant to the October 2014 law "On Mass Media," foreign investors in Russian media companies must reduce their equity in these companies to 20 percent by February 1, 2017 (the previous law applied a 50 percent limit only to Russia's broadcast sector). U.S. stakeholders have also raised concerns over limits on direct investments in the mining and mineral extraction sectors that they say discriminate against foreign companies, as well as a licensing regime they describe as non-transparent and unpredictable.

State-Owned Enterprises

Russia's numerous state-owned enterprises (SOEs) play a prominent role across much of Russia's economy, and the government appears to be increasing state control as the economy continues to weaken. While private enterprises are theoretically allowed to compete with SOEs on the same terms and conditions, in practice the competitive playing field can be distorted in favor of SOEs as a result of these enterprises' lack of transparency and lack of independence, unclear responsibilities of their boards of directors, misalignment of managers' incentives and company performance, inadequate control mechanisms on managers' total remuneration or their use of assets transferred by the government to the SOE, and minimal disclosure requirements. In December 2014, the government reversed a prohibition against senior government officials serving on the boards of state enterprises, further tilting the playing field in favor of state-owned or -controlled enterprises by re-introducing a governmental or political voice in the companies' decision-making processes. Government ministers or deputy ministers currently chair the boards of Russian Railways, RusHydro, Rostelecom, Transneft, and Russian Grids (Rosseti).

A specific variant of SOEs, "state corporations" (there are currently six: Rosatom, VEB, Fund for Communal Housing, Deposit Insurance Agency, Roskosmos, and Rostec), are 100 percent owned by the Russian government and operate under separate legislation and in a marketplace skewed in their favor. For example, state corporation holding structures and management arrangements (*e.g.*, senior government officials as board members) create conditions for preferential treatment, while the case-by-case legal construction of state corporations (by virtue of their separate legal framework) leaves much scope for discretion and lobbying by company insiders at the expense of private enterprises.

While federal budget constraints have increased the priority of privatization, much of Russia's privatization program either has failed to materialize or is behind schedule. The treatment of foreign investors in privatizations conducted to date has been inconsistent, with foreign participation at times confined to minority stakes, creating concerns about protection for minority shareholders and corporate governance.

Taxes

Russian and U.S. leasing companies have reported that the VAT assessed on inputs for exported final products is often not refunded, and that they often must resort to court action to obtain their reimbursements. Leasing companies have reported that VAT refunds on exports are the source of significant fraud, and actions to prevent fraud make it even more difficult for legitimate exporters to obtain refunds. In addition, the companies have reported that, in some cases, local tax inspectorates have initiated audits and attempted to seize their bank accounts, thus forcing exporters to seek very expensive and time-consuming court enforcement.

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.

Automotive Sector

Russia maintains an investment incentive regime in the automotive sector with domestic content requirements and production targets. The first program, introduced in 2005, allowed for the duty-free entry of automotive parts used in the production of vehicles that contained at least 30 percent Russian content and required that automotive manufacturers produce at least 25,000 units domestically. In December 2010, Russia initiated a second automotive industry investment incentive program that increased significantly the required domestic production volume to 300,000 units and the domestic content requirement to 60 percent. Automotive producers also had to agree to establish a research and development center in Russia and to comply with the requirement that engines and transmissions should represent 30 percent of the output in Russia. As part of its WTO accession protocol, Russia agreed to end the problematic elements of the automotive industry incentive programs by July 1, 2018, and to begin consultations in July 2016 with the United States and other WTO Members on WTO-consistent measures it may take in this sector. Nevertheless, the local content requirements remain a barrier to U.S. exports of automotive parts and the United States will work with Russia to eliminate the elements of these programs that are inconsistent with the Trade Related Investment Measures Agreement, even before the July 1, 2018 deadline.

BARRIERS TO DIGITAL TRADE

Data Localization

Movement of Data

In 2015, Russia adopted legislation requiring that certain data collected electronically by companies on Russian citizens be processed and stored in Russia. (At least one sector, airline reservations, has been exempted from the localization requirement.) Russia has not issued implementing regulations, creating enormous uncertainty among both domestic and foreign companies as to the actual requirements of the law. Companies most likely affected by this law include companies seeking to serve Russia entirely on a cross-border basis as well as those that have a presence in Russia but nevertheless rely extensively on centralized, capital-intensive data processing facilities located outside of Russia. Industry stakeholders are concerned the law will limit their ability to offer a variety of services in Russia.

Facilities localization

The 2015 law not only implicates the provision of cross border services, but it also restricts a company's options with regard to the location of its servers for storing the data. Concerns have been raised that Russia does not currently have sufficient server capacity to meet the demand for local storage of all the data implicated by this law. In 2016, Russia extended the data storage requirements with the "Yarovaya Amendments," requiring certain telecommunications operators to store locally metadata for 6 months, with longer storage requirements depending on the type of provider. To date, Russian telecommunications watchdog Roskomnadzor has inspected more than 1,000 domestic and foreign companies for compliance with the 2015 law, typically resulting in administrative warnings or nominal fines for violations. In November 2016, however, it blocked access in Russia to a U.S.-based business networking service site based on a finding of non-compliance, despite the fact that the company had no physical presence in Russia. In addition to imposing a cost burden, replicating data storage in Russia for data that was previously stored elsewhere can create cybersecurity vulnerabilities, by creating another, unnecessary access point into a supplier's network.

Technology

Encryption

Industry asserts that the Yarovaya Amendments, under the guise of fighting terrorism, may require companies to assist government authorities in decrypting user communications and prohibits encryption measures unless a decryption key is provided to the Russian authorities upon request. U.S. companies are concerned that these provisions may require them to provide the Russian government with excessive access to citizens' private information.

Digital Products

Tariffs and Other Duties

Since December 2013, when President Putin announced support for "streamlining electronic commerce," government officials have proposed various reductions in the duty-free threshold for online purchases from non-EAEU online stores. Although the Ministry of Economic Development in 2014 proposed reducing the current €1,000 maximum to €500 per month, no decisions to reduce the duty-free limit have been taken. In July 2016, a law known as the Google Tax was adopted, introducing, as of January 1, 2017, a VAT of up to 18 percent on Internet purchases. The new "Google tax" will affect at least 14 types of IT market products and services, including: software applications and games databases; advertising platforms; online auctions; online retailers; data storage; hosting providers; domain registration; automated search services; and digital goods (*e.g.*, books, music, audio-visual products, graphics). Currently, application vending sites do not pay VAT on purchases by Russian Internet users. In January 2017, the new law will take effect for the largest online retailers and they will be required to register with the Russian Federal Tax Service.

SAUDI ARABIA

TRADE SUMMARY

The U.S. trade balance with Saudi Arabia shifted from a goods trade deficit of $2.3 billion in 2015 to a goods trade surplus of $1.1 billion in 2016. U.S. goods exports to Saudi Arabia were $18.0 billion, down 8.7 percent ($1.7 billion) from the previous year. Corresponding U.S. imports from Saudi Arabia were $16.9 billion, down 23.3 percent. Saudi Arabia was the United States' 19th largest goods export market in 2016.

U.S. exports of services to Saudi Arabia were an estimated $9.9 billion in 2015 (latest data available) and U.S. imports were $1.1 billion. Sales of services in Saudi Arabia by majority U.S.-owned affiliates were $5.7 billion in 2014 (latest data available), while sales of services in the United States by majority Saudi Arabia-owned firms were $2.4 billion.

U.S. foreign direct investment in Saudi Arabia (stock) was $10.5 billion in 2015 (latest data available), a 10.6 percent increase from 2014. U.S. direct investment in Saudi Arabia is led by mining, manufacturing, and wholesale trade.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Saudi Arabia is developing and implementing new energy efficiency standards for a variety of products, including vehicles, air conditioners, electrical appliances, lighting, electrical motors, tires, insulation and others that could affect their import. The United States continues to press Saudi Arabia to develop and fully implement appropriate mechanisms for stakeholder consultation in regulatory decision-making to help ensure that interested parties have opportunities to provide comments on draft regulations and to provide a reasonable time for those comments to be taken into account. For instance, in the process of developing new automotive fuel efficiency standards in December 2014 and follow-on standards for fuel economy labels, the United States worked to ensure that Saudi officials consulted with affected private-sector stakeholders.

Over the course of 2016, Saudi Arabia continued to revise technical regulations for a variety of products based solely on standards developed by the International Organization for Standardization and International Electrotechnical Commission. Saudi Arabia has excluded other international standards, such as those developed by U.S.-domiciled organizations through open, transparent and consensus-based processes – and which may meet or exceed Saudi Arabia's objectives. Saudi Arabia's exclusion of these other international standards, which are often used by U.S. manufacturers, creates significant market access restrictions for industrial and consumer products exported from the United States.

Energy Drinks

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

Conformity Assessment Marking

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

Sanitary and Phytosanitary Barriers

In June 2016, the United States and Saudi Arabia announced an agreement to immediately reopen the Saudi market to U.S. beef and beef products from cattle under the age of 30 months, with a phased-in approach for full access for beef and beef products in the future. In May 2012, Saudi Arabia had banned imports of these products following an atypical case of bovine spongiform encephalopathy in the United States.

In November 2016, the GCC announced that it would implement a December 2016 version of the "GCC Guide for Control on Imported Foods" in October 2017. The United States continues to raise concerns about the Guide, particularly a possible requirement to revise U.S. health export certificates for food and agricultural products destined for GCC countries. The GCC has not provided a scientific justification for its revised certificate statements, some of which may not follow the guidelines of the Codex Alimentarius Commission, the International Plant Protection Convention and the World Organization for Animal Health. The United States continues to request that the GCC delay implementation of the Guide and that experts work to address these concerns.

IMPORT POLICIES

Tariffs

As a member of the GCC, Saudi Arabia applies the GCC common external tariff with a number of country-specific exceptions. Tariff rates on the majority of goods subject to duties are 5 percent, though higher rates, ranging from 6.5 percent to 40 percent, are imposed on goods that compete with domestic industries. Tobacco products face a tariff rate of 100 percent.

Import Prohibitions and Licenses

Saudi Arabia prohibits the importation of 61 categories of products, *inter alia*, alcohol, pork products, pet dogs, used clothing, gambling devices, dummies, musical greeting cards, and automobiles and automotive parts older than five years. Special approval is required for the importation of live animals, horticultural products, seeds for use in agriculture, products containing alcohol, chemicals and harmful materials, pharmaceutical products, wireless equipment, radio-controlled model airplanes, natural asphalt, archaeological artifacts, audio or visual media, books, periodicals, and religious materials that do not adhere to the state-sanctioned form of Islam or that relate to a religion other than Islam. Some media products that are imported are subject to censorship.

Customs

U.S. private sector stakeholders consistently raise concerns about the policies and practices of Saudi Customs, including inconsistent application of regulations, inaccurate assessment of duties, delayed

clearance of goods and the lack of a mechanism for U.S. exporters to seek an advance ruling on Saudi customs procedures and regulations.

GOVERNMENT PROCUREMENT

Saudi Arabia is an observer to the WTO Committee on Government Procurement. Although Saudi Arabia committed to initiate negotiations for accession to the Agreement on Government Procurement when it became a WTO Member in 2005, it has not yet begun those negotiations.

Foreign contractors must subcontract 30 percent of the value of any government procurement, including support services, to firms that are majority-owned by Saudi nationals. An exemption is granted when no Saudi-owned company can provide the goods or services necessary to fulfill the requirements of a tender. Foreign suppliers are also required to establish a training program for Saudi nationals. Saudi Arabia provides a 10 percent price preference for GCC goods for procurements in which foreign suppliers participate.

Foreign companies are permitted to provide services to the Saudi Arabian government directly without a local agent and to market their services to other public entities through an office that has been granted temporary registration from the Ministry of Commerce and Investment. Foreign companies solely providing services to the government, if not already registered to do business in Saudi Arabia, are required to obtain a temporary registration from the Ministry within 30 days of signing a contract.

Most defense procurement is negotiated on a case-by-case basis. For defense sales, U.S. contractors are subject to an offset rate of 40 percent of the total value of the contract and must ensure that at least half of all offsets be direct.

In 2016, the Saudi Arabian government began to implement offset requirements in sectors beyond defense based on a 2014 Royal Decree subjecting all foreign companies with government contracts more than $107 million to a 40 percent offset requirement. However, no U.S. companies outside the defense sector have reported enforcement of such offset requirements.

U.S. companies have reported long delays and difficulty in receiving payments for procurement contracts with national and regional government entities, with some delays lasting more than two years. Delays increased significantly in late 2015, when declining oil revenues prompted the Saudi Arabian government to freeze payments to major contractors, accruing tens of billions in arrears and leading some companies to lay off workers in order to continue operation. In November 2016, the Saudi Arabian government allocated $26.7 billion to settle many outstanding payments by the end of its fiscal year.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The United States continues to carefully monitor the adequacy and effectiveness of intellectual property rights (IPR) protection and enforcement in Saudi Arabia. U.S. rights holders continue to raise concerns regarding the use of unauthorized software by the government, as well as the lack of clarity regarding protection for undisclosed test and other data associated with pharmaceutical marketing approval. U.S. rights holders also continue to report substantial challenges with copyright and trademark enforcement, including difficulty in obtaining information from the Ministry of Culture and Information and the Ministry of Commerce and Investment on the status of enforcement actions and investigations, the limited number of and training for copyright inspectors in the Department of Copyright at the Ministry of Culture and Information, the lack of seizure and destruction of counterfeit goods in enforcement actions by the Ministry of Commerce and Investment, and limits on the ability of the Ministry of Commerce and Investment to enter facilities suspected of involvement in the sale or manufacture of counterfeit goods, including facilities

located in residential areas. The U.S. Government will continue to work with Saudi Arabia and stakeholders to address these concerns.

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

SERVICES BARRIERS

Audiovisual Services

Saudi Arabia has long banned the construction or operation of public cinemas. Beginning in late 2014, the Saudi General Commission of Audiovisual Media began to explore possibly issuing licenses for such activities. In May 2016, the Saudi Arabian government created a new General Authority for Entertainment that is developing new recreational and entertainment options, possibly to include public cinemas.

Banking

Saudi Arabia limits foreign ownership in commercial banks to 40 percent of any individual bank operation and foreign ownership in investment banks and brokerages to 60 percent.

Insurance

Saudi Arabia requires that all insurance companies be locally incorporated joint-stock companies, with foreign equity limited to 60 percent. The remaining 40 percent must be sold in the Saudi stock market. Insurance companies must operate on a cooperative or mutual basis, in effect requiring distribution of any profits between policyholders and the insurance company.

Professional Services

Certain professionals, including architects, consultants and consulting engineers, are required to register with and be certified by the Ministry of Commerce and Investment. In addition, offices practicing law, accounting and auditing, design, architecture, engineering or civil planning, or providing healthcare, dental or veterinary services must have a Saudi partner, and the foreign partner's equity cannot exceed 75 percent of the total investment.

INVESTMENT BARRIERS

Foreign investment is currently prohibited in 15 sectors and subsectors, including production, manufacturing and services related to military activity, oil exploration and drilling. In November 2015, Saudi Arabia implemented new legislation regarding company ownership that allows for single shareholders to register a company in an effort to promote a more open business climate and establish more financial transparency.

In 2016, the Saudi government began to allow full foreign ownership of retail and wholesale businesses, removing the previous 25 percent local ownership requirement. However, requirements for establishing full ownership have limited the ability of many foreign investors to benefit from this change. These requirements include the obligation to maintain operations in three international markets and to invest more than $50 million in the local economy over five years.

All foreign investment in Saudi Arabia requires a license from the Saudi Arabian General Investment Authority (SAGIA), which must be renewed periodically. While SAGIA is required to grant or refuse an investment license within five days of receiving a complete application, bureaucratic impediments arising from SAGIA and other agencies sometimes delay the process. Foreign investors consistently raise concerns about SAGIA being overly restrictive and capricious in administering requirements for companies seeking to invest in Saudi Arabia. However, during 2016, foreign investors have reported increased efficiency in obtaining a license, with an approval time averaging one week compared to one month in the past. High fees for some investment licenses discourage foreign companies, especially small and medium enterprises, from entering the Saudi market. Companies can also experience bureaucratic delays after receiving their license, such as for obtaining a commercial registry or purchasing property.

In June 2016, the Capital Market Authority announced that it would expand access for "qualified foreign investors" (QFIs) to buy directly shares listed on the Saudi Arabia *Tadawul* stock exchange. Under the terms of *Tadawul*'s opening – designed to attract stable, experienced and strategic investment in the market–only large global institutional investors are permitted to buy directly. These QFIs cannot hold more than 5 percent of any individual company. Furthermore, cumulative foreign ownership cannot exceed 10 percent of the total *Tadawul* market capitalization or 49 percent of any individual company.

Under regulations regarding qualification that are currently set to be implemented in 2017, a QFI applicant must meet several requirements. The entity must be duly licensed or otherwise subject to oversight by a regulatory body with standards equivalent to those of the CMA; have assets under management of at least $1 billion; and have been engaged in securities or investment-related activities for at least 5 years. The new regulations will also increase the ceiling on QFIs' ownership of individual companies from 5 percent to 10 percent.

SINGAPORE

TRADE SUMMARY

The U.S. goods trade surplus with Singapore was $9.1 billion in 2016, an 11.1 percent decrease ($1.1 billion) over 2015. U.S. goods exports to Singapore were $26.9 billion, down 5.6 percent ($1.6 billion) from the previous year. Corresponding U.S. imports from Singapore were $17.8 billion, down 2.6 percent. Singapore was the United States' 13th largest goods export market in 2016.

U.S. exports of services to Singapore were an estimated $14.4 billion in 2015 (latest data available) and U.S. imports were $6.8 billion. Sales of services in Singapore by majority U.S.-owned affiliates were $85.3 billion in 2014 (latest data available), while sales of services in the United States by majority Singapore-owned firms were $9.0 billion.

U.S. foreign direct investment in Singapore (stock) was $228.7 billion in 2015 (latest data available), a 10.5 percent increase from 2014. U.S. direct investment in Singapore is led by nonbank holding companies, wholesale trade, and manufacturing.

Trade Agreements

The United States-Singapore Free Trade Agreement (FTA) has been in effect since 2004, and the United States meets regularly with Singapore to review implementation of the agreement. Singapore is a participant in the Regional Comprehensive Economic Partnership regional trade negotiations, which includes the ten ASEAN countries plus Australia, China, Japan, Korea, India, and New Zealand. It also has numerous bilateral and regional FTAs including with its ASEAN partners, Australia, China, India, Japan, Korea, New Zealand, Panama, Peru, Costa Rica, Jordan, and the European Free Trade Association and Gulf Cooperation Council countries. Singapore has concluded an FTA with the EU, which has not yet entered into force.

SANITARY AND PHYTOSANITARY BARRIERS

Sanitary and Phytosanitary Barriers

Beef, Pork, and Poultry Pathogen Reduction Treatments (PRTs)

Prior to 2012, Singapore's Agri-Food and Veterinary Authority (AVA) prohibited the use of all Pathogen Reduction Treatments (PRTs), also known as antimicrobial treatments or antimicrobial interventions, in the production of beef, pork, and poultry products sold in Singapore, which effectively limited the number of U.S. suppliers that could export frozen meat into Singapore. Effective February 2013, Singapore permitted the use of eight PRTs on fresh/chilled and frozen meat and poultry carcasses and meat and poultry cuts certified for export to Singapore.

On February 4, 2016, the United States and Singapore signed a letter exchange on SPS issues in which the two governments established a Bilateral Cooperative Mechanism on Pathogen Reduction Treatments to engage in cooperative activities with respect to PRTs used in the production of meat and poultry products in the United States that may be subsequently exported to Singapore.

In April 2016, AVA approved a ninth PRT (Acidified Sodium Chloride or "Sanova" by product name). Nevertheless, only nine PRTs are authorized for use on meat and poultry in Singapore, compared with 41

PRTs authorized in the United States. The United States will continue to work with Singapore to secure the approval of additional PRTs by Singapore.

Pork/Trichinae and Permissible Time Limits

Singapore requires U.S. pork exports to be frozen or tested for trichinosis, even though U.S. producers maintain stringent biosecurity protocols that limit the presence of trichinae in U.S. commercial swine to extremely low levels. U.S. industry sources note that the requirement delays export by two to three weeks, adding to inventory and related costs. Singapore also imposes overly restrictive requirements on frozen and processed meat and poultry products that restrict the time after slaughter or manufacture that a product may arrive in Singapore.

On February 4, 2016, as part of the bilateral letter exchange on SPS issues, the United States and Singapore agreed to establish a Bilateral Cooperative Mechanism on Pork Trade to serve as a forum for consultations between technical experts of Singapore and the United States with respect to pork-related trade issues, including trichinella-related mitigations for the shipment of fresh or chilled pork and pork meat products from the United States to Singapore and the length of time after slaughter that pork and pork meat products from the United States are allowed to enter Singapore. Under the terms of the letter exchange, the United States and Singapore will work to reach agreement as soon as possible through the Pork Trade Bilateral Cooperation Mechanism to resolve these issues.

Beef and Beef Products

In 2015, the United States and Singapore concluded negotiations on agreed terms and conditions to lift Singapore's longstanding BSE-related ban on U.S. beef and beef products and to restore full market access for such products. Previously, only fresh/chilled and frozen boneless beef derived from animals less than 30 months of age were eligible for export to Singapore. Fresh/chilled and frozen beef cuts derived from cattle of all ages are now eligible for export to Singapore. Offal and processed beef are also allowed entry under certain conditions. Singapore reaffirmed its commitment to open its market to U.S. beef and beef products as part of the February 4, 2016 SPS letter exchange.

IMPORT POLICIES

Tariffs

All U.S. exports to Singapore under the FTA are duty free.

Import Licenses and Internal Taxes

Singapore maintains a tiered motorcycle-operator licensing system based on engine displacement, which, along with a road tax based on engine size and regulations that limit the power output of electric motorcycles to no more than 10 kilowatts, discourages imports of large motorcycles from the United States. Singapore also restricts the import and sale of non-medicinal chewing gum. It levies high excise taxes on distilled spirits and wine, tobacco products, and motor vehicles.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Singapore was not listed in the 2016 Special 301 Report. Singapore aspires to become an innovation hub and has made it a national priority to establish itself as a regional intellectual property hub. Despite Singapore's strong record on intellectual property, U.S. stakeholders have raised some concerns, including limitations of trade secrets protection, weak enforcement against infringing goods transshipped through

Singapore, and insufficient deterrent penalties for end-user software piracy. U.S. stakeholders also cite use of unauthorized streaming services and third-party illicit streaming devices to access pirated content as a concern, as well as the absence of standalone legislation making the illicit recording of a film in a theater a criminal offense.

In August 2016, the Singaporean government proposed amendments to the Copyright Act. The United States looks to Singapore to provide meaningful opportunities for stakeholder input in the amendment process.

The United States continues to work bilaterally with Singapore to address IPR issues.

SERVICES BARRIERS

Pay Television

In 2011, the Media Development Authority, now the Info-communications Media Development Authority of Singapore (IMDA), implemented regulations requiring pay TV providers to "cross carry" exclusive broadcasting content acquired after March 12, 2010. These rules are still in place and require a pay TV company with an exclusive contract for channels/content to offer that content to other pay TV companies for their subscribers at the same rates. U.S. content providers remain concerned about the negative impact these regulations have on private contractual arrangements, innovation in the packaging and delivery of new content to consumers, and investment in the market. The United States will continue to engage with Singapore to address this issue, including with respect to exclusive content supplied via the burgeoning "over-the-top" model (serving subscribers via the Internet, rather than via dedicated cable or satellite networks). Although these rules were adopted to obviate the need for subscribers seeking to access content provided exclusively on a rival network to subscribe to two cable networks, the proliferation of competitive Internet-based options has significantly reduced the consumer burden of having multiple accounts, undermining such a rationale.

Audiovisual and Media Services

Singapore restricts the use of satellite dishes and has not authorized direct-to-home satellite TV services. IMDA licenses the installation and operation of broadcast receiving equipment, including satellite dishes for TV reception. Parties who require TV services received via satellite need to apply for a TV Receive-Only System License, which is given only to organizations, such as financial institutions, that need to access time-sensitive information for business decisions.

Distribution, importation, or sales of any "offshore" or foreign newspaper must be approved by the Singaporean government.

Legal Services

Except in the context of international arbitration, U.S. and other foreign law firms with offices in Singapore are not allowed to advise on Singapore 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 Singapore law practice (licensed as a Joint Law Venture), or get licensed as a Qualifying Foreign Law Practice (QFLP). QFLP licenses are limited (nine have been issued since 2008), and according to the Ministry of Law, the QFLP scheme is not open for application and there are no details available regarding further rounds of applications.

Banking

Unless they have been awarded Qualifying Full Bank (QFB) privileges, foreign banks and other financial institutions that issue credit cards in Singapore are permitted to provide ATM services to locally issued credit card holders only through their own networks or through a foreign bank's shared ATM network. QFBs, however, can negotiate with local banks on a commercial basis to let their credit card holders obtain cash advances through the local banks' ATM networks.

The Minister in charge of the Monetary Authority of Singapore must approve a merger or takeover of a bank incorporated in Singapore or financial holding company, as well as the acquisition of voting shares in such institutions above specific thresholds – 5 percent, 12 percent, and 20 percent. One important consideration in this approval process is the government's policy of maintaining local banks' market share of no less than 50 percent of total resident deposits. With respect to expansion of business within Singapore, MAS will consider awarding new QFB privileges to foreign banks only under FTAs and where there are substantial benefits to Singapore.

Healthcare: Procedural Transparency

U.S. stakeholders have expressed interest in improved transparency regarding Ministry of Health subsidy policies and procedural rules regarding pharmaceuticals, notably for approvals of biopharmaceutical innovations.

SOUTH AFRICA

TRADE SUMMARY

The U.S. goods trade deficit with South Africa was $2.1 billion in 2016, a 11.7 percent increase ($218 million) over 2015. U.S. goods exports to South Africa were $4.7 billion, down 14.2 percent ($773 million) from the previous year. Corresponding U.S. imports from South Africa were $6.8 billion, down 7.6 percent. South Africa was the United States' 42nd largest goods export market in 2016.

U.S. exports of services to South Africa were an estimated $3.2 billion in 2015 (latest data available) and U.S. imports were $1.6 billion. Sales of services in South Africa by majority U.S.-owned affiliates were $7.5 billion in 2014 (latest data available), while sales of services in the United States by majority South Africa-owned firms were $270 million.

U.S. foreign direct investment in South Africa (stock) was $5.6 billion in 2015 (latest data available), a 8.8 percent decrease from 2014. U.S. direct investment in South Africa is led by manufacturing, wholesale trade, and professional, scientific, and technical services.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

In 2012, the Department of Health implemented a labeling regulation for foodstuffs (Regulations Relating to the Labeling and Advertising of Foodstuffs (R146)) that restricts the use of testimonials, endorsements, or statements claiming food as “healthy” or “nutritious” as well as the use of the term “diet”. In 2014, the Department of Health published draft regulations that would further prohibit the use of these terms unless the food contains no added sodium, sugar, or saturated fat, or only contains “low” levels of them. In addition, the draft regulations would prohibit the use of these terms for foods that contain any addition of fructose, non-nutritive sweeteners, fluoride, aluminum or caffeine, in any quantity. The Department of Health has indicated in the draft regulations that, in the case where health claims or nutrient content claims form part of a brand name or trademark, the use of that brand name or trademark on the packaging of the foodstuff would be required to be phased out. U.S. stakeholders are concerned that these new regulations could require some brand owners to make changes to existing trademarks, and branding and labels in order to continue to sell their products in South Africa.

In September 2014, the Department of Health issued proposed amendments to its regulations relating to health measures on alcoholic beverages (Amendment to Regulations Relating to Health Messages on Container Labels of Alcoholic Beverages (R697)). The proposal would require that the health warnings printed on the labels of alcoholic beverages be increased in size to 1/8 of the total container size, as opposed to 1/8 of the label. Some stakeholders have expressed concerns about the proposal, including the lack of a definition of the word “container”, which could be interpreted to include not just the consumer-facing packaging, but also any other packaging materials used to contain or transport the beverages. In addition, stakeholders are seeking clarity about enforcement of the proposed rotation requirement, which would require that the seven health warnings be exhibited on the labels with equal regularity to one another within a 12-month period.

U.S. technology firms report that South African delays in issuing letters of authority (LOAs) are effectively blocking imports of certain U.S. high-technology/ICT equipment into South Africa. (LOAs are conformity assessments that show that products imported into South Africa meet the relevant South African standards.) Previously, the National Regulator for Compulsory Specifications (an agency within the South African

Bureau of Standards that falls under the purview of the Department of the Trade Industry (DTI)), issued LOAs within four to six weeks; however, now LOAs are reportedly taking up to approximately one year to be approved and issued. Given the pace of technology advancing and short product life cycles for technology products, the approval delays can mean that an updated version of the equipment is being produced before the old version is approved for import to South Africa. As of February 2017, some U.S. technology firms impacted by the delays report that DTI and SABS are working to reduce the time to approve and issue LOAs and reduce the backlog of existing LOAs under review.

In September 2016, the DTI published for public comment the Final National Liquor Policy (no. 1208), which provides policy recommendations intended to amend the Liquor Act, 59 of 2003. Some stakeholders have expressed concerns related to the proposed prohibition on the sale of "very high alcohol content" products and the "strict" labeling of liquor beverage products, as these terms are undefined in the policy document.

The United States regularly engages with South Africa on these and other issues related to technical barriers to trade at the WTO, through bilateral discussions, and under the United States-South Africa Trade and Investment Framework Agreement.

Sanitary and Phytosanitary Barriers

Beef and Beef Products

In December 2003, South Africa banned the importation of all U.S. ruminant animals and products following the discovery of a case of bovine spongiform encephalopathy (BSE) in the United States. In June 2010, South Africa opened its market to U.S. deboned beef from cattle of all ages. However, South Africa continued to ban the importation of all other beef cuts and beef products, as well as other U.S. ruminant animals and products. In June 2015, South Africa's Cabinet adopted a decree recognizing the United States' negligible risk status for BSE. In January 2016, the U.S. Department of Agriculture (USDA) and South Africa's Department of Agriculture, Forestry, and Fisheries (DAFF) reached agreement on the content of a health certificate for the importation of U.S. beef and beef products into South Africa. This has allowed trade in all U.S. beef and beef products to resume.

Pork

South Africa imposes multiple restrictions on the import 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 since most U.S. producers maintain stringent biosecurity protocols that limit the appearance of trichinae in the United States to extremely low levels in commercial swine. Additionally, South Africa requires certification that swine are free of pseudorabies, even though the United States achieved the successful eradication of pseudorabies in commercial herds in all 50 states in 2004.

South Africa also imposes a restriction on pork cuts allowed for importation due to concerns related to Porcine Reproductive and Respiratory Syndrome (PRRS), which does not appear consistent with international standards. The United States continues to engage with South Africa on this issue.

In January 2016, USDA and DAFF reached agreement on the content of a USDA export health certificate for the importation of some U.S. pork and pork products into South Africa. This allowed a resumption of trade in certain pork products for which the certificate may be used. However, South Africa's PRRS restrictions continue to prevent the importation of many U.S. pork products for unrestricted sale (*i.e.*, sale

for use without further processing) in South Africa. Discussions to expand the list of U.S. pork products that may be sold without being further processed in South Africa are ongoing.

Poultry

In December 2014, South Africa banned all poultry imports from the entire United States due to the detection of highly pathogenic avian influenza (HPAI) in backyard flocks in Washington and Oregon. In November 2015, the United States and South Africa agreed to an animal health protocol to allow trade in U.S. poultry from states not affected by HPAI.

In January 2016, USDA and DAFF reached agreement on a health certificate for the importation of U.S. poultry into South Africa. At the same time, USDA and DAFF agreed to specific procedures with respect to Salmonella testing to be applied to imports of U.S. poultry. Under the agreement, U.S. poultry was successfully imported into South Africa in February 2016.

While trade in poultry has resumed, South Africa has required that exports of U.S. poultry meat to South Africa be produced from U.S. birds hatched and raised within the United States. This requirement has restricted exports of U.S. turkey from meat produced from Canadian poults. Although less than 5 percent of U.S. turkey meat is produced from Canadian poults, all U.S. turkey exporters are required to certify that meat is not produced from Canadian poults. As a result of requirement, USDA has implemented an Export Verification (EV) program administered by USDA's Agricultural Marketing Service (AMS). The AMS/EV program enables turkey producers and processors to ensure compliance with this origin requirement by paying a fee for AMS to verify that the meat is not produced from Canadian poults. Three U.S. facilities are approved to export under the AMS/EV program, and eight additional facilities are in the process of being approved. USDA is in discussions with DAFF to remove the EV program regarding poults originating from Canada and raised in the United States since South Africa also imports Canadian turkey.

Horticultural Products

South Africa prohibits imports of Pacific Northwest apples, except apples originating from orchards that have been declared free from *Rhagoletis pomonella* (apple maggot). The United States is currently seeking access for apples that originate from areas regulated for apple maggot and that undergo a cold treatment protocol.

IMPORT POLICIES

Tariffs

South Africa is a member of the WTO, the Southern African Development Community (SADC), and the Southern African Customs Union (SACU). As a member of SACU, South Africa applies the SACU common external tariff. In practice, South Africa sets the level of WTO Most Favored Nation (MFN) tariffs applied by all SACU countries, and manages all matters related to trade remedies and disputes for the SACU countries. South Africa's average applied MFN duty rate in 2016 was 7.6 percent. South Africa has preferential trade agreements with the European Union (EU), the Southern Common Market (MERCOSUR), the European Free Trade Area, and SADC. In 2014, South Africa concluded negotiations for a SADC Economic Partnership Agreement (EPA) with the EU, which entered into provisional application in October 2016. SADC EPA partner countries include Botswana, Lesotho, Mozambique, Namibia, South Africa, and Swaziland. Angola is an observer to the agreement.

U.S. exports face a disadvantage compared to EU goods in South Africa. The European Union-South African Trade and Development Cooperation Agreement (TDCA) of 1999 covers a significant amount of

South Africa-EU trade. South Africa's tariffs applied to imports from the EU on TDCA-covered tariff lines average 4.5 percent based on an unweighted average, while the MFN duty rate, which imports from the United States face, averages 18.4 percent for the same TDCA-covered lines. Final phase-in of the EU tariff preferences under the TDCA became effective in 2012. Key categories in which U.S. firms face a tariff disadvantage include cosmetics, plastics, textiles, trucks, and agricultural products and machinery.

The EU-SADC EPA will further erode U.S. export competitiveness in South Africa and the region due to the greater disparities in tariff levels that U.S. exports will face under the EPA compared to the TDCA. The United States has raised concerns about the tariff disparity in bilateral discussions with South Africa, noting the unilateral benefits the United States offers South African imports under the African Growth and Opportunity Act. South African authorities have emphasized that the only way to address this imbalance is through a free trade agreement.

In September 2013, the South African International Trade Administration Commission (ITAC) increased import duties for whole chickens to the maximum bound rate of 82 percent, and announced import duty increases for other poultry products, including an increase in duties to 37 percent for imports of frozen bone-in chicken (imports of U.S. frozen bone-in chicken are also subject to antidumping duties. South Africa raised the tariffs in response to requests from its domestic industry. In recent years, the South African government has encouraged domestic industry to appeal for increases up to the bound tariff rates where a lack of global competitiveness was a concern.

U.S. stakeholders have expressed serious concerns about South Africa's imposition of antidumping duties on imports of frozen bone-in chicken from the United States, including concerns about methodology, transparency, and due process spanning the original investigation and final determination in 2000 to the improper initiation of subsequent sunset reviews. As a result of industry negotiations to address and resolve these issues, in June 2015, U.S. and South Africa poultry industry groups reached agreement on an understanding to establish a tariff rate quota (TRQ) on a certain volume of U.S. bone-in chicken that could be exported to South Africa without being subject to antidumping duties. In December 2015, ITAC published final guidelines for administering the TRQ. Upon publication of the final guidelines, the TRQ entered into force, allowing U.S. trade in bone-in chicken subject to the agreement to begin. In February 2016, shipments of U.S. bone-in chicken subject to the TRQ began to be imported into South Africa.

Nontariff Measures

The DTI prohibits imports of goods of a specified class or kind into South Africa by notice in the Government Gazette, unless the products are imported in accordance with a permit issued by ITAC. Prohibited imports include narcotic and habit-forming drugs in any form; fully automatic, military and unnumbered weapons, explosives and fireworks; poison and other toxic substances; cigarettes with a mass of more than 2 kilograms per 1,000; goods to which a trade description or trademark is applied in contravention of South African law (for example, counterfeit goods); unlawful reproductions of any works subject to copyright; and prison-made or penitentiary-made goods. ITAC requires import permits on used goods if such goods are also manufactured domestically, thus significantly limiting importation of used goods. Other categories of controlled imports include waste, scrap, ashes, residues, and goods subject to quality specifications.

The Ministry of Finance announced in its February 2016 budget a decision to introduce a tax on sugar-sweetened beverages, with a proposed effective date of April 1, 2017, with the aim of reducing excessive sugar intake. In response, in July 2016, the National Treasury published for public comment a policy paper and proposals on the taxation of sugar-sweetened beverages. The paper recommended that a tax on sugar-sweetened beverages based on sugar content be implemented. Some stakeholders have expressed concern that the application of taxes on sugar-sweetened beverages, including on energy drinks, will be applied

inconsistently and discriminatorily, and would not apply to other beverage types or other sugar-containing products. Discussions with stakeholders are ongoing, and legislation introducing a tax on sugar-sweetened beverages reportedly will not be introduced until after the proposed effective date of April 1, 2017.

GOVERNMENT PROCUREMENT

The 2011 Local Procurement Accord (the Accord) signed between the government and business, labor, and community stakeholders commits the government to significantly expand the value of goods and services it procures from South Africa suppliers. The Accord included an "aspirational target" of sourcing 75 percent of government procurement locally to boost industrialization and to create jobs. South Africa's National Industrial Participation Program, introduced in 1996, imposes an industrial participation obligation on all government and parastatal purchases or lease contracts for goods, equipment, or services with an imported content greater than or equal to $10 million. This obligation requires the seller or supplier to engage in local commercial or industrial activity valued at 30 percent or more of the value of the imported content of the goods and/or services purchased or leased pursuant to a government tender.

South Africa also uses government procurement to empower historically disadvantaged populations through its Broad-Based Black Economic Empowerment (B-BBEE) strategy. In a procurement the company's B-BBEE scorecard accounts for a percentage of a bid's assessment, which varies by sector (*See the section on Investment Barriers for more information on B-BBEE.*)

South Africa is neither a party nor an observer to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

South Africa was not listed in the 2016 Special 301 Report. In recent years, the South African government has made an effort to improve enforcement of intellectual property rights (IPR), including an effort to combat pirated and counterfeit goods by appointing more inspectors, designating more warehouses for securing counterfeit goods, and improving the training of customs, border police, and police officials. Additionally, the DTI continues to work with universities and other local groups to incorporate IPR awareness into college curricula and training of local business groups.

In June 2016, DTI issued the "Intellectual Property Consultative Framework," which aimed to set the foundation for a new comprehensive IPR policy. South Africa previously attempted to amend its national IPR strategy in 2013, but the exercise was abandoned after significant stakeholder concerns were raised. Since issuing the 2016 framework, DTI has reported that they intend to conduct ongoing stakeholder consultations as they work to develop a new draft IPR policy by early 2017.

Under the EU-SADC EPA, which entered into force on a provisional basis in 2016, South Africa agreed to prohibit the use of certain terms as geographical indications in its domestic market. This commitment could have an adverse impact on certain U.S. agricultural products.

SERVICES

Telecommunications

Responsibility for telecommunications policy and regulation is divided among the South African Department of Telecommunications and Postal Services (DTPS), the Department of Communications, and the Independent Communications Authority of South Africa (ICASA).

In October 2016, DTPS published a National Integrated Information and Communication Technologies (ICT) policy white paper that recommends a number of policies that, if implemented, could lead to a fundamental restructuring of the telecommunications market. The white paper proposes opening access to both telecommunications infrastructure and high-demand spectrum, and envisages the creation of a single national Wireless Open Access Network (WOAN) for high-demand (4G) spectrum run by a public-private partnership. Some analysts have expressed concerns that the South African government could move to claw back high-demand spectrum previously awarded to mobile carriers under such a partnership model. The ICT white paper also proposes creating a separate broadcasting regulator and a new regulator for ICT.

Telkom is one of South Africa's leading communications services providers, and it dominates fixed-line telecommunications services. Telkom operated as a monopoly until 2006, and today the South African government remains the largest shareholder in Telkom with a 39.3 percent stake. According to public statements, the South African government expects Telkom to operate as a private company, but it reportedly views Telkom as a strategic asset.

Broadcasting

The Independent Communications Authority of South Africa (ICASA) imposes local content requirements for satellite, terrestrial, and cable subscription services. In March 2016, ICASA updated local content regulations that require up to 80 percent of broadcast programming consist of South African programming. Foreign ownership in a broadcaster remains capped at a maximum of 20 percent.

In 2006, South Africa agreed to meet an International Telecommunications Union deadline to achieve analog-to-digital migration by June 1, 2015. As of March 2017, South Africa has initiated but not completed the migration. This has prevented the spectrum from being allocated to the telecommunications operators who have requested access to the 2.6 GHz band and frequencies below 850 MHz to build next generation mobile broadband networks.

INVESTMENT BARRIERS

While South Africa is generally open to greenfield FDI, merger and acquisition-related FDI is scrutinized closely for its impact on jobs and local industry. Private sector and other stakeholders are concerned about politicization of South Africa's posture towards this type of investment. South Africa also imposes local content requirements on investments in areas such as renewable energy projects.

The B-BBEE Codes of Good Practice creates a certification system (a "B-BBEE scorecard") that rates a company's commitment to the empowerment of historically disadvantaged people in South Africa. A high rating is particularly important in competition for public tenders, as the B-BBEE scorecard will account for 10 percent of a bid's assessment, but is also important for branding purposes and for managing client relationships, as a company's score can influence a client's score. The government has made B-BBEE requirements stricter in recent years, causing concern among U.S. firms wary about the impact of the changes to their ratings. U.S. firms have particularly struggled to score well on the "ownership" element of the scorecard, as a result of corporate rules that can prevent the transfer of discounted equity stakes to South African subsidiaries. Whereas U.S. firms had at one time been able to compensate by scoring higher on other elements, recent changes to the rules introduced penalties for failing to comply with requirements relating to ownership, management control diversity, enterprise development, and preferential procurement. In addition to ownership, the preferential procurement category requires localization with "Empowering Suppliers," which proves challenging to companies importing products or inputs for value chains.

Sectors such as financial services, mining, and petroleum have their own "transformation charters" intended to promote accelerated empowerment within those sectors. The charters for the integrated transport, forest

products, construction, tourism, and chartered accountancy sectors have force of law in South Africa. Many other sectors, including financial services, information and communications technology, and property have transformation charters that do not have force of law, yet express the sector's commitment to "economic transformation."

Mineral and Petroleum Resources Development Act (MPRDA)

U.S. stakeholders have expressed concerns about South Africa's proposed MPRDA, which would grant the government 20 percent carried interest in any new petroleum or mineral activity, and allow the government to acquire additional ownership of any such venture on terms determined by the Minister of Mineral Resources. Parliament is expected to consider this issue in 2017.

Other Legal Concerns for Investment

President Zuma signed the Protection of Investment Act into law in December 2015. Some analysts have commented that the Act is overly vague with respect to measures the government of South Africa may take against an investor or its investment, including "redressing historical, social and economic inequalities and injustices"; "promoting and preserving cultural heritage and practices, indigenous knowledge and biological resources related thereto, or national heritage"; and "achieving the progressive realization of socio-economic rights." The Act also allows for international arbitration of disputes only after domestic remedies have been exhausted, which could deter foreign investment.

In May 2016, South Africa's Parliament passed an Expropriation Act that redefined the country's legal framework relating to expropriation. The Act provides that the government can expropriate property for a "public purpose" or in the "public interest" in return for compensation deemed to be "just and equitable." Some analysts have suggested that how these terms will be interpreted and applied is uncertain, and that the Act could deter investment. Others have argued that provisions of the Act are inconsistent with South Africa's constitution. The legislation is currently awaiting President Zuma's signature.

Another concern for investors is the Private Security Industry Regulation Act Amendment Bill, which, if signed, would require 51 percent local ownership in private security firms. The United States has raised concerns about the local ownership provision of the bill in bilateral discussions with South Africa, including in relation to South Africa's international trade commitments.

BARRIERS TO DIGITAL TRADE

The 2002 Electronic Communications and Transactions Law governs electronic commerce in South Africa. The law was designed to facilitate electronic commerce, but U.S. stakeholders have claimed that the requirements for government accreditation for certain electronic signatures and long list of disclosures for websites that sell goods and services via the Internet are unnecessarily burdensome.

OTHER BARRIERS

Transparency and Corruption

Several laws have been enacted in the last 15 years to increase transparency and reduce corruption in South Africa's government, but some of those laws suffer from deficiencies. For example, legislation barring the payment of bribes to public officials fails to protect whistleblowers against recrimination or defamation claims, while the Protection of State Information bill (passed in 2013) has been criticized by academics, civil society groups, international organizations, and the media as limiting transparency and freedom of expression. President Zuma has yet to sign the bill into law.

Implementation of transparency and anticorruption laws also suffers from challenges. Although South Africa has no fewer than 10 agencies engaged in anticorruption activities, high rates of violent crime strain overall law enforcement capacity and make it difficult for South African criminal and judicial entities to dedicate adequate resources to anticorruption efforts.

Labor Constraints

Companies in many economic sectors experience difficulty recruiting qualified employees, due in part to declining performance in South Africa's school system, in particular with respect to math and science. For many years, U.S. and other foreign companies have complained of difficulties in obtaining temporary work permits for their skilled foreign employees. These issues were exacerbated by immigration regulations promulgated by the Department of Home Affairs, which came into effect in 2014. The regulations affect foreigners looking to visit, study, work, live, and own businesses in South Africa. The visa requirements under these immigration regulations were rescinded in 2015, but new regulations have not yet been finalized.

SRI LANKA

TRADE SUMMARY

The U.S. goods trade deficit with Sri Lanka was $2.4 billion in 2016, a 4.3 percent decrease ($110 million) over 2015. U.S. goods exports to Sri Lanka were $369 million, up 1.9 percent ($7 million) from the previous year. Corresponding U.S. imports from Sri Lanka were $2.8 billion, down 3.6 percent. Sri Lanka was the United States' 102nd largest goods export market in 2016.

U.S. foreign direct investment (FDI) in Sri Lanka (stock) was $111 million in 2015 (latest data available), unchanged from 2014.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Biotechnology

Sri Lanka prohibits the sale of seeds derived from agricultural biotechnology or products containing agricultural biotechnology components intended for human consumption without the approval of Sri Lanka's Chief Food Authority. Sri Lanka does not appear to have a functioning approval mechanism and thus in effect imposes a ban on sales of seeds and other agricultural products derived from biotechnology. Furthermore, Sri Lanka requires all commodity imports to be accompanied by a certification that the commodity is "non-GE." The United States will continue to engage Sri Lanka on these issues, especially on establishing a biotechnology regulatory framework consistent with international standards.

Poultry Products

Sri Lanka does not follow World Organization for Animal Health (OIE) recommendations for avian influenza, thus impeding U.S. exports of poultry products. The OIE recommendations recognize the concept of zoning–that import measures can be confined to geographic areas (such as a state) affected with avian influenza rather that ban imports from a country altogether. Moreover, the OIE standards recognize that areas that are affected by outbreaks of avian influenza can regain disease-free status after three months if a stamping out policy is applied and the exporting party has an effective surveillance system in place. In contrast, Sri Lanka permits imports of poultry products only from countries that have never reported outbreaks of HPAI, or six months after the U.S. Department of Agriculture has notified the OIE that a particular state is free of avian influenza.

Meat Products

Animal health authorities take lengthy periods to conduct microbiological tests of meat shipments. Furthermore, Sri Lankan authorities do not comply with the testing regulations specified in Sri Lanka's import permit when carrying out sample testing in-country and have occasionally rejected imports based on testing methods contradictory to those that are set out in the country's regulations or the import permit. The relevant authorities often only accept testing performed by the Medical Research Institute based in Colombo, whose testing methods differ from those set out in Sri Lanka's regulations. Any negative results on the sample tests could force the importer to re-export the shipment. The extended period taken to conclude testing of the shipment places the importer at risk of losing the right to file insurance claims as many insurers only insure for a limited time period.

IMPORT POLICIES

The Sri Lankan government continues to utilize import substitution policies, and taxes on imports remain high for a large number of goods, making them prohibitively expensive. Policies contained in the 2017 budget (released November 2016) adhere to the Sri Lankan government's support for agricultural self-sufficiency and food security. The 2017 budget announced initial steps towards rationalization of import taxes by the gradual removal of the Export Development Board Levy (called the "cess"). When there are balance of payment difficulties, the government has imposed controls on foreign exchange transactions. In December 2015 the Sri Lankan government imposed a policy capping vehicle financing to no more than 70 percent of the value of the vehicle. The 2017 budget limited financing to no more than 50 percent of the value of the vehicle. This policy was intended to limit motor vehicle imports in an effort to counteract the increase of vehicle imports over the previous year, which adversely affected Sri Lanka's trade deficit and caused traffic congestion in the capital.

Import Charges

According to the WTO, Sri Lanka's average applied agricultural tariff in 2015 was 23.7 percent, and its average applied tariff for non-agricultural goods was 6.9 percent. However, Sri Lanka's bound rates are generally much higher, and some products do not have their rates bound, which has given Sri Lanka flexibility to increase the rates.

Sri Lanka's main trade policy instrument has been the import tariff. There are currently six tariff bands – 0, 5, 10, 15, 25, and 30 percent. Generally, Sri Lanka applies the lowest band to raw materials and the highest to finished goods. Also, some items, *e.g.*, several agricultural products, are subject to an *ad valorem* or a specific tariff, whichever is higher. There is intermittent use of exemptions and waivers for specific products.

In addition to the import tariff, a number of supplementary taxes and levies on imports, taken together with tariffs, can total 100 percent or more of the value of some food and consumer goods, making them prohibitively expensive. Before 2015 annual government budgets regularly increased supplementary taxes on selected products, which made it difficult for foreign exporters and local importers to calculate their import costs. Affected U.S. products include agricultural products, processed/packaged foods, and personal care products.

One of these supplementary levies is the Export Development Board (EDB) levy, often referred to as a "cess," which ranges from 10 percent to 35 percent *ad valorem* on a range of imports identified as "nonessential" or as competing with local industries. Further, when calculating the EDB levy, an imputed profit margin of 10 percent is added on to the import price. In some cases, such as biscuits, chocolates, and soap, the levy is charged not on the import price, but on 65 percent of the maximum retail price. In an attempt to rationalize the tariff structure, the 2017 budget removed the EDB levy on 100 items, including lard, sunflower seed, and wallpaper.

A Ports and Airports Development Levy (PAL) is also applied on most imports. The government increased the PAL from 5 percent to 7.5 percent starting January 1, 2016. Locally manufactured products are not subject to the PAL.

Additionally, the Sri Lankan government imposes a value-added tax (VAT) on imports, and increased the rate from 11 percent to 15 percent from November 1, 2016. When calculating the VAT, an imputed profit margin of 10 percent is added to the import price. Locally manufactured products are also subject to VAT, but not the imputed profit margin.

A special commodity levy (SCL) is charged on some imported food items. The SCL rates are changed frequently creating uncertainty to importers. Locally manufactured products are not subject to SCL. Items subject to SCL typically include sugar, canned fish, chickpeas, potatoes, onions, vegetable oil, and margarine. In 2016 SCL on some of these items was increased and new items were added. New items added to the list in 2016 were yogurt, butter, dairy spreads, and fruits. The SCL on butter, dairy spreads, and cheese is Rs 880 per kg and replaced an existing import duty of 30 percent.

Since November 2011 the Sri Lankan government has imposed an all-inclusive tax under the EDB levy on imported textiles not intended for use by the apparel export industry. As of November 2016, this all-inclusive tax was Rs 100 per kg (approximately $0.77).

In November 2015 the Sri Lankan government introduced an all-inclusive tax pursuant to the EDB levy on apparel imports replacing the 25 percent import tariff, the 12 percent VAT, the Rs 75 (approximately $0.57) per unit EDB Levy, the five percent PAL, and the two percent NBT. As of November 2016, this all-inclusive tax was 15 percent or Rs 200 per unit, whichever is higher.

In October 2014, the Sri Lankan government introduced an all-inclusive tax under the Excise Special Provisions Law on cars replacing the VAT, the NBT, the EDB levy, the import tariff, and the PAL. The tax is based on the engine capacity. As of November 2016, the excise tax on cars ranged from 150 percent for small cars to 250 percent for large vehicles. Hybrid vehicles and electric cars are taxed at lower rates.

Price Controls

Sri Lanka's Consumer Affairs Authority sets maximum retail prices (MRP) for essential consumer items. Items subject to MRP include lentils, sugar, chick peas, chicken, wheat flour, dried chili peppers, canned fish, and milk powder. Food importers have lobbied the government to remove MRP, arguing that standard prices are impractical in an environment of changing international markets and currency fluctuations.

Soft drinks - sugar content

The government published regulations cited as the Food (Color Coding for Sugar levels) Regulations 2016, which required labeling of carbonated beverages, ready to serve drinks other than milk-based products and fruit juices. The labels need to display a numerical description of the sugar content, a description of the relative sugar level and a color code.

Import Licenses

Sri Lanka requires import licenses for more than 400 items at the six-digit level of the Harmonized Tariff System, mostly for health, environment, and national security reasons. Importers must pay a fee equal to 0.222 percent of the import price with a minimum fee of Rs 1,000 (approximately $6.90) to receive an import license. Import licenses for meat products may be required based on the health or disease status of livestock in the particular country or area. Approval is at the discretion of the regulators; no standard practices are followed and requirements can vary. Committees entrusted with evaluating products to be imported often lack the capacity to make scientific determinations and a zero-risk policy is followed in lieu of scientific rationale.

EXPORT POLICIES

Sri Lanka maintains a ban on the export of ferrous scrap, which limits global supply, including in the United States.

GOVERNMENT PROCUREMENT

Government procurement of most goods and services is primarily undertaken through a public tender process. Some tenders are open only to registered suppliers. Procurement has also occurred outside the normal competitive tender process. The government of Sri Lanka now directs all its agencies to follow tender guidelines rather than accept unsolicited project proposals. As of November 2016, however, some government agencies continued to review unsolicited project proposals. Since receiving the directive to utilize a tender process, it does not appear these agencies have approved unsolicited proposals. In response to alleged corruption in government procurement in years past, President Sirisena appointed an independent procurement commission to formulate procedures and guidelines for procurement by government institutions. The commission, mandated by an amendment to the constitution, is also responsible for monitoring government procurement. Sri Lanka is not a signatory to the WTO Agreement on Government Procurement but holds observer status at the WTO Committee on Government Procurement. It is widely reported and believed that corruption remains a serious problem. For example, in October 2016, a parliamentary committee found irregularities in the sale of government securities by the Central Bank of Sri Lanka during 2015-2016.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Enforcement of intellectual property rights has gradually improved in Sri Lanka, but counterfeit goods (mostly imported) continue to be widely available and music and software piracy are reportedly widespread. United States and other international companies in the recording, software, movie, clothing, and consumer product industries complain that inadequate IPR protection and enforcement weaken their businesses. The government of Sri Lanka published a policy in 2010 requiring all government ministries and departments to use only licensed software, but it has yet to put systems in place to monitor compliance with this policy. Some industry sectors, including apparel, software, tobacco, and electronics, have reported success in combating trademark counterfeiting through the courts. Redress through the courts remains time-consuming and challenging overall. Better coordination among enforcement authorities and government institutions such as the National Intellectual Property Office is needed to strengthen Sri Lanka's IPR regime.

SERVICES BARRIERS

Insurance

Foreign insurance companies that provide health insurance services to Sri Lankans must sell through an insurance broker registered in Sri Lanka and sell products not sold by local insurance companies. Branch offices are not permitted. The Sri Lankan government requires all insurance companies to reinsure 20 percent of their insurance business with a state-run insurance fund.

Broadcasting

Sri Lanka imposes taxes on foreign films, programs, and commercials shown on television. The 2017 budget proposed to extend the tax to cover foreign commercials on cable and satellite television networks. As of early December 2016, neither the date of implementation nor the implementation mechanism for this proposal had been announced. The budget also proposed to increase the tax on foreign films dubbed into Sinhala and Tamil from Rs 90,000 per 30-minute episode to Rs 300,000 per 30-minute episode. Government approval is required for all foreign films and programs shown on television.

INVESTMENT BARRIERS

Sri Lanka maintains foreign investment restrictions in a wide range of sectors. For example, foreign investment is not permitted in certain types of money lending activities, in the coastal fishing sector, and in retail trade for investments of less than $2 million (or $150,000 in the case of international brands and franchises). In other sectors, foreign investment is subject to case-by-case screening and approval when foreign equity exceeds 40 percent. These sectors include shipping, travel agencies, freight forwarding, mass communications, deep-sea fishing, timber industries, mining and primary processing of natural resources, and the cultivation and primary processing of certain agriculture commodities. Foreign equity restrictions also apply in the gem mining sectors.

Sri Lanka prohibits the sale of public and private land to foreign nationals and to enterprises with foreign equity exceeding 50 percent. Foreign companies engaged in banking, financial, insurance, maritime, aviation, advanced technology, or infrastructure development projects identified and approved as strategic development projects may be exempted from this restriction on a case-by-case basis. This restriction also does not apply to the purchase of condominium properties on or above the fourth floor of a building. In January 2016 the government removed a controversial 15 percent tax on land and property leased to foreign investors that had to be paid upfront at the time the lease was signed.

The 2017 budget proposed liberalization to rules governing landholding, including the removal of all restrictions on foreign ownership of condominium properties; permission for public limited companies to enjoy freehold right to land; and permission for majority foreign-owned companies to lease land on a long-term basis (provided that they satisfy minimum investment and employment levels). The government has not announced when these proposals will go into effect.

In 2011 the Sri Lankan government approved the Revival of Underperforming Enterprises and Underutilized Assets Act, which allows for the nationalization of assets belonging to 37 private companies deemed by the Sri Lankan government to be underperforming and not meeting lease conditions. Although many of the companies were defunct, several were operating businesses, including one that was owned by a prominent member of the opposition. The current government, which is led by President Sirisena, has stated that it will not nationalize private companies. Nevertheless, the Act remains in force and has significantly increased investor uncertainty regarding property rights in Sri Lanka.

BARRIERS TO DIGITAL TRADE

A 2.5 percent stamp duty applies to usage of credit cards issued by Sri Lankan banks for transactions entered into in foreign currency. The 2.5 percent is an increase, in effect since January 1, 2016, from a previous level of 1.5 percent. Beginning on January 1, 2016, transactions in local currency have been exempted from this duty. As a result, U.S. electronic commerce firms, setting prices in dollars, face greater costs than local competitors when selling in the Sri Lankan market.

OTHER BARRIERS

Public sector corruption, including bribery of public officials, is a significant challenge for U.S. firms operating in Sri Lanka and a constraint on foreign investment. While the country has generally adequate laws and regulations to combat corruption, enforcement is weak and inconsistent. U.S. stakeholders have expressed particular concern about corruption in large projects and in government procurement.

SWITZERLAND

TRADE SUMMARY

The U.S. goods trade deficit with Switzerland was $13.7 billion in 2016, a 48.4 percent increase ($4.5 billion) over 2015. U.S. goods exports to Switzerland were $22.7 billion, up 2.3 percent ($516 million) from the previous year. Corresponding U.S. imports from Switzerland were $36.4 billion, up 15.9 percent. Switzerland was the United States' 15th largest goods export market in 2016.

U.S. exports of services to Switzerland were an estimated $31.1 billion in 2015 (latest data available) and U.S. imports were $21.3 billion. Sales of services in Switzerland by majority U.S.-owned affiliates were $76.5 billion in 2014 (latest data available), while sales of services in the United States by majority Switzerland-owned firms were $52.6 billion.

U.S. foreign direct investment (FDI) in Switzerland (stock) was $155.2 billion in 2015 (latest data available), a 9.8 percent increase from 2014. U.S. direct investment in Switzerland is led by nonbank holding companies, manufacturing, and finance/insurance.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

The Swiss Federal Council has determined that low-volume vehicle manufacturers (under 300,000 units produced by the manufacturer and sold in Europe per year) and niche vehicle manufacturers (fewer than 10,000 units) are subject to fleet average carbon dioxide targets of 130g/km. Products that do not meet these targets are subject to additional taxes. The Swiss government, purportedly because of concerns that this requirement could severely impact luxury automobile manufacturers, has granted an exception to only certain car manufacturers. Under this exception, new vehicles are granted an adjusted target of approximately 75 percent of the 2007 model's carbon dioxide emission levels – provided the vehicles had received type approval in a European Union (EU) Member State. Although U.S. vehicle import volumes into Switzerland are much lower than EU import volumes, importers of secondary market U.S. vehicles that have not received type approval in an EU Member State have not been granted a similarly adjusted target. As a consequence, they are subject to the additional taxes applicable to vehicles required to satisfy the 130g/km target. Prior to the implementation of this carbon dioxide tax, secondary market U.S. vehicle imports into Switzerland generated $40-50 million per year in revenue for importers. The current level of secondary market U.S. automobile imports into Switzerland is approximately 20 percent of 2014 values, and was expected to decline to zero percent by the end of 2016. In 2014, the Swiss Federal Council reviewed the law and acknowledged that while it unfairly burdened U.S. imports, there would be no attempt to address the matter.

Sanitary and Phytosanitary Barriers

Switzerland's restrictive phytosanitary regulations have limited the Swiss market for agricultural biotechnology products. In particular, Switzerland maintains a moratorium on planting biotechnology crops and marketing agricultural biotechnology animals, which is scheduled to remain in force through the end of 2017. In 2016, the Swiss cabinet approved a plan by which the moratorium could be extended until 2021.

IMPORT POLICIES

Switzerland, along with Norway, Iceland, and Liechtenstein, is a member of the European Free Trade Association (EFTA). Unlike other EFTA members, Switzerland does not participate in the EU single market through the European Economic Area (EEA) accord. According to the WTO, Switzerland's simple average most favored nation (MFN) applied tariff is 36.1 percent for agricultural goods and 1.8 percent for non-agricultural goods.

Agricultural Products

Swiss agriculture is highly subsidized and regulated. Price controls, production quotas, import restrictions, and tariffs all support domestic production. U.S. agricultural product access to the Swiss market is restricted by high tariffs on certain products, preferential tariff rates for products from other trading partners, restrictive private standards and certain government regulations. Switzerland's tariff schedule is composed of specific (*i.e.*, non-*ad valorem*) duties. Imports of nearly all agricultural products, particularly those that compete with Swiss products, are subject to seasonal import duties, quotas, and import licensing. Agricultural products not produced in Switzerland, such as tropical fruit and nuts, tend to have lower tariffs. Agricultural imports that compete with Swiss products often face barriers imposed by the Swiss government and non-governmental organizations. In particular, the registration fee for U.S. bovine genetics for U.S. bulls is over 25 times higher than the fee for domestic bulls, and organic food products face private standards that limit or prevent shipment despite the organic equivalence arrangement between the United States and Switzerland. Due to this highly restrictive agricultural trade regime, Switzerland enjoys a 3-to-1 agricultural product trade advantage with the United States, equaling $850 million in 2016.

GOVERNMENT PROCUREMENT

Switzerland is a party to the WTO Agreement on Government Procurement (GPA), which covers both cantonal and federal procurement. Switzerland is the only GPA party that has not yet adopted the revised GPA, which entered into force in April 2014. As a result, U.S. Government procurement obligations with Switzerland are defined by the 1994 GPA.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Switzerland was placed on the Special 301 Watch List for the first time in 2016 due to the lack of sufficient measures to address online copyright piracy. Although Switzerland generally maintains high standards of intellectual property rights (IPR) protection and enforcement and makes important contributions to promoting such protection and enforcement internationally, U.S. copyright holders continue to express strong concerns regarding specific difficulties in Switzerland's system of online copyright protection and enforcement. A 2010 decision by the Swiss Federal Supreme Court has been implemented to essentially deprive copyright holders in Switzerland of the means to enforce their rights against online infringers. Rights holders report that Switzerland has become an increasingly popular host country for infringing websites, as indicated in the 2016 Notorious Markets Report. In December 2015, the Swiss government published an amendment to its copyright act and held public consultations through March 2016. The United States continues to encourage the Swiss government to move forward expeditiously with concrete and effective measures that address copyright piracy in an appropriate and effective manner, including through legislation, administrative action, consumer awareness, public education, and voluntary stakeholder initiatives.

BARRIERS TO DIGITAL TRADE

Privacy Shield

In January 2017, the U.S. and Swiss governments concluded the Swiss-U.S. Privacy Shield Framework to provide companies a mechanism to comply with Swiss data protection requirements when transferring personal data from Switzerland to the United States. The Swiss-U.S. Privacy Shield aligns with the EU-U.S. Privacy Shield and replaces the previous U.S.-Swiss Safe Harbor Framework. U.S. companies will be able to submit self-certifications beginning on April 12, 2017.

SERVICES BARRIERS

Insurance

Managers of foreign-owned insurance company branches must be residents of Switzerland. The majority of the board of directors of any Swiss subsidiary must also have EU- or EFTA-country citizenship.

Public monopolies exist for fire and natural damage insurance in 19 cantons and for workplace insurance in certain industries.

TAIWAN

TRADE SUMMARY

The U.S. goods trade deficit with Taiwan was $13.3 billion in 2016, a 11.8 percent decrease ($1.8 billion) over 2015. U.S. goods exports to Taiwan were $26.0 billion, up 0.7 percent ($185 million) from the previous year. Corresponding U.S. imports from Taiwan were $39.3 billion, down 3.9 percent. Taiwan was the United States' 14th largest goods export market in 2016.

U.S. exports of services to Taiwan were an estimated $12.3 billion in 2015 (latest data available) and U.S. imports were $7.7 billion. Sales of services in Taiwan by majority U.S.-owned affiliates were $7.9 billion in 2014 (latest data available), while sales of services in the United States by majority Taiwan-owned firms were $2.0 billion.

U.S. foreign direct investment (FDI) in Taiwan (stock) was $15.0 billion in 2015 (latest data available), a 1.5 percent increase from 2014. U.S. direct investment in Taiwan is led by manufacturing, wholesale trade, and depository institutions.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

In September 2016, Taiwan's Executive Yuan announced the extension of the mandatory notice-and-comment period from 14 to 60 days for proposed regulations and laws originated in executive agencies related to trade, investment, or intellectual property rights. While this positive step toward improving regulatory transparency will provide enhanced opportunities for stakeholder input, U.S. exporters continue to face a range of regulatory barriers in the Taiwan market in the form of technical barriers to trade (TBT) and restrictive sanitary and phytosanitary measures.

Biotechnology ban in school lunches

In December 2015, the Taiwan legislature passed amendments to the School Health Act that banned the use of biotechnology food ingredients and processed food with biotechnology ingredients in school meals. The United States continues to highlight the lack of scientific basis for this ban and urges its removal, including at the October 2016 Trade and Investment Framework Agreement (TIFA) Council meeting.

Technical Barriers to Trade

Food – Mandatory Biotechnology Labeling

In May 2015, Taiwan promulgated new biotechnology labeling regulations for prepackaged foods, food additives, and unpackaged foods. The regulations cover highly refined foods that are "directly" manufactured using biotechnology crops. For example, Taiwan has stated that corn syrup, made of biotechnology corn, must be labeled GE (genetically engineered), whereas a beverage made with corn syrup is exempt from GE labeling. The regulations impose a three percent *de minimis* threshold for GE labeling. These regulations cover restaurants and catering establishments. The labeling requirements for prepackaged foods and food additives were implemented in December 2015, and the requirements for unpackaged foods were implemented in three phases concluding in July, October, and December 2015, respectively. The United States continues to raise the lack of clarity with respect to implementation and potential impact on trade, including at the October 2016 TIFA Council meeting.

Cosmetics – Labeling and Other Requirements

Taiwan's cabinet, the Executive Yuan, submitted amendments to Taiwan's Statute for Control of Cosmetic Hygiene, renamed the Cosmetic Hygiene Control Act, to the Legislative Yuan on September 9, 2016. While the amendments are still pending legislative approval, the Taiwan Food and Drug Administration (TFDA) has commenced drafting implementing guidelines that are anticipated to address requirements for product information files (PIF), product notification, good manufacturing practices (GMP), product claims, advertisements, and confidential business information (CBI).

U.S. stakeholders have raised concerns that the amendments, upon implementation, would place an onerous burden on industry by requiring extensive pre-market documentation submissions, specifically in connection with PIF and GMP requirements, which might contain confidential business information (CBI), even though the amendments as approved by the Executive Yuan took U.S. concerns into account in removing requirements to list the manufacturing factory, a form of CBI, on product labels. In September 2016 consultations with U.S. stakeholders, TFDA officials clarified that implementing guidelines would not mandate overlapping application of both pre-market approval and post-market surveillance during the transition between the two systems, ameliorating prior industry concerns over a potentially duplicative compliance burden. U.S. stakeholders continue to advocate for an appropriate transition period for medicated cosmetic products not previously covered under the Statute for Control of Cosmetic Hygiene, including toothpaste, breath fresheners, and sunscreen, to comply with the amendments. U.S. stakeholders have also raised concern regarding the proportionality of punishments for advertising method infractions. There has been recent positive progress as Taiwan authorities addressed some U.S. stakeholder concerns in the latest draft approved by the Executive Yuan in September 2016, which is currently with the Legislative Yuan for review. Industry anticipates further engagement once the Act receives legislative approval and TFDA develops implementing guidelines.

U.S. exports of beauty products, makeup, hair, bath and shaving preparations, dental hygiene products, and related materials to Taiwan totaled $151 million in 2016.

Chemical Substances – ECN and NCN Programs

In July 2013, Taiwan's Legislative Yuan passed amendments to the Labor Safety and Health Law and renamed it the Occupational Safety and Health Act (the OSH Act), which became effective in July 2014. Under the OSH Act, importers and producers of chemical substances must register all chemical substances they sell or utilize in production with the Ministry of Labor (MOL).

The Legislative Yuan passed parallel amendments to the Toxic Chemical Substances Control Act (TCSCA), drafted by the Environmental Protection Agency of Taiwan (EPAT), in December 2013. The amended TCSCA covers existing and new chemical substances that are manufactured in, exported from, or imported into Taiwan. It further mandates registering existing chemical substances with EPAT under an Existing Chemical Notification (ECN) program and new chemical substances under a New Chemical Notification (NCN) program.

Pursuant to the amended TCSCA, in December 2014, Taiwan enacted the Regulation of New and Existing Chemical Substances Registration, which covers existing chemical substances listed in EPAT's ECN inventory, as well as new chemical substances not listed in the ECN inventory. Pursuant to the OSH Act, in January 2015, Taiwan enacted the Regulation of New Chemical Substances Registration, covering any new chemical substances not listed in the MOL chemical inventory. Separate ECN/NCN registrations under the TCSCA and OSH Act implementing regulations both became mandatory from their entry into force date.

In response to U.S. advocacy through the TIFA TBT working group to eliminate the burden of duplicative EPAT and OSHA listings, EPAT announced in August 2015 that it would serve as a consolidated single registration window. This step, along with the establishment of simplified registration rules, reduced regulatory complexity associated with $2.5 billion in U.S. chemical exports to Taiwan. Phase one of the TCSCA registration process concluded in March 2016. In May 2016, EPAT solicited stakeholder comments to improve the operation of the ECN and NCN registration schemes, including the single window, and reported that EPAT will deploy a list of chemicals to be subject to standard registration by the end of 2017.

The United States has also continued to raise concerns with Taiwan on the limited duration of CBI protection and seek greater flexibility in extending the CBI protection term. In the October 2016 TIFA Council meeting, U.S. and Taiwan authorities discussed strengthening CBI protection in the Third Party Representative (TPR) process. Currently, only domestic importers and manufacturers are authorized to appoint a Taiwan-based TPR to submit registration dossiers on their behalf. U.S. stakeholders continue to advocate for adoption of an Only Representative alternative to simplify the administrative process and enhance CBI protection. Both sides will continue discussions on chemical registration issues through the TIFA TBT Working Group.

Organics

Taiwan regulations do not allow product labeled as organic to test positive for any chemical residues. This policy, which does not take into account unintentional environmental contamination, has impeded U.S. organic exports to Taiwan. Organic products may be subject to an unnecessary batch-by-batch hold and test process. In addition, Taiwan requires certification from Taiwan's Council of Agriculture (COA) confirming that USDA certified organic products are organic even though Taiwan has recognized the United States as equivalent for organic products. In November 2015, the COA released draft legislation regarding the production, marketing, testing, and labeling of organic products, including imported products. The draft legislation further mandates that the organic equivalency that Taiwan grants the United States and other trading partners be retracted unless those other trading partners recognize Taiwan as equivalent for organic products within one year. However, the COA performed a thorough review of the USDA National Organic Program (NOP) standards and found the NOP to be equivalent in 2009, and therefore there is no basis for Taiwan to revoke equivalency.

Sanitary and Phytosanitary Barriers

Beef and Beef Products

Taiwan banned imports of U.S. beef and beef products following the detection of an animal with bovine spongiform encephalopathy (BSE) in the United States in 2003. In 2006, Taiwan began allowing imports of U.S. deboned beef derived from animals under 30 months of age. In October 2009, the United States and Taiwan reached an agreement on a protocol to expand market access to fully re-open the Taiwan market to all U.S. beef and beef products for human consumption. However, in January 2010, Taiwan's Legislative Yuan adopted an amendment to the Food Sanitation Act that banned imports of U.S. ground beef, internal organs and eyes, brains, spinal cord, and skull meat for at least 10 years since the last confirmed BSE or variant Creutzfeldt-Jakob disease case, contrary to Taiwan's obligations under the 2009 beef protocol. Taiwan announced additional border measures, including a special import licensing scheme for permitted offals, and imposed stricter inspection requirements for certain "sensitive" beef offals (*e.g.,* tongue) that discourage trade for 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 discourage trade. The United States will continue urging Taiwan to open its market fully to U.S. beef and

beef products based on science, World Organization for Animal Health (OIE) guidelines, the United States' negligible risk status, and the beef protocol.

Beta-agonists

In September 2012, Taiwan adopted and implemented a maximum residue limit (MRL) for ractopamine in beef muscle cuts consistent with the Codex Alimentarius Commission standard. Taiwan has not implemented an MRL for ractopamine in other beef products (*e.g.*, offals) or pork, despite notifying the WTO in 2007 of its intent to do so. Taiwan authorities state that pressure from the local pork industry and consumer groups prevent their establishment of an MRL for pork. Apart from ractopamine, Taiwan has also not established MRLs for other beta-agonist compounds or provided science to support its policy. The United States will continue urging Taiwan to implement the remaining proposed MRLs for ractopamine without delay, and accept and approve new applications for MRLs for beta-agonists based on science in a timely manner.

MRLs for Agrochemicals

Taiwan's slow process for establishing MRLs for pesticides, low number of approved MRLs, and zero tolerance policy for pesticides without established MRLs have resulted in U.S. shipments stopped at ports of entry and other restrictions on U.S. agricultural exports to Taiwan. While Taiwan authorities have made some progress in establishing MRLs, the United States will continue working with Taiwan authorities to establish MRLs based on Codex standards or other science-based MRLs, and find ways to further reduce the risk of rejected or delayed shipments in the future.

IMPORT POLICIES

Tariffs

Taiwan maintained tariff-rate quotas (TRQs) on a number of products when it became a WTO Member in January 2002, including small passenger vehicles, fish products and agriculture products. Taiwan subsequently eliminated TRQs for four fish products and eight agricultural products. Nevertheless, many TRQs remain in place, especially in the agriculture area, where TRQs still cover 16 agricultural products, including rice, peanuts, bananas, and pineapples.

Taiwan has recourse to special safeguards (SSG) for agricultural products covered by TRQs. SSGs, which are permitted under Article 5 of the WTO Agreement on Agriculture, allow Taiwan to impose additional duties when import quantities exceed SSG trigger volumes or import prices fall below SSG trigger prices. Because Taiwan previously did not import many of these products, its SSG trigger volumes are relatively low. Currently, Taiwan has recourse to a SSG for 17 agricultural product categories, including poultry meat, certain types of offal, and milk.

U.S. stakeholders continue to request that Taiwan lower or eliminate tariffs on many goods, including large motorcycles, agricultural products, and soda ash.

Rice

Upon accession to the WTO in January 2002, Taiwan committed to lifting its ban on rice imports and opened an import quota of 144,720 metric tons (MT) on a brown rice basis under a "special treatment" regime. One year later, Taiwan began implementing a TRQ system for brown rice. Taiwan's annual TRQ is divided into two portions: 35 percent or 50,652 MT for private sector imports, and 65 percent or 94,068

MT for public sector imports. The amount allocated to public sector imports is divided by both country of origin and tender type (*i.e*., the simultaneous buy-sell (SBS) scheme and normal tenders). The SBS scheme is attractive to U.S. exporters because private importers bear all costs of importing, storing, and distributing the rice. In 2003, based on input from the United States and other WTO members, Taiwan implemented the public sector import quota based on a country-specific quota (CSQ) regime, with the U.S. quota of 64,634 MT accounting for the largest share. Public sector imports are conducted by open tender, with the contract being awarded to whichever bidder offers the lowest quote below a ceiling price set by Taiwan.

In certain years Taiwan has rejected bids for U.S. rice under its CSQ regime, arguing that high U.S. prices had exceeded Taiwan's ceiling price. U.S. exporters have raised concerns that Taiwan's ceiling price mechanism, which is not made public, arbitrarily sets prices lower than the levels bid by U.S. exporters, causing the tenders to fail. As a result, Taiwan purchases of U.S. rice have fallen short of the quota in some years, including most recently in 2014. The United States will continue to underscore to Taiwan that rice tenders should reflect the market price and will continue to press for greater transparency in Taiwan's ceiling price mechanism.

Taiwan also imposed a grade requirement for the 2016 SBS quota. The United States continues to urge Taiwan to allow specifications to be decided by the buyer and seller.

Distilled Spirits

In Taiwan, *mijiu* rice wine for cooking is taxed at a much lower rate than the rate applied to alcoholic beverages not for cooking. The United States and other trading partners continue to express their strong concerns to the Taiwan authorities that steps should be taken to ensure that the domestic *mijiu* rice wine is not marketed to compete with, or to substitute for, imported alcoholic beverages not for cooking, and that imported alcoholic beverages should not be taxed at a higher rate than like domestically produced alcoholic beverages. The United States also continues to express concerns regarding Taiwan's requirement for expiration date marks on certain alcoholic beverages packaged in paper or plastic containers, in light of the applicable Codex standard, which provides that beverages containing 10 percent alcohol or more by volume shall not be required to list a date of minimum durability regardless of the material of the container.

The U.S. distilled spirits industry also continues to face challenges in the Taiwan market stemming from reportedly unclear regulations, excessive restrictions, and burdensome labeling requirements.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Intellectual property right holders report both positive developments and ongoing challenges in Taiwan's protection and enforcement of intellectual property rights. In recent years, Taiwan has bolstered trade secrets protections and enforcement, including through the passage of important legislation. At the same time, considerable challenges remain in combatting copyright and related infringement, although U.S. publishers report improved cooperation with enforcement actions, and Taiwan officials have worked with U.S. counterparts and industry stakeholders to identify best online enforcement practices, as well as to promote voluntary cooperation and coordination among key stakeholder groups. Critically, experts from the United States and Taiwan have also engaged closely on draft amendments to Taiwan's Copyright Act, which are under consideration by the Legislative Yuan. Taiwan is additionally taking important steps toward the better protection of pharmaceutical inventions, to promote that economy's innovation potential in this important area. An additional area of concern is the effectiveness of the recently reorganized Criminal Investigative Brigade. A Memorandum of Understanding on IPR Enforcement Cooperation between U.S. and Taiwan authorities entered into effect in February 2017. Despite overall signs of potential positive momentum, until planned improvements are executed, right holders will continue to face substantial challenges in each of these areas.

Exports of U.S. intellectual property were valued at $5.28 billion in 2015, of which audio-visual and related products were $217 million.

SERVICES BARRIERS

Banking Services

In 2013, Taiwan's banking regulatory body, the Financial Supervisory Commission (FSC), indicated that it would allow foreign banks in Taiwan to keep both their subsidiary and branch operations, but asked that foreign banks' branches limit their primary business scope to areas that do not overlap with those of their subsidiaries, including corporate finance and derivatives services for large companies.

In May 2014, Taiwan authorities implemented the "Regulations Governing Internal Operating Systems and Procedures for the Outsourcing of Financial Institution Operation," which lifted previous requirements that both local and foreign banks establish standalone onshore data centers.

U.S. direct investment in depository institutions totaled $3.4 billion as of 2015.

Securities Services

In December 2012, the FSC announced that it would adopt a differential management approach and provide preferential licensing procedures for foreign trust fund companies that meet FSC's localization standards. In November 2014, the FSC announced new measures to promote long-term investment in the Taiwan market by lowering the ceiling for Taiwan investors' share of an offshore fund from 70 percent to 50 percent, and to 40 percent in some cases. The lower ceilings would apply if the offshore fund does not meet certain qualifications for the preferential management scheme, such as establishing a local presence, investing an average of NT$4 billion ($127.5 million) in onshore funds, and recruiting a certain number of Taiwan staff. As of September 2016, six offshore funds met these criteria and were entitled to preferential treatment until September 2017, subject to annual review. According to FSC statistics, as of September 2016, 38 of 44 offshore funds in Taiwan did not meet the criteria.

U.S. cross-border exports of financial services were valued at $597 million in 2015. Majority-owned foreign affiliates of U.S. multinational enterprises supplied $1.42 billion in financial and insurance services in 2014.

Telecommunications

The combined direct and indirect foreign ownership limit for wireless and wire line telecommunications firms is 60 percent, with a direct investment limit of 49 percent. Separate rules exist for Chunghwa Telecom (CHT), the legacy carrier still partially owned by the Ministry of Transportation and Communications. CHT controls 97 percent of the fixed line telecommunications market in Taiwan. For CHT, the cap on direct and indirect foreign investment was raised to 55 percent in December 2007, with a direct investment limit of 49 percent.

U.S. cross-border exports of telecommunications, computer, and information services were valued at $141 million in 2015. Majority-owned foreign affiliates of U.S. multinational enterprises supplied $1.08 billion in information services in 2014.

INVESTMENT BARRIERS

Taiwan prohibits or limits foreign investment in certain sectors, including agricultural production, chemical manufacturing, bus transportation, sewage and water services, and social services such as public education, health, and child care.

Foreign ownership in power transmission and distribution, piped distribution of natural gas, and high speed railways is limited to 49 percent of the total shares issued. The foreign ownership ceiling on airline companies, airport ground handling companies, forwarders, air cargo terminals, and catering companies is 49.99 percent, with each individual foreign investor subject to an ownership limit of 25 percent.

In the October 2016 TIFA Council meeting, the United States raised the need for transparency and consistency in Taiwan's investment review process. During the previous administration, Taiwan authorities had proposed amendments to the Statute for Investment by Foreign Nationals aiming to bolster inbound investment, including by eliminating pre-investment approval requirements for investments under $1 million, but those amendments were not passed by the Legislative Yuan. A new set of proposed amendments was being drafted by the Ministry of Economic Affairs at the end of 2016 for eventual consideration by the Legislative Yuan.

In 2016, regulatory and legislative scrutiny of several investment applications contributed to ongoing concerns about the predictability of Taiwan's investment approval procedures and about the Taiwan authorities' openness to foreign investment in areas deemed sensitive, such as the media industry and transactions involving private equity. Investment applications in these sectors can be subject to lengthy review periods, redundant requests for information from the authorities, and intervention from elected officials outside of normal regulatory channels.

Majority-owned foreign affiliates of U.S. multinational enterprises supplied $7.91 billion in services exports to Taiwan in 2014.

OTHER BARRIERS

Pharmaceuticals

U.S. industry stakeholders continue to underscore the need for greater transparency and predictability in Taiwan's pricing and reimbursement policies for pharmaceuticals, including innovative pharmaceuticals, in Taiwan's health care system. In July 2015, Taiwan's Ministry of Health and Welfare announced that it would extend by an additional two years (*i.e.*, 2015 and 2016) the pilot drug expenditure target (DET) program. The 2013 introduction of the DET pilot program served as an improvement over the less predictable price volume survey system that had preceded it. However, U.S. industry continues to raise concerns over the DET pilot program's inconsistent treatment of different forms of patented pharmaceutical products in price adjustments, the calculation of annual drug expenditure targets, what actions will be taken if targets are exceeded, and the impact of orphan drug and newly introduced vaccine expenditures on the National Health Insurance Administration (NHIA) global budget. At the same time, industry stakeholders have advocated for a further extension of the DET pilot program for a third two-year pilot period, covering 2017 and 2018, to allow time for additional dialogue to address these concerns. In November 2016, NHIA proposed changes to the DET pilot program that would significantly expand the scope of recently off-patent drugs subject to the deepest price cuts; if approved, this change would go into effect immediately in April 2017, which would not allow sufficient time for comment and analysis and therefore would undermine efforts to increase predictability in the pricing system.

U.S. exports of pharmaceutical products to Taiwan were valued at $309 million in 2016.

Medical Devices

Taiwan is a major market for U.S. medical device exports, valued at $271 million in 2016. Concerns persist over Taiwan's product license approvals and pricing review mechanisms. Manufacturing facility registration (known as Quality Systems Documentation, or QSD) is mandatory in Taiwan, regardless of whether a medical device is already on the market or new to Taiwan's market; and re-registration is required every three years. Although TFDA makes available an expedited application process for regulatory review of medical devices, U.S. industry has continued to express concern with documentary requirements that limit the number of manufacturers eligible to benefit from the program. TFDA accepts copies of U.S. FDA medical device Establishment Inspection Reports (EIR) of U.S. manufacturers that export to Taiwan in lieu of QSD for the simplified mode of review. However, TFDA requires an EIR issued within the last three years and an ISO 13485 certificate to qualify for simplified review. Moreover, the simplified mode in product registration is only available to applicants who submit a Certificate of Free Sale/Certificate to Foreign Government from the United States and the EU, excluding manufacturers that choose only to seek approval in one of the markets.

Self-pay and balance-billing are two mechanisms that have been introduced by Taiwan authorities to allow Taiwan patients to have the option of choosing medical devices that are not paid in-full by the authorities. At present, NHIA does not provide reimbursement for implanted devices. Implants, in addition to a range of other commonly used devices not approved for reimbursement, must instead be issued a self-pay code, but this option is currently not available to a range of other non-implantable devices. U.S. stakeholders report that hospitals that ask patients to self-pay for devices without a code are subject to administrative penalties by NHIA. To expedite code issuance, in April 2014, NHIA began assigning temporary self-payment codes for urgent or high-demand medical devices within two months of application. Temporary self-payment codes for new medical devices cannot be issued until NHIA completes review of new therapeutic procedures in which the device is used, and industry has suggested that issuance of temporary self-pay codes for new procedures are needed to accelerate patient access to new devices.

The balance billing mechanism, introduced in January 2013, allows partial patient self-pay for high-end devices or new technologies. NHIA has the authority to introduce price caps that apply ceilings on what patients pay on new balance billing items. Transparency and due process mechanisms are critical in this process, and U.S. stakeholders expressed concern that the current balance billing system does not effectively distinguish among devices of differing effectiveness. In a positive development in 2014, NHIA established a website used to help consumers compare the cost of devices at different hospitals as a way to address a consumer concern without resorting to setting a balance-billing cap. In a further positive development in 2016, the NHIA increased the frequency of balance billing application reviews from semi-annually to quarterly. U.S. stakeholders continue to urge NHIA to lift balance-billing caps on products with the same functional classifications, and to adopt a more flexible approach in allowing hospitals to set charges.

Following up on 2015 TIFA commitments, U.S. and Taiwan authorities in April 2016 held a dialogue to explore options to improve the time-to-market of innovative medical devices. A follow-on dialogue is to be held in 2017.

THAILAND

TRADE SUMMARY

The U.S. goods trade deficit with Thailand was $18.9 billion in 2016, a 8.7 percent increase ($1.5 billion) over 2015. U.S. goods exports to Thailand were $10.6 billion, down 5.9 percent ($658 million) from the previous year. Corresponding U.S. imports from Thailand were $29.5 billion, up 3.0 percent. Thailand was the United States' 25th largest goods export market in 2016.

U.S. exports of services to Thailand were an estimated $2.7 billion in 2015 (latest data available) and U.S. imports were $2.9 billion. Sales of services in Thailand by majority U.S.-owned affiliates were $5.6 billion in 2014 (latest data available), while sales of services in the United States by majority Thailand-owned firms were $138 million.

U.S. foreign direct investment in Thailand (stock) was $11.3 billion in 2015 (latest data available), a 3.2 percent decrease from 2014. U.S. direct investment in Thailand is led by manufacturing, wholesale trade, and depository institutions.

The United States and Thailand meet regularly under the bilateral Trade and Investment Framework Agreement (TIFA) to address issues and ways to further strengthen our economic relations. Thailand has preferential trade agreements with trading partners such as China, Australia, and New Zealand, which has eroded the competitiveness of U.S. products in the Thai market. Thailand has eliminated tariffs on approximately 99 percent of all goods from ASEAN trading partners.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Alcoholic Beverage Labeling Requirements

Thailand brought into force a new regulation entitled “The Rules, Procedure and Condition for Labels of Alcoholic Beverages” in October 2015. The United States and other WTO Members have urged Thailand to notify the measure to the WTO. Even though Thailand’s Office of Alcohol Control issued a guidance document on the regulation in September 2015, many of Thailand’s trading partners and alcohol importers remain concerned about the measure’s lack of clarity. In particular, the United States seeks clarity on enforcement procedures and timing and on the kinds of terms, claims, and statements that businesses can use on labels for alcoholic beverages. The United States will continue to raise our concerns on this regulation at the WTO and bilaterally, including in meetings under our TIFA.

Labeling Restrictions on Foods for Infants and Young Children (0-36 months of age)

In December 2015, following repeated requests from the United States, Thailand notified to the WTO its Draft Marketing Control of Food for Infant and Young Child and Related Products (“Milk Code”). This measure imposes restrictions on the use of trademarked brand names, packaging, symbols, and educational, promotional, and marketing activities for modified milk for infants, follow-up formula for infants and young children, and supplemental foods for infants. The restrictions cover infants and children up to 36 months of age and establish considerable penalties for violations of the Milk Code. In November 2016, Thailand notified to the WTO a revised draft measure that includes a penalty of jail time for advertising violations. Thailand forwarded the revised draft measure to the National Legislative Assembly for its consideration in the fall of 2016. The Assembly is still reviewing the revised measure, including the

labeling and health claim prohibitions. The United States is seeking to ensure that Thailand's final measure is developed transparently and takes into account appropriate scientific and technical information in order to avoid any unnecessary restrictions on trade.

Sanitary and Phytosanitary Barriers

Animal-Derived Products

Although the World Animal Health Organization (OIE) recognized the United States as a negligible bovine spongiform encephalopathy (BSE) risk country in 2013, Thailand has not lifted its long-standing ban on U.S. feed or feed ingredients that contain or are derived from ruminant animals. Thailand also requires inspection and approval of U.S. manufacturing facilities that produce certain animal-derived products as a condition of import. The United States has pressed Thailand to address these issues and will continue to do so.

Beef and Beef Products

Since 2003, Thailand has restricted the importation of U.S. beef and beef products due to concerns over BSE. Currently, Thailand only allows the importation of boneless U.S. beef and beef products from cattle less than 30 months of age. In July 2013, subsequent to the OIE classifying the United States as negligible risk, Thailand sent a team from the Department of Livestock Development (DLD) to perform an audit of the U.S. beef production system as a step toward fully reopening the market to U.S. beef. Thailand approved the audit findings in April 2014. That same month, Thailand's Minister of Public Health signed a revised BSE rule allowing all beef products (including bone-in beef and offal products) originating from negligible BSE risk countries (including the United States) to be imported. USDA is currently working with the DLD on the export certificate for uncooked beef and beef products. For beef offal products, DLD is requiring a separate systems audit prior to lifting the ban, which the United States is working to schedule in 2017.

Ractopamine

In 2012, after the Codex Alimentarius Commission established maximum residue levels (MRLs) for ractopamine in cattle and pig tissues, Thailand indicated it would lift its ban on imports of pork from countries that allow ractopamine use, such as the United States. However, it has not yet established MRLs for ractopamine in pork, which effectively prevents the importation of U.S. pork products. The Thai Food and Drug Administration (FDA) has reportedly finished collecting the field data for its risk assessment of ractopamine, but has not yet finalized their results. The United States raised this issue at the TIFA meeting in 2016, and will continue to press Thailand to lift the ractopamine ban.

Poultry

Thailand currently bans U.S. live poultry and poultry meat due to the sporadic presence of highly pathogenic avian influenza (HPAI) in the United States, notwithstanding OIE guidelines. The United States has urged Thailand to adopt an OIE-consistent "regionalization" policy and to accept poultry products from areas of the United States not affected by HPAI. In 2016, U.S. poultry and poultry product exports fell 53 percent to $1.2 million from the previous year. In September 2016, DLD conducted an audit in the United States as a precursor to re-opening the market for day-old chicks and hatching eggs. The outcome of this audit is still under review. The United is working with DLD to schedule a similar audit for U.S. turkey meat as soon as possible. U.S. chicken and chicken products are also subject to a non-transparent import permitting process, which has largely kept these products out of the Thai market.

Import Fees

Thailand imposes food safety inspection fees in the form of import permit fees on all shipments of uncooked meat. The current level of fees were set in October 2016 at 7 baht/kilogram ($200/metric ton) for imported uncooked meat for food or feed and at 3 baht/kg ($86/MT) for imported uncooked meat for purposes other than food or feed. These fees are significantly higher than the ceiling rates for the equivalent domestic slaughtering fees, which were most recently set by the Control of Animal Slaughtering for Sale Act in September 2016. In November 2014, the Thai National Legislative Assembly also passed a new Animal Epidemics Act that contains a provision that gives DLD discretionary authority for up to a five-fold increase in these import fees. The United States will continue to press Thailand to address our concerns about the discriminatory nature of these fees.

IMPORT POLICIES

Tariffs

High tariffs in many sectors continue to pose challenges for U.S. access to the Thai market. While Thailand's average applied MFN tariff rate was 11.0 percent *ad valorem* in 2015 (latest available data), *ad valorem* tariffs can be as high as 724 percent, and the *ad valorem* equivalent of some specific tariffs (charged mostly on agricultural products) is even higher. Thailand has bound all of its tariffs on agricultural products in its WTO commitments, but only approximately 71.3 percent of its tariff lines on industrial products. The highest *ad valorem* tariff rates apply to imports competing with locally-produced goods, including automobiles and automotive parts, motorcycles, beef, pork, poultry, tea, tobacco, flowers, wine, beer and spirits, and textiles and apparel. About half of Thailand's MFN tariff schedule includes duties of less than 5 percent, and almost 20 percent of tariff lines are duty free, including for products such as certain chemicals, electronics, industrial machinery, and paper.

Thailand has bound its agricultural tariffs at an average of 38.5 percent *ad valorem*. Its average applied MFN tariff on agricultural products was 30.7 percent in 2015 (latest available data). Applied MFN duties on imported processed food products range from about 30 percent to 50 percent. Tariffs on meats, fresh fruits and vegetables, fresh cheese, and pulses (*e.g.*, dry peas, lentils, and chickpeas) are similarly high. For corn, the in-quota tariff is 20 percent, and the out-of-quota tariff is 73 percent. The type of potato used to produce frozen French fries, for example, is not produced in Thailand, yet imports of these potatoes face a 30-percent tariff. Tariffs on apples are 10 percent, while duties on pears, cherries, citrus, and table grapes range from 30 percent to 40 percent. In addition, preferential tariff rates provided to Thailand's free trade agreement partners; including China, Australia, and New Zealand; have negatively impacted the competitiveness of U.S. agricultural products in recent years.

Thailand's average bound tariff for non-agricultural products is 25.5 percent. Thailand's applied tariffs on industrial goods tend to be much lower than its bindings, averaging 7.7 percent in 2015 (latest available data). However, Thailand applies high tariffs in some sectors. For example, Thailand applies import tariffs of 80 percent on motor vehicles, 60 percent on motorcycles and certain clothing products, 54 to 60 percent on distilled spirits, and 30 percent on certain articles of plastic and restaurant equipment. Thailand also charges tariffs of 10 to 30 percent on certain audiovisual products and reception apparatus, while applied MFN duties on consumer electronics typically range from zero percent to 30 percent. Thailand applies a 10-percent tariff on most pharmaceutical products, including almost all products on the World Health Organization's list of essential medicines, with the exception of some vaccines, anti-malarials, and anti-retrovirals, which are exempt.

Nontariff Barriers

Import licenses are required for the import of many raw materials, petroleum, industrial machinery, textiles, pharmaceuticals, and agricultural items. Imports of certain items not requiring licenses in some cases face extra fees and certificate of origin requirements. Additionally, a number of products are subject to import controls under other laws. Importation of processed foods, medical devices, pharmaceuticals, vitamins, or cosmetics requires licensing from the Food and Drug Administration under the Ministry of Public Health. Importation of tungsten oxide, tin ores, or metallic tin in quantities exceeding two kilograms requires permission from the Department of Mineral Resources under Ministry of Industry. Importation of arms, ammunition, or explosive devices requires licensing from the Ministry of Interior. Importation of antiques or objects of art, whether registered or not, requires permission from the Fine Arts Department under the Ministry of Education.

Although Thailand has been relatively open to imports of feed ingredients; including corn, soybeans, and soybean meal; U.S. stakeholders have raised concerns about what they consider to be excessively burdensome requirements for feed products containing certain dairy ingredients. Thailand imposes domestic purchase requirements on importers of several products subject to tariff-rate quotas, including soybeans and soybean meal. Imports of feed wheat are also subject to requirements for the domestic purchase of locally produced corn at above market prices even though feed wheat is not subject to a tariff-rate quota.

Price Controls

The Thai government, through the Central Commission on Price of Goods and Services, has the legal authority to control prices or set *de facto* price ceilings for selected goods and services, including staple agricultural products (such as sugar, pork, cooking oil, condensed milk, and wheat flour), liquefied petroleum gas, medicines, sound recordings, and student uniforms. The controlled list is reviewed at least annually, but these price control review mechanisms are nontransparent. In practice, Thailand's government influences prices in the local market through its control of state monopoly suppliers of products and services, such as in the petroleum, and aviation sectors.

Excise Taxes

Excise taxes are higher than the regional average on some items, such as tobacco, unleaded gasoline, beer, wine, and distilled spirits. Thailand is currently reviewing its excise tax structure and is considering changes that could further increase the excise tax burden on imported products.

Excise taxes on automobiles in Thailand are based on carbon dioxide emissions, and range from 3 percent to 50 percent, as of January 1, 2016.

Customs Barriers

The Customs Department has taken some steps in recent years to increase efficiency and transparency in certain customs areas. In 2015, Customs issued a notification to provide for advance rulings on tariff classification and customs valuation. Customs also continues to develop legislation that would streamline the clearance process, including developing a website and mobile app with updated tariff schedules. Thailand also eliminated its requirement of a certificate of origin for information technology imports for products covered under the WTO Information Technology Agreement.

Still, the United States continues to have serious concerns about the lack of transparency in Thailand's customs regime and the exercise of significant discretionary authority by Customs Department officials.

The Customs Department Director General has significant authority and discretion to increase the customs value of imports for reasons that go beyond practices agreed under the WTO Agreement on Customs Valuation. The U.S. Government and stakeholders also have expressed concern about Thailand's inconsistent application of the transaction valuation methodology and has reported the repeated use of arbitrary or fictitious values by the Customs Department.

The U.S. Government and U.S. stakeholders also continue to urge the Customs Department to implement overdue reforms, including publishing proposals for changes in customs laws and regulations, and providing public notice and allowing sufficient time for comments on these proposals. In addition, U.S. companies continue to report serious concerns about corruption and the cost, uncertainty, and lack of transparency associated with the penalty/reward system. This system, in which financial incentives are provided to customs officials to initiate investigations or enforcement actions, creates conflicts of interest for customs officials and encourages customs investigations for personal financial gain. The Thai government is currently advancing legislation that could lower the rewards for customs officials and allow for reduced penalties for administrative errors and other unintentional violations. The United States will continue to press Thailand in bilateral and multilateral fora to fully address our concerns on this issue.

GOVERNMENT PROCUREMENT

The Prime Minister's Procurement Regulations, which govern public sector procurement, came into effect in 1992 and have since been revised several times. These regulations established a preference program in which products certified by the Ministry of Industry as supplied from domestic suppliers have an automatic 7 percent advantage over foreign bidders in evaluations in the initial bid round. Domestic suppliers in the preference program include subsidiaries of U.S. firms registered as Thai companies.

If corruption is suspected during the bidding process, Thai government agencies and State-owned enterprises reserve the right to accept or reject any or all bids at any time. The Thai government also reserves the right to modify the technical requirements at any time. This gives considerable leeway for Thai government agencies and state-owned enterprises to manage procurements, while denying bidders recourse to challenge procedures. Foreign businesses have frequently alleged that the Thai government makes changes to technical requirements for this purpose during the course of procurements. Despite Thailand's commitment to transparency in government procurement, U.S. companies and the Thai media report allegations of irregularities.

In December 2016, Thailand adopted its first national government procurement law, based on the UNCITRAL model laws and the WTO Agreement on Government Procurement. The law will apply to all government agencies, local authorities, and state-owned enterprises, and aims to improve transparency. The law removes privileges previously provided to the Thai Government Pharmaceutical Organization and directs agencies to use a "value for money" approach to procurements. Thailand is now in the process of drafting implementing language, which will provide further specifics.

SUBSIDIES

In response to questions posed by the United States, the Thai government provided information regarding various subsidy programs operating under the *Investment Promotion Act (1977) (Amended 1991, 2001)* (IPA), which are administered by the Board of Investments (BOI). Under the IPA, the BOI exercises discretion in providing various incentives for, *inter alia*, passenger cars and large-size motorcycles, energy conservation, alternative energy and eco-friendly products, high-technology businesses, and new product manufacturing. These incentives include reductions and exemptions from income tax and import duties, double deductions for transportation, electricity, and water costs, and deductions for infrastructure installation and construction costs in addition to normal depreciation. Additionally, pursuant to the

Industrial Estate Authority Act (No. 4), B.E. 2550 (2007), the Industrial Estate Authority of Thailand operates an incentive program called the Skill, Technology and Innovation Scheme, which provides additional income tax exemptions to promote technological innovation. Also in response to questions from the United States, the Thai government provided information regarding certain programs not covered in its subsidy notification. These include 200-percent tax deductions for business expenses related to research and development, job training, and special measures/equipment for disabled persons. In 2013, the Thai government announced the second phase of its Eco-Car Scheme, which provides tax and duty incentives for investments in eco-friendly vehicle production and importation.

Following Thailand's last WTO Trade Policy Review in October 2015, the Thai government provided additional information in response to Members' questions regarding its Special Economic Zones (SEZ), of which there are 10 near the border with neighboring countries. Incentive programs available inside these SEZs include corporate income tax exemptions for up to eight years and 50-percent tax reductions for the next five years; double deductions for transportation and utility costs; 25-percent deductions on investment costs for installation or construction of facilities; and import duty exemption on machinery and raw materials. As with the IPA programs, the BOI administers these SEZ incentive programs.

In early 2014, the Thai government discontinued its controversial rice pledging program. This program resulted in large financial outlays by the government and up to 18 million metric tons of government-owned rice stocks. Since the coup in May 2014, the interim government has acted to export rice through government-to-government contracts and private auctions at prices far below acquisition costs, further adding to downward price pressure on international markets. In late 2014 and 2015, the Thai government announced a similar four-month pledging program, at lower guaranteed prices than in previous years, and limited to only fragrant and glutinous rice paddies. The Thai government received approximately one million metric tons of combined fragrant and glutinous rice paddies in 2014 and 2015 through this program. In late 2016, a new pledging program for all varieties was announced as a means of halting the decline of domestic rice prices. The program set a target of three million metric tons of paddy rice. Under the 2016 pledging program, the Thai government provided subsidies on the storage costs of 1,500 baht per metric ton (42 USD/MT) and direct payment of 2,000 baht per metric ton (57 USD/MT) for certain harvest and postharvest handling costs (a maximum of 12,000 baht ($340) per farm household). The Bank for Agriculture and Agricultural Cooperatives, which managed the pledging program, received interest rate compensation from the Thai government.

The Thai government is also in the process of reforming fuel subsidies by eliminating large cross-subsidies between energy sources and reinstating excise taxes and Oil Fund levies on diesel and liquid petroleum gas (LPG). LPG prices and electricity up to 50 watt-hours/month have remained fixed for low-income households.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Thailand remained on the Priority Watch List in the 2016 Special 301 Report. The United States recognizes Thailand's continuing efforts to strengthen IPR protection and enforcement in 2016, including statements by the Prime Minister aimed at increasing public awareness and greater interagency coordination on IPR enforcement actions.

However, many concerns with IPR protection and enforcement remain. IPR enforcement remains inconsistent and uncoordinated. Online and mobile piracy reportedly have increased significantly, and physical goods piracy and counterfeiting on a commercial scale remains widespread, as noted in the U.S. 2016 Out-of-Cycle Review of Notorious Markets. The United States continues to urge Thailand to take enforcement action against widespread piracy and counterfeiting in the country, and to impose sentences that would deter potential offenders.

Other U.S. concerns include a backlog in pending patent applications, widespread use of unlicensed software in both the public and private sectors, extensive cable and satellite signal theft, a lack of adequate protection against the circumvention of technological protection measures, and a lack of clarity in the operation of notice-and-takedown procedures with respect to infringing content online. The United States continues to encourage Thailand to provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. In addition, the United States continues to urge Thailand to develop new laws and regulations, including on pharmaceutical-related issues, through a more transparent process that takes into account the views of rights holders and incorporates effective notice and comment processes.

SERVICES BARRIERS

Audiovisual Trade Barriers

The Motion Picture and Video Act gives Thailand's Film Board the authority to establish ratios and quotas limiting the importation of foreign films. Foreign investment in terrestrial broadcast networks is limited to 25 percent of registered capital and voting rights.

Telecommunications Services

Thailand has taken steps to reform its telecommunications regulatory regime, but significant obstacles to foreign investment remain. Thai law now allows foreign equity up to 49 percent in basic telecommunications service firms and higher levels for providers of value-added services, despite limiting foreign equity to only 20 percent in its provisional 1997 WTO commitments,. However, Thailand has not revised its WTO schedule, as it committed to do, to reflect these higher foreign-equity limits and the adoption of pro-competitive regulatory measures (*e.g.*, mandatory interconnection) that it has enacted. Thailand also maintains regulations to restrict "foreign dominance" in telecommunications, but criteria by which foreign dominance is determined remain unclear.

The United States also has concerns about other issues in the telecommunications sector relating to the two State-owned telecommunications enterprises: TOT and CAT Telecom. These include the failure to resolve the status of assets developed under Build-Operate-Transfer contracts with TOT and CAT Telecom, which is impeding the development of a competitive market; the preferences accorded to TOT and CAT with respect to spectrum; and the failure to enforce the interconnection obligations of these two operators with respect to competitors. The United States has expressed concerns to Thailand about these practices and will continue to press Thailand to address these concerns.

Legal Services

U.S. investors may own law firms in Thailand only if they enter into commercial association with local attorneys or local law firms, and U.S. citizens and other foreign nationals (with the exception of "grandfathered" non-citizens) may not provide legal services. In certain circumstances, foreign attorneys can obtain a limited license entitling them to offer advisory services in foreign and international law.

Financial Services

Thailand limits the number of licenses for foreign bank branches and subsidiaries. Foreign banks can gain entry to the Thai banking system by obtaining new licenses, which Thailand opens for application periodically, and by acquiring shares of existing domestic banks. The latest round of applications for new

licenses was in 2013. Consistent with the Financial Sector Master Plan Phase 2, five new foreign full bank licenses to operate as a subsidiary were made available for the purpose of encouraging international trade and investment. In 2014, out of the five licenses allowed by the quota, Thailand granted new subsidiary licenses to two foreign banks. Foreign ownership 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 deemed necessary to support the stability of a financial institution or the overall financial system during an economic crisis. Changes in major shareholders must also be for prudential reasons with emphasis on good governance and risk management under the Basel Core Principles. Currently, Thailand may grant new foreign banking licenses on a reciprocal basis and has started with ASEAN banks under the ASEAN Banking Integration Framework.

Foreign bank branches and subsidiaries can perform all types of financial activities under the concept of "universal banking," similar to local banks. A subsidiary may open up to 20 branches and 20 off-premise ATMs across Thailand, and foreign bank branches may open up to three branches or off-premise ATMs in Thailand without having to meet additional capital requirements. Representative offices have the authority to conduct liaison and research services.

The Thai Securities and Exchange Commission grants licenses to new domestic and foreign securities companies that meet its requirements. It allows various ownership structures, including 100-percent Thai or foreign ownership, strategic foreign partnerships, joint ventures between Thai and foreign companies, and bank affiliate status.

In 2015, the Thai government relaxed certain restrictions on foreign shareholders and directors in the insurance sector. Although shares held by foreign shareholders are still limited to less than 25 percent of the total number of voting shares that have been sold, and foreign directors may hold no more than 25 percent of the board of director seats, the Insurance Commission may now allow a company to increase the number of shares held by foreign shareholders up to 49 percent and foreign directors up to one half of the board if the company meets certain criteria.

Accounting Services

Thailand's Foreign Business Act reserves accounting services for Thai nationals, unless specific, onerous conditions are met. As a result, foreigners cannot serve as professional accountants in Thailand. In addition, foreign nationals cannot be licensed as certified public accountants unless they are citizens of a country with a reciprocity agreement, pass the required examination in Thai, and legally reside in Thailand. Foreign accountants may serve as business consultants. Regarding business operations, foreigners are only permitted to own up to 49 percent of an accounting professional service and only through a limited liability company registered in Thailand.

Postal and Express Delivery Services

Private express delivery companies must pay postal "fines" and penalties for delivery of documents in Thailand. These fines amount to an average of 37 baht per item (slightly more than $1) for shipments that weigh up to two kilograms. Thailand also imposes a 49-percent limit on foreign ownership in land transport.

INVESTMENT BARRIERS

The Foreign Business Act (FBA) lays out the framework governing foreign investment in Thailand. Under the FBA, a foreigner (defined as a person who is not a Thai national, a company that is not registered in

Thailand, or a company in which foreign ownership accounts for 50 percent or more of total shares) needs to obtain an alien business license from the relevant ministry before commencing business in a sector restricted by the FBA. Although the FBA prohibits majority foreign ownership in most sectors, U.S. investors registered under the United States–Thailand Treaty of Amity and Economic Relations (AER) are exempt. However, U.S. investment is prohibited under the AER in the following areas: "communications, transportation, fiduciary functions, banking involving depository functions, the exploitation of land or other natural resources, domestic trade in indigenous agricultural products, and the practice of professions, or calling reserved for Thai nationals." Thailand reserves the following occupations for Thai nationals: tour guides, clerks and secretaries, attorneys, accountants, civil engineers, architects, farmers, construction workers, drivers and vehicle operators, jewelry makers, hairdressers, weavers, a variety of handicraft makers, and tailors.

BARRIERS TO DIGITAL TRADE

Technology

Cybersecurity

The Ministry of Digital Economy and Society is currently reviewing the draft National Cybersecurity Bill, which is designed to strengthen the cybersecurity capabilities of government agencies and to provide appropriate breach notification procedures. The draft bill raises concerns, however, because it would give the Office of the National Cybersecurity Committee (the Committee) broad powers to access confidential and sensitive information without sufficient protections to circumscribe such access or to appeal decisions of the Committee.

Internet Services

Liability/Safe Harbor

The Computer Crime Act of 2007 prohibits programs, texts and other computer data that are considered by the government to be false, criminal, damaging to national security, liable to cause panic amongst the public, or consider vulgar and would be accessible to the public. The Act also provides that any service provider who aids or consents to these offenses shall be liable for the same punishment as the individual user. The Act was amended in December 2016 and now exempts Internet service providers from liability if they remove content from computers that violates the Act. Nevertheless, it still contains onerous provisions under which service providers may "be found liable for the speech of their users without a prior court order." The United States will continue to press Thailand to make changes to this act, in particular the adoption of clear safe harbor measures for Internet service providers.

OTHER BARRIERS

U.S. stakeholders have expressed concern that processes used by the Thai government for revising laws and regulations affecting trade and investment lack consistency or transparency.

In the pharmaceutical sector, the Government Pharmaceutical Organization, a State-owned entity, is not subject to Thai FDA licensing requirements on the production, sale, and importation of pharmaceutical products. U.S. stakeholders have expressed concerns about the lack of transparency and due process in the administration of the Thai government's National List of Essential Drugs for procurement of pharmaceutical products dispensed at government hospitals, planned changes to the Drug Act that would affect registration of patented medicines, the uncertain business climate following Thai Cabinet-level

resolutions that cite compulsory licensing as an acceptable cost reduction method for health care, and other issues in the pharmaceutical sector.

Corruption

Recent legislation and Thailand's 2007 Constitution seek to address corruption, but it continues to be a serious concern in Thailand. The National Anti-Corruption Commission is the primary constitutional body vested with powers and duties to counter corruption in the public sector. However, several different agencies have jurisdiction over corruption issues and their actions are not always complementary. Investigative and prosecutorial capacity is limited, and Thai laws focus predominantly on abuse of office rather than financial or asset-related malfeasance. Anticorruption mechanisms continue to be employed unevenly, and the lack of transparency in many government administrative procedures serve to facilitate corruption.

In October 2016, Thailand introduced a new anti-corruption court to expand the reach of prosecution of corruption offenses to the private sector and to resolve corruption cases more quickly. The National Legislative Assembly, Thailand's unicameral legislature, unanimously approved the legislation creating the Criminal Court for Corruption and Malfeasance Cases on June 16, 2016. The court was formed by upgrading a division of Thailand's Criminal Court that had already been handling corruption and malfeasance cases to a separate court, with all corruption cases falling under its purview.

TUNISIA

TRADE SUMMARY

The U.S. goods trade surplus with Tunisia was $133 million in 2016, a 136.3 percent increase ($77 million) over 2015. U.S. goods exports to Tunisia were $524 million, down 13.0 percent ($78 million) from the previous year. Corresponding U.S. imports from Tunisia were $392 million, down 28.3 percent. Tunisia was the United States' 93rd largest goods export market in 2016.

U.S. foreign direct investment in Tunisia (stock) was $311 million in 2015 (latest data available), a 13.6 percent decrease from 2014.

IMPORT POLICIES

Tariffs

Tunisia introduced a two-tier tariff schedule on January 1, 2016, applying tariffs of zero percent for raw materials, energy, intermediate goods, and equipment, and 20 percent for manufactured products. Agricultural goods are subject to a zero percent or 20 percent tariff, depending on the product. This tariff schedule appears to reflect the country's desire to align its system closely to that of its main trading partner, the European Union (EU), with which it has had an association agreement covering the trade of goods since 1998. In recent years, Tunisia has significantly reduced its applied tariffs: the average rate fell from about 45 percent in 2006 to 14 percent in 2016. Tunisia also grants tariff preferences for imported goods from European Free Trade Association members, Turkey, and several Arab countries in the Maghreb and Mediterranean region. Although Tunisia has trade agreements with approximately 60 countries, only one new agreement has been signed in the last decade – with Iran in 2008. Tunisia began negotiations with the EU in April 2016 on a Deep and Comprehensive Free Trade Agreement that would go beyond the current association agreement to liberalize trade in agriculture and services and would include disciplines on labor and the environment.

Customs Procedures

Customs processing remains cumbersome, labor intensive, and for the most part, based on paper documents. Inconsistent application of customs processes within the Tunisian Customs Administration can be a significant obstacle for importers, despite the use of the *Tunisie Trade Net* electronic single window and a "single form" (*liasse unique*) for sending and receiving customs declarations, foreign trade attestations, and technical import control documents. Risk assessment is still done manually by sifting through large volumes of paper documents. However, the average time that goods spend in customs processing dropped from 15-20 days in 2015 to 3-4 days in 2016. Tunisia began the process of ratifying the WTO Trade Facilitation Agreement in 2016.

Nontariff Barriers

Tunisia maintains a number of non-tariff barriers. Approximately 3 percent of imported goods (including agricultural products, automobiles, and textiles) require an import license issued by the Ministry of Trade. There are also some quotas, especially for imported consumer goods that compete with local products. Importers have to request an allotment from the government to receive an import license. The licenses are typically valid for 12 months after issuance by the Ministry of Trade. The Tunisian Central Pharmacy maintains a monopoly on pharmaceutical imports into the country. Official government policy forbids

discrimination against foreign suppliers, but the Central Pharmacy does discriminate based on price, which tends to favor locally-produced generics.

GOVERNMENT PROCUREMENT

A 2014 decree revising the regulatory framework for government procurement reduced the timeline for the award of contracts and provided that bids be evaluated on the basis of "the lowest bid that meets the specifications." However, the decree excludes procurement by the Ministry of Defense and the three State banks and gives preference to Tunisian companies and Tunisian-origin products, provided that the Tunisian company bids do not exceed those of foreign competitors by more than ten percent and the Tunisia-origin products are judged to be of equal quality.

Tunisia is not a signatory to the WTO Government Procurement Agreement, but it has committed to become an observer.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The most commonly reported trade-related IPR infringement is the import of counterfeit goods, mainly Chinese-made counterfeits sold in Libya that make their way through overland routes into Tunisia and Algeria. Customs officials have the authority to inspect and seize counterfeit trademark and pirated copyright goods, but often lack the ability to identify such goods. Cross-border smuggling of counterfeit and pirated items remains a problem.

SERVICES BARRIERS

Telecommunications

Most Internet Service Providers can access the Internet only via the government-run Tunisian Internet Agency (ATI), whose service does not always meet industry standards. Limited exceptions are permitted. Two telecommunication operators were granted exceptions in 2013 and are not required to go through ATI for an international broadband connection.

INVESTMENT BARRIERS

Entering the Tunisian market remains difficult for foreign investors. Foreign investment is limited to 49 percent in most sectors, and the process of establishing an investment is particularly challenging in areas that are not government priorities (*i.e.,* where there is no public tender). Every joint venture with a foreign investor must be approved by the Tunisian government under the investment code, which assesses the potential benefit to the Tunisian economy. Investors 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. Foreign investors are largely prohibited from engaging in the wholesale and retail distribution sector.

The family-owned structure of many Tunisian businesses makes it difficult for U.S. companies to establish joint ventures. Local partners are resistant to ceding management control to foreign investors, and foreign firms often find it difficult to change local distributors or agents after entering into contractual relationships. In addition, provisions in Tunisian commercial legislation designed to protect minority shareholder interests confer disproportionate influence on Tunisian minority partners.

Following through on a promised reform, Tunisia adopted a new investment law in September 2016, which will take effect on April 1, 2017. The law is intended to facilitate foreign investment in Tunisia by reducing

the need for government approvals, allowing higher percentages of foreign employees, and increasing the number of sectors that are open for foreign investment.

BARRIERS TO DIGITAL TRADE

Tunisia imposes burdensome restrictions on foreign exchange. One result of these restrictions is that Tunisian credit cards and debit cards cannot be used for international electronic commerce transactions. The Tunisian government is working with the Central Bank to reduce current regulations on PayPal and similar online payments platforms, thereby allowing secure transactions. The aim is to allow Tunisian firms to begin making both payments and withdrawals in 2017.

OTHER BARRIERS

Although the government of Tunisia continues to make efforts to expand opportunities for businesses, U.S. companies report that cumbersome, time-consuming government processes and inconsistent regulatory practices make it difficult to enter and operate in the Tunisian market.

Due to foreign exchange restrictions, Tunisian purchasers are prohibited from using foreign currency to pay for imported goods until Tunisian customs confirms that the goods are actually imported. This remains a source of confusion and difficulty for some U.S. companies.

TURKEY

TRADE SUMMARY

The U.S. goods trade surplus with Turkey was $1.3 billion in 2016, a 18.9 percent decrease ($307 million) over 2015. U.S. goods exports to Turkey were $9.4 billion, down 1.3 percent ($123 million) from the previous year. Corresponding U.S. imports from Turkey were $8.1 billion, up 2.3 percent. Turkey was the United States' 29th largest goods export market in 2016.

U.S. exports of services to Turkey were an estimated $3.1 billion in 2015 (latest data available) and U.S. imports were $2.1 billion. Sales of services in Turkey by majority U.S.-owned affiliates were $5.3 billion in 2014 (latest data available), while sales of services in the United States by majority Turkey-owned firms were $74 million.

U.S. foreign direct investment (FDI) in Turkey (stock) was $3.7 billion in 2015 (latest data available), a 1.1 percent decrease from 2014. U.S. direct investment in Turkey is led by manufacturing, wholesale trade, and professional, scientific, and technical services.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Pharmaceuticals – Good Manufacturing Practices Certification

In late 2009, Turkey's Ministry of Health (MOH) issued a Regulation to Amend the Regulation on the Pricing of Medicinal Products for Human Use, which took effect on March 1, 2010. The regulation requires foreign pharmaceutical producers to secure a good manufacturing practices (GMP) certificate based on a manufacturing plant inspection by 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. The requirement in the 2010 regulation that Turkish authorities themselves perform the inspections has led to severe delays in many pharmaceutical products receiving GMP certifications because the MOH's inspection backlog has grown significantly. U.S. manufacturers report that these delays have effectively closed the Turkish market to the registration of certain new innovative drugs because delays in GMP inspections have prolonged MOH's already lengthy processes for granting final approvals to place these products on the Turkish market. In response to repeated U.S. Government requests (including at senior levels) to speed up overall market access approval time frames, the MOH authorized parallel submission (versus sequential submission) of GMP inspection and marketing approval applications for "Priority One" pharmaceuticals imported from U.S. and EU firms. While a positive step, the MOH has not yet formalized this approach and does not yet apply it to all pharmaceutical product applications. On March 16, 2015, the Turkish Medicine and Medical Devices Institution announced that the duration of GMP certificate validity was extended from three years to four-and-a-half years.

Testing of Imported Toys

In early 2015, Turkey began onerous testing of all imported toys for phthalates and flame retardant materials, even if importers could demonstrate that similar testing was done prior to export. This practice threatened to affect not only U.S. direct exports to Turkey of $7.5 million annually, but also products from large U.S. companies manufacturing toys in third countries. Following repeated interventions with Turkish

authorities by the U.S. Embassy in Ankara, and the U.S. delegation's raising of the issue in meetings of the WTO TBT Committee, Turkish authorities announced in January 2016 that they would no longer pursue such testing. As of June 2016, industry sources indicated that testing had been reduced to 5 percent of imported products, which they considered a significant improvement.

Testing of Imported Footwear

U.S. footwear producers have reported delays at the Turkish border due to burdensome testing and inspection of their products – actions which, according to industry, far exceed typical import procedures for many other markets, including the United States and the EU. Following interventions by the United States, the delays that had lasted for months were substantially reduced, but industry continues to report excessive processing times.

Food and Feed Products – Mandatory Biotechnology Labeling

In 2010, Turkey enacted the comprehensive Biosafety Law, which, *inter alia*, mandates the labeling of food or feed derived from agricultural biotechnology if the biotechnology content exceeds a certain threshold. The labeling is purportedly for public health reasons. In addition, the Biosafety Law requires that "GMO" labels on certain food products contain health warnings. The Turkish government has provided no scientific evidence for requiring these health warnings.

In addition to the labeling 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.

Livestock Genetics Import Requirements

In February 2016, Turkey modified its livestock genetics import regulation to allow greater diversity of genetics to enter the country, partially easing this trade barrier. Some of the regulation's previously strict minimum genetic criteria rules were removed, which broadened the variety of genetics that can be imported, including allowing genetics from bulls on a country's Top 100 TPI (Total Performance Index) bull list. Still remaining in the regulation are minimum requirements for live motile sperm cells for conventional and sorted semen that exceed the industry norm.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

The United States has repeatedly raised concerns with Turkish officials, including at senior levels, about specific provisions of the 2010 Biosafety Law and its implementing regulations.

In addition to requiring mandatory health warnings on labels of products derived from agricultural biotechnology, the Biosafety Law, upon entering into effect, immediately negated the approvals of agricultural biotechnology products granted under Turkey's previous biotechnology regulation. This initially had the effect of stopping all agricultural trade with the United States in products derived from agricultural biotechnology (primarily soy and corn products).

Though it notified the Biosafety Law to the WTO prior to its original enactment, the Turkish government has failed to notify subsequent revisions of the law and its implementing regulations. Turkey also has not informed its trading partners before implementing various regulatory controls for biotechnology traits. Trading partners often learn of changes only when products are blocked at Turkish ports.

U.S. agricultural biotechnology developers have expressed reluctance to seek regulatory approvals in Turkey for individual biotechnology traits due to onerous liability requirements imposed by the Biosafety Law, unclear procedures for the assessment of individual biotechnology traits, and concerns regarding the protection of applicants' confidential information.

The Biosafety Board established under the Biosafety Law thus far has rejected applications for approval of a number of corn and soybean biotechnology traits and has generally operated in a nontransparent manner. To date, a total of 32 traits, of which seven are soybean and 25 are corn, are approved for use in animal feed in Turkey. Twenty-four traits are still undergoing risk and socio-economic assessments. The Biosafety Board has not provided any scientific justification for approvals or rejections.

On May 29, 2014, Turkey published an amendment to the "Regulation on GMO and Its Product" that defines "contamination" as the presence of more than 0.9 percent of product made with unapproved biotechnology traits in the content of a cargo. Biotechnology trait presence below 0.9 percent does not require labeling. If the cargo tests positive for the presence of an unapproved trait (at any level), the cargo is rejected and cannot be used for feed or food. There is an exception to the threshold for unapproved traits used in feed~~,~~ - traits with pending applications are allowed to be present up to a 0.1 percent threshold. If the cargo is meant for use as food, currently there is no allowable limit for the presence of biotechnology traits.

Turkey has also imposed onerous biotechnology-focused testing requirements for certain U.S. food and feed imports. Turkish authorities in 2013 began requiring 100 percent testing for any biotechnology content in U.S. wheat imports following a single detection in Oregon of an unapproved wheat biotechnology trait. The testing has been limited to U.S. wheat imports even though biotechnology wheat is not commercialized anywhere in the world and wheat imports from any country are equally likely to test positive for trace amounts of unapproved biotechnology traits. This has negatively affected U.S. wheat imports.

In October 2014, the Turkish government implemented a biotechnology-focused 100 percent testing regime for all imports of animal feed. Since June 2016, however, Turkey's sampling and testing frequency for both food and feed has depended on whether the shipment is accompanied by a declaration issued by the competent authority of the loading or origin country stating whether the food or feed in question includes products derived from agricultural biotechnology and, if such a certificate is supplied, on its content. Commodities declared as not containing products derived from agricultural biotechnology are subject to a lower testing frequency. Commodity shipments from countries known to export products derived from agricultural biotechnology, and lacking a biotechnology-free declaration, are subjected to analysis at the rate of 100 percent.

Also in October 2014, Turkey began requiring certifications from the country of origin that products exported to Turkey have not been produced using enzymes or microorganisms derived from agricultural biotechnology. As no government in the world regulates the use of such enzymes or microorganisms, many products that may have been produced using them, ranging from wine and cheese to breads, pet food, and livestock nutritional supplements, subsequently have been rejected at Turkish ports for lack of the required certifications. On May 5, 2015, Turkey excluded enzymes from the scope of the Biosafety Law and thus from the certification requirement. However, Turkey continues to require government-issued certifications in the case of microorganisms.

Food Safety

Turkey's efforts to conform its national food safety laws to EU measures have been inconsistent, often resulting in non-transparent regulatory requirements and unpredictable enforcement actions. Turkish

authorities frequently have implemented changes without notification or consultation with trading partners, increasing costs to exporters. U.S. producers of table grapes have expressed concerns that Turkish efforts to harmonize its pesticide Maximum Residue Levels (MRLS) with EU MRLS have the potential to put imports from the United States at a disadvantage compared to imports from EU suppliers.

The importation of live animals and of animal products requires a control certificate from Turkey's Ministry of Food, Agriculture and Livestock. The issuance of this certificate is not automatic.

Plant Health

Turkey has sporadically rejected imports of U.S. un-milled rice due to detection of white tip nematode. Turkey considers white tip nematode to be a quarantine pest despite the fact that this nematode is widespread in Turkey. Due to the risk of a detection of the nematode upon arrival, many U.S. rice exporters have stopped shipping to Turkey.

Animal Health

In June 2013, Turkey began to require dioxin-free certification for imports of animal feed and pet food products. This requirement negated a 2006 bilateral agreement under which Turkey accepted that imports of animal feed and pet food products from the United States did not require this certification. Turkey has not provided any evidence that products from the United States contain dioxins.

Turkey is an important transit point for U.S. poultry flowing to Iraq and the Middle East. Following a detection of highly pathogenic avian influenza in the United States in 2015, Turkey's Ministry of Food, Agriculture and Livestock banned poultry imports from affected U.S. states. Contrary to OIE guidelines, however, Turkey continues to maintain bans from U.S. states affected by these outbreaks even though the United States long ago reported their conclusion. Turkey also bans, in a manner inconsistent with OIE guidelines, poultry products from U.S. states with identified cases of avian influenza in wild birds and identified cases of low pathogenic avian influenza.

IMPORT POLICIES

Tariffs

In accordance with its customs union agreement with the EU, Turkey exempts from tariffs non-agricultural products imported from the EU and applies the EU common external tariff to third-country non-agricultural imports, including those from the United States. Turkey also exempts from tariffs non-agricultural products imported from other trading partners with which it has concluded free trade agreements. Turkey has bound just over half of its tariff lines under the WTO Agreement, a relatively low percentage for an economy of its size.

Turkey's average applied tariff rate is 42.7 percent for agricultural products and 5.5 percent for non-agricultural products, while its WTO bound rates are 61 percent and 17 percent, respectively. Turkey continues to maintain high tariff rates on many imported food and agricultural products. Tariffs on fresh fruits range from 20 percent to 162 percent. Tariffs on processed fruit, fruit juice, and vegetables range from 25 percent to 75 percent, and poultry tariffs are 65 percent. Most tariffs on grains are set at 130 percent.

Turkey recently has taken advantage of substantial differences between its applied and bound tariff rates to increase significantly tariffs across multiple sectors without breaching its WTO commitments. Since mid-2014, Turkey has increased tariffs by an average of 26 percent on products classified in 17 HS chapters,

affecting a wide range of sectors, including furniture, medical equipment, tools, iron, steel, footwear, carpets, and textiles. In November 2016, the Turkish government announced that an additional tranche of tariffs would be raised to levels between 11 and 25 percent.

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.

Tariffs on Imported Footwear

On August 10, 2014, Turkey began levying an "additional customs tax" (ACT) on imported footwear. The ACT added an additional 30 to 50 percent tax, or a minimum of $3 to $5 per pair, to the cost of the imported products. In addition, duties paid are added to the base value of imported products for purposes of calculating the eight percent valued-added tax (VAT) due on footwear, resulting in higher VAT charges on imports than on domestically produced goods.

Import Licenses and Other Restrictions

Turkey requires import licenses for some agricultural products and various products that need after-sales service such as photocopiers, advanced data processing equipment, and diesel generators. U.S. firms complain that lack of transparency in Turkey's import licensing system results in costly delays, demurrage charges, and other uncertainties that inhibit trade. Turkish documentation requirements for food imports are onerous, inconsistent, and non-transparent, often resulting in shipments delayed at Turkish ports. U.S. exporters of rice, dried beans, pulses, sunflower seeds, wheat, and walnuts, have reported concerns with valuation of their products by Turkish customs authorities.

Turkey in 2015 banned the import of nearly all refurbished parts, which affects products in several sectors, including computer equipment and medical devices.

Despite legislation to privatize the natural gas sector via a phased transfer of 80 percent of gas purchase contracts to the private sector by the end of 2009, Turkey's state pipeline company, BOTAS, still controls over 75 percent of the gas import market.

GOVERNMENT PROCUREMENT

Turkey is not a signatory to the WTO Agreement on Government Procurement but has participated as an observer in the WTO Committee on Government Procurement since 1996.

Turkish government contracting officials are authorized to issue tender documents with provisions that restrict foreign companies' participation and that award price advantages of up to 15 percent (particularly for high technology products) to domestic bidders. Additionally, Turkish procurement law sometimes requires government contracting agencies to accept only the lowest-cost bids in response to tenders. In a scenario involving the procurement of highly technical goods or services, this may prevent consideration of bids from firms with the highest capacity and best abilities (including U.S. firms) – *i.e.*, those that provide a greater number of services, lower life cycle costs, and higher quality products.

Several other features of the Turkish procurement system have the effect of severely limiting the ability of U.S. companies to participate in government tenders. First, Turkish contracting agencies are able to impose "no-limitation-of-liability" clauses on successful bidders. Such clauses render contractors liable for all costs resulting from design or application errors or lack of supervision. Second, Turkish procurement law mandates the use of model contracts (*i.e.*, standard forms), which many government procuring agencies refuse to modify. These model contracts make it difficult for U.S. companies to formulate proposals that

are fully responsive to procuring agencies' requirements. Third, foreign companies (including those with Turkish subsidiaries) have reported difficulties complying with onerous documentation requirements imposed by contracting agencies.

Turkish military procurement policy generally mandates the inclusion in contracts of various "commercial offset" requirements. These specifications typically encourage localization commitments by bidding firms, including in the areas of foreign direct investment and technology transfer. Such requirements can dramatically increase costs for bidding firms, and have discouraged participation by some U.S. companies in Turkish commercial defense tenders.

In February 2014, the Turkish parliament adopted an Omnibus Bill that gives civilian government ministries authority to impose commercial offset requirements in procurement contracts. Similar to the military offset requirements, this law, though apparently still not fully implemented, will require a foreign company that wins a Turkish government procurement contract to produce locally in order to provide its products and services. The government reportedly intends to focus on implementing the offset requirements in the pharmaceutical, medical devices, and commercial aircraft sectors, among others.

SUBSIDIES

Turkey employs a number of incentives related to exports. Significant subsidies appear to be granted in 16 agricultural or processed agricultural product categories. These subsidies take the form of tax credits and provisions for debt forgiveness, and are paid for by taxes on exports of primary products such as hazelnuts and leather. Additionally, the Turkish Grain Board generally purchases domestic wheat at intervention prices (above world prices) and then sells it at world prices to Turkish flour, biscuit, and pasta manufacturers for use in exports. U.S. exporters have expressed serious concerns about the adverse impact these Turkish wheat flour exports have had on their sales in certain third country markets.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Turkey remained on the Watch List in the 2016 Special 301 Report.

U.S. industry sources report significant problems involving the export from and trans-shipment through Turkey of counterfeit goods, as well as software piracy, piracy of printed works, and online piracy. According to some reports, Turkish law enforcement and other authorities' efforts to improve IPR enforcement have decreased in the past year, and the judicial system as a whole (including judges, prosecutors, and police) has increasingly failed to deter IPR-related crime adequately.

SERVICES BARRIERS

In the area of professional services, Turkish citizenship is required to practice as an accountant, a certified public accountant, or a lawyer representing clients in Turkish courts.

BARRIERS TO DIGITAL TRADE

Data Localization

On March 24, 2016, the Turkish Parliament passed the "Law on the Protection of Personal Data," which came into effect on April 7, 2016. The law limits transfers of personal data out of Turkey and may require firms to store data on Turkish citizens within Turkey – a requirement some U.S. firms view as unworkable given their business models. At least one U.S. firm exited the Turkish market due to this new requirement.

Turkey's implementation of Article 23 of its Law on Payments and Security Settlement Systems, Payment Services and Electronic Money Institutions has had a negative impact on suppliers offering Internet-based payment services, given requirements to maintain data storage and processing facilities in Turkey. Article 23 requires information systems used for keeping documents and records to be located within Turkey. The Turkish Banking Regulation and Supervision Agency denied a license application to at least one foreign supplier of payment services because of this localization requirement, which led to that foreign supplier leaving the market, since the economies of scale involved in operating global payment platforms often preclude investing in facilities in every market. The exit of this company from Turkey resulted in fewer options for Turkish SMEs seeking to export to foreign markets.

U.S. firms in a variety of industries have expressed worry that the government will pursue data localization requirements for all sectors in 2017. Such localization requirements can restrict the free flow of data and, in particular, affect cloud-based services, potentially inhibiting the further development and expansion of creative electronic services such as electronic invoicing, electronic general assembly, executive board meetings, electronic bookkeeping, new electronic payment, and electronic money services.

Technology

Encryption

In 2011, the Information and Communication Technologies Authority (BTK), which is affiliated with the Ministry of Transportation, Maritime Affairs, and Communications, imposed regulations on the use of encryption hardware and software. Suppliers are required to provide encryption keys to state authorities before they can offer their products or services to individuals or companies within Turkey. Failure to comply can result in administrative fines and, in cases related to national security, prison sentences. The government also blocked encrypted messaging services on several occasions in 2016.

Internet Services

BTK is responsible for enforcing bans on Internet content determined by Turkish courts to be offensive. BTK has on several occasions used its authority to block access to various Internet-based service providers, including U.S.-based suppliers.

On February 6, 2014, the Turkish Parliament passed amendments to Turkey's Law No. 5651 (the "Internet Law") that expanded the government's authority to restrict Internet access. While initial protests against the amendments from civil society and business interests and a Constitutional Court challenge led to some modifications of the new amendments, the ruling of the Constitutional Court, issued in December 2015, ultimately confirmed broad authority for government restriction of Internet access.

According to one independent organization, as of May 2016, over 111,000 websites were banned based on complaints related to Turkey's civil code and to alleged violations of intellectual property rights. This means that the number of blocked websites has risen from 43,785 to 111,011 in three years. Occasional blocking by the government of social media sites such as Facebook, Twitter, and YouTube, and throttling of Internet connectivity, which especially hurt industry-leading American technology companies, are among the most common restrictions on Internet services.

OTHER BARRIERS

Corruption

Despite Turkey having ratified the OECD anti-bribery convention and passed implementing legislation making it illegal to bribe foreign and domestic officials, many foreign firms doing business in Turkey perceive corruption of some government officials and politicians to be a serious problem. The judicial system also is perceived by many observers to be susceptible to external influence (from both inside and outside the government) and on occasion to be biased against foreigners. Based on anecdotal evidence, government-related corruption in the construction sector in particular appears to be worsening.

Taxes

In January 2014, Turkey raised its special consumption tax to between 45 percent and 145 percent on all motor vehicles based on engine size. Previously, the rate range was 37 percent to 130 percent. This tax has a disproportionate effect on automobiles imported from the United States.

Pharmaceuticals – Official Exchange Rate for Government Purchases

U.S. pharmaceutical companies have complained that their business operations in Turkey are being adversely impacted by the Turkish government's refusal to adjust the official exchange rate used for government purchases of imported pharmaceutical products. In 2009, companies negotiated with the MOH to sell their products in Turkey using an exchange rate of Turkish Lira 1.95 = Euro (€) 1.00. The government codified this arrangement in statute. The government also agreed in that statute to adjust the exchange rate if it went up or down by over 15 percent compared to the 2009 baseline. The Lira has depreciated significantly against the Euro in foreign exchange markets since 2009. According to U.S. industry, the exchange rate shift 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 refused to implement the rulings until 2015. Even then, the government arbitrarily chose to reimburse companies for 70 percent of the previous year's average daily market exchange rate, a practice that has already been challenged by additional industry lawsuits.

UNITED ARAB EMIRATES

TRADE SUMMARY

The U.S. goods trade surplus with United Arab Emirates was $19.0 billion in 2016, a 7.4 percent decrease ($1.5 billion) over 2015. U.S. goods exports to United Arab Emirates were $22.4 billion, down 2.7 percent ($622 million) from the previous year. Corresponding U.S. imports from United Arab Emirates were $3.4 billion, up 36.0 percent. United Arab Emirates was the United States' 16th largest goods export market in 2016.

Sales of services in United Arab Emirates by majority U.S.-owned affiliates were $8.5 billion in 2014 (latest data available), while sales of services in the United States by majority United Arab Emirates-owned firms were $3.3 billion.

U.S. foreign direct investment (FDI) in United Arab Emirates (stock) was $15.6 billion in 2015 (latest data available), a 1.9 percent increase from 2014. U.S. direct investment in United Arab Emirates is led by mining, finance/insurance, and manufacturing.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

In 2016, the UAE implemented the new Emirates Conformity Assessment Scheme as well as technical regulations for a range of products, including air conditioners, dishwashers, mobile phones, chemical materials, textiles, mechanical apparatuses and vehicles, food and agriculture, construction materials, oil and gas, information technology, sanitary wares, cosmetic materials, electrical and electronic items, metrology, telecommunications cables, and automatic doors and windows.

In 2016, the Emirates Authority for Standardization and Metrology (ESMA) informed U.S. stakeholders that halal certifiers must comply with ESMA's accreditation program in 2017 in order to issue halal certification for U.S. exports to the UAE. The United States has urged ESMA to engage with stakeholders regarding the enforcement date of the new accreditation requirements.

Energy Drinks

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

Conformity Assessment Marking

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

Sanitary and Phytosanitary Barriers

In February 2016, the Ministry of Climate Change and Environment (MCCE) adopted a resolution to facilitate and unify control procedures for imported food for non-commercial purposes across the UAE, to prevent diseases transmitted through food and to strengthen food safety measures. In November 2016, the UAE implemented a new federal law on food safety that requires all imported food and agricultural products to be registered with MCCE.

In November 2016, the GCC announced that it would implement a December 2016 version of the "GCC Guide for Control on Imported Foods" in October 2017. The United States continues to raise concerns about the Guide, particularly a possible requirement to revise U.S. health export certificates for food and agricultural products destined for GCC countries. The GCC has not provided a scientific justification for its revised certificate statements, some of which may not follow the guidelines of the Codex Alimentarius Commission, the International Plant Protection Convention and the World Organization for Animal Health. The United States continues to request that the GCC delay implementation of the Guide and that experts work to address these concerns.

IMPORT POLICIES

Tariffs

As a member of the GCC, the UAE applies the GCC common external tariff with a number of country-specific exceptions. The UAE's exceptions include alcohol (50 percent) and tobacco (100 percent). The UAE exempts 811 items from customs duties, including imports by the diplomatic corps, military goods, personal goods, used household items, gifts, returned goods, and imports by philanthropic societies.

Import Licenses

Only licensed firms are permitted to engage in importation, and only UAE-registered companies, which must have at least 51 percent UAE ownership, may obtain such a license. This licensing requirement does not apply to goods imported into free zones. Importation of some goods for personal consumption does not require an import license.

Documentation Requirements

The UAE requires that documentation for all imported products be authenticated by the UAE embassy in the exporting country. There is an established fee schedule for authentication. For U.S. exports, if the authentication process is not completed in the United States, customs authorities apply the fee when the goods arrive in the UAE. This consularization requirement is burdensome and costly to U.S. exporters.

GOVERNMENT PROCUREMENT

U.S. companies continue to raise concerns regarding the general lack of transparency in the UAE's government procurement process as well as lengthy delays and burdensome procedures in receiving payment for projects.

The UAE applies a 10 percent set-aside for domestic small and medium size enterprises (SMEs), as well as a 10 percent price preference for GCC companies, in federal government procurement. Companies must have at least 51 percent UAE ownership in order to participate in in federal government procurement, except for major projects or defense contracts in which local companies are not able to provide the necessary goods or services.

Foreign defense contractors continue to raise concerns regarding the complexity of the UAE's "Tawazun Economic Program." This program requires those with contracts valued more than $10 million over a five-year period to establish commercially viable joint venture projects with UAE companies that may yield profits equivalent to 60 percent of the contract value within a seven-year period. Certain projects may be granted a grace period depending on the required lead time as a result of the complexity, sophistication, or infrastructure requirements. Monetary obligations are assessed on the expected growth cycle of a project and are at the end of each year of the program. Foreign defense firms must submit a bank guarantee equivalent to 8.5 percent of overall outstanding obligations.

The Dubai government also allocates a substantial share of its annual procurement for SMEs and requires that all Dubai government entities and companies in which the government owns at least 25 percent provide preferences that include a fee exemption and 10 percent allocation in procurements, discounted rent of 5 percent for entities in commercial centers and a 5 percent price preference.

The UAE is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The UAE was not listed in the 2016 Special 301 Report. The UAE federal government worked to improve protection of intellectual property rights (IPR) by seizing and destroying a range of counterfeit goods and launching public awareness campaigns. In an effort to streamline cooperation with the private sector, in February 2016, the Emirates Intellectual Property Association, a quasi-government association based in Dubai, signed a Memorandum of Understanding with the Brand Owners' Protection Group for the GCC and Yemen. In August 2016, the Dubai Department of Economic Development's Commercial Compliance and Consumer Protection Division launched an "Intellectual Property Gateway" to automate procedures relating to IPR issues, including receiving complaints on trademark infringement, receiving reports from field officers, and providing information to trademark owners.

However, significant challenges remain. Officials in Dubai and Ajman continue to allow the re-export and transshipment of many counterfeit products, rather than seizing and destroying the goods, notwithstanding that UAE officials have asserted that a 2014 law on commercial fraud requires the destruction of counterfeit goods while still allowing defective or substandard goods to be returned to their point of origin. In addition, U.S. rights holders continue to raise concerns regarding Internet piracy and the lack of transparency and available information related to UAE raids and seizures of pirated and counterfeit goods. The UAE also has yet to provide for the establishment of collecting societies for certain types of copyright royalties, which has been a longstanding concern.

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

SERVICES

Arline Subsidies

In January, 2015, the U.S. international airlines American Airlines, Delta Air Lines and United Airlines approached U.S. officials asserting that Qatar Airways, Etihad Airways and Emirates Airline have received and are benefitting from more than $50 billion dollars in subsidies received from their respective governments since 2004 that are distorting the global aviation market in a manner that causes significant

harm to the U.S. airline industry and raises concerns and potential inconsistencies with Open Skies Agreements that Qatar and the UAE have signed with the United States, as well as certain provisions of U.S. law. The U.S. airlines provided evidence that the Gulf carriers receive significant levels of financial support from their governments in numerous forms, including zero-interest loans, loan guarantees, debt/equity swaps and direct equity injections, subsidized airport facilities and aviation-related goods and services on preferential terms. The airlines assert that the subsidies constitute substantial government interference in international aviation markets that is harming U.S. services exports and undermining fair competition. The airlines further asserted that if the subsidies are not addressed, the harm to the U.S. airline industry and the negative impact on U.S. exports of air transport services will continue to increase, as the subsidies are fueling enormous increases in Gulf carrier capacity - well in excess of GDP growth, which drives growth in demand for air transport services - diverting passengers from U.S. and third country airlines onto Gulf carrier networks and sending U.S. jobs overseas. In reviewing these claims, U.S. agencies solicited information and views from all interested parties. U.S. officials continue to engage with interested parties to address the concerns expressed.

BARRIERS TO DIGITAL TRADE

Internet Services

The UAE has precluded the provision of Internet-based communications services, including Voice over Internet Protocol (VoIP) services, except by or in partnership with the two licensed telecommunications operators, Etisalat and Du and the two licensed satellite companies, Thuraya and Yahsat. This restriction has created significant market access barriers in a key Middle East market for innovative U.S. based service suppliers.

SERVICES BARRIERS

Airline Subsidies

In January 2015, three U.S. air carriers approached U.S. officials alleging that the Government of the United Arab Emirates has provided market-distorting subsidies to its airlines since 2004. The U.S. Government takes these claims seriously, and has solicited information from the diverse range of aviation industry stakeholders regarding these allegations and related policy implications. The matter remains under review at this time.

Agent and Distributor Rules

Federal Law No. 18 of 1981, as amended by No. 14 of 1988, governs registered commercial agents, and Federal Law No. 18 of 1993 and No. 5 of 1985 govern unregistered commercial agencies. These laws allow non-GCC foreign companies to distribute their products in the UAE only through exclusive commercial agents that are either UAE nationals or companies wholly owned by UAE nationals or GCC citizens. The UAE government allows foreign companies to sell some products, including livestock, dairy products, fats and oils, honey, eggs, fruit juices, salt, yeast, animal feed, detergents, and hygiene products, without a local agent in order to stabilize the prices of these products. Foreign companies are required to maintain an exclusive commercial agent and may not register another commercial agent unless either the previous agent or the Commercial Agencies Committee agrees to termination of the agreement or unless there is judicial action to cancel the agreement.

Telecommunications

The UAE government maintains significant ownership in Etisalat and Du – the only two currently operating telecommunications companies – which are also the only Internet service providers and mobile phone operators in the UAE. In June 2015, the UAE allowed foreign investors to own up to 20 percent of the largest telecommunications operator.

Transportation

Federal Law No. 9 of 2011 restricts licenses for all commercial transport vehicles to UAE citizens, including those used by couriers, taxis, or limousines.

Insurance

Foreign insurance companies are allowed to operate in the UAE only as branches. Domestic insurance companies operate only as public joint stock companies. Though foreign equity up to 25 percent is allowed in some of the insurance companies listed on the Abu Dhabi Securities Exchange and Dubai Financial Market, many domestic insurance companies do not permit any foreign ownership. Since 2008, the UAE government has loosely enforced an informal moratorium on licenses for new competitors, only issuing new insurance licenses to UAE and GCC firms.

The emirate of Abu Dhabi limits insurance coverage for infrastructure and construction projects and companies under the Abu Dhabi National Oil Company to Abu Dhabi-based national insurance companies.

INVESTMENT BARRIERS

The UAE generally does not provide national treatment for foreign investors, and foreign ownership of land and stocks is restricted. The UAE limits foreign investment through restrictive agency, sponsorship, and distribution requirements. With rare exception 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 may be apportioned differently and often are negotiated at fixed amounts. Branch offices of non-GCC foreign companies are required to have a commercial agent with 100 percent UAE national ownership, unless the foreign company has established its office pursuant to an agreement with the federal or an emirate-level government.

In April 2016, the UAE clarified Federal Law No. 4 of 2012, which defines "a dominant establishment" and prohibits these entities from engaging in price fixing, predatory pricing, discrimination between customers with similar contracts without justification, or forcing customers to refrain from dealing with competing entities. However, the resolution exempts establishments in which federal or local governments own at least 50 percent. Generally, state-owned enterprises are key components of the UAE economic model and are perceived to be favored in legal disputes with foreign companies brought before the local judiciary.

Foreign investors continue to raise concerns regarding the resolution of investment disputes and the difficulty of collecting arbitration awards. Among other issues, foreign investors are concerned that pursuing arbitration in disputes with a UAE company may jeopardize their business activities in the country.

UKRAINE

TRADE SUMMARY

The U.S. goods trade surplus with Ukraine was $501 million in 2016, a 4,333.3 percent increase ($490 million) over 2015. U.S. goods exports to Ukraine were $1.1 billion, up 25.1 percent ($216 million) from the previous year. Corresponding U.S. imports from Ukraine were $578 million, down 32.1 percent. Ukraine was the United States' 75th largest goods export market in 2016.

U.S. foreign direct investment in Ukraine (stock) was $446 million in 2015 (latest data available), a 39.0 percent decrease from 2014.

The United States-Ukraine Trade and Investment Cooperation Agreement

The United States and Ukraine signed a Trade and Investment Cooperation Agreement (TICA) on April 1, 2008, establishing a forum for discussion of bilateral trade and investment relations. The TICA established a joint United States-Ukraine Trade and Investment Council (TIC), which addresses a wide range of trade and investment issues, including market access, intellectual property rights protection, value-added tax issues, and specific trade and investment concerns. The TIC seeks to increase commercial and investment opportunities by identifying and working to remove impediments to trade and investment flows between the United States and Ukraine. The TIC met most recently in Washington, D.C. on October 5, 2016. In this sixth meeting of the TIC, the delegations discussed measures to enhance bilateral trade opportunities beneficial to both countries, and to eliminate barriers to increased bilateral trade. They also reviewed Ukraine's efforts to improve its enforcement and protection of intellectual property rights and its program to rationalize its regulatory regime.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Conformity with EU Technical Regulations and Regimes

As part of its Deep and Comprehensive Free Trade Area (DCFTA) with the European Union (EU), Ukraine is moving to "achieve conformity with" the EU technical regulations and regulatory regime (including the EU's conformity assessment procedures). Some industry stakeholders have expressed concerns that this process may lead to Ukraine adopting existing EU measures that raise TBT concerns. For example, Ukraine is incorporating elements of the EU's Restrictions on the Use of Hazardous Substances and its Registration, Evaluation, Authorization and Restriction of Chemicals (REACH).[16] U.S. stakeholders have expressed serious concerns that the REACH's approval process for chemicals often requires producers to provide unnecessary and onerous information that is unrelated to establishing the safety of the chemical. Additionally, U.S. trade could be negatively impacted if Ukraine adopts as a basis for its technical regulations EU regional standards instead of international standards.

[16] *See* EU entry regarding REACH.

Sanitary, Veterinary and Phytosanitary Barriers

Establishment Lists

Pursuant to Order No. 118 (April 1, 2014), Ukraine accepts only shipments of animal products from establishments allowed to ship to the EU (with the exception of U.S.-produced beef and pork, which are allowed to be sold in Ukraine due to special provisions in the bilateral U.S.-Ukraine veterinary certificates). As a result, U.S. producers of all other animal products do not ship to Ukraine because each individual facility needs to complete the costly and time consuming EU approval process, are inspected by Ukrainian Veterinary Service specialists, or undergo a country-wide food safety systems audit.

Food Safety Standards

On September 20, 2015, Ukraine enacted Law No. 1602, which mandates the use of Ukrainian food safety standards rather than international standards, without providing a risk assessment for those Ukrainian standards that deviate from international standards. The Law further provides that if Ukraine does not have a national standard, then the international standard may be used. In the absence of an international standard, the EU standard is to be used. U.S. exporters (primarily exporters of products of animal origin) are concerned that the adoption by Ukraine of standards that are not in line with international standards, or standards that are not based on a risk assessment, could make it significantly more difficult to export to Ukraine.

International Certificate Requirement

Law No. 1602 also introduced the requirement that all importers of food products present an "international certificate or other document issued by the competent authority of country of origin", and permits only a narrow range of certificates to meet this requirement. For example, a United States-Ukraine bilaterally-agreed veterinary certificate qualifies as an "international certificate", allowing U.S. exporters of animal and fish products to maintain market access. By contrast, a producer's "certification of safety and wholesomeness", or a "certificate of free sale" issued by states, local municipalities, or associations, have not been officially accepted by Ukraine but are the only types of certificates available to U.S. exporters of processed food products. Because these alternative certificates are not officially accepted by the Ukrainian competent authority, this new requirement potentially excludes U.S. exports of processed foods from the Ukrainian market.

Export of Certain Animal Products without Bilateral Certificates

Imports of non-processed products of animal origin (including live animals) for which no bilateral certificate has been negotiated continue to be governed by Order 71 (June 14, 2004). This Order lists numerous, product-specific requirements that do not appear to be science-based. Because the U.S. competent authorities are not able to certify to requirements that do not appear to be non-science-based, U.S. exports of such products are virtually shut out of the market.

Biotechnology

The biotechnology regulatory system in Ukraine is still not fully developed. In fact, Ukraine does not have a system for registration of GE products. There is a system in place to register GE plant varieties or animal breeds, but it is so cumbersome the system has never been utilized. In late 2013, national legislation was amended to establish new biotechnology registries and to eliminate duplicative control by various government authorities over processed products containing GE components as well as their labelling. The

new legislation's impact has been limited by a lack of implementing regulations. Only one GE product, an herbicide tolerant soybean, has been approved for use in feed.

IMPORT POLICIES

Tariffs and Customs Issues

U.S. exports are subject to Ukraine's most-favored nation (MFN) applied tariff rate. All of Ukraine's tariff lines are bound. The simple average bound rate is 6.1 percent; 10.8 percent for agricultural products; and 4.9 percent for industrial products. In 2015, Ukraine's applied MFN rates were slightly below the bound levels at 9.6 percent for agriculture products and 3.6 percent for industrial products. The simple average MFN import duty in Ukraine is currently 4.9 percent; 9.6 percent for agricultural products (WTO definition) and 3.6 percent for industrial goods.

Sampling and Testing Practices

Importers of U.S. products have complained that inspection officials at ports of entry take for laboratory testing larger samples of products than necessary. Cabinet of Ministers Decree No. 833 (June 14, 2002) defines "uniform allotment" (*i.e.*, batches identified for sampling) and establishes sample sizes and sampling time. However, the definition of allotment appears arbitrary and not risk-based and results in an artificially large number of allotments sampled and tested. Sampling and testing, particularly of expensive products such as caviar, fish, or chilled meat, and the associated testing fees can pose a significant burden on the importer.

Customs Valuation

While Ukraine's MFN applied tariff rates are relatively low, U.S. businesses have raised concerns that the State Fiscal Service (SFS) (formerly the Ministry of Revenues and Duties) assigns higher customs values to imports, including food, agricultural products, and pharmaceuticals, than are provided in the import documentation. In September 2015, the Cabinet of Ministers passed Resolution No. 724 on the use of customs value benchmarks. U.S. businesses have raised concerns that this resolution instructs the SFS to base customs valuation on historic prices registered by the SFS, rather than on the contract price as set out in the WTO Agreement on Customs Valuation and Ukraine's Customs Code. Businesses have raised the issue that, among other issues, Resolution No. 724 could result in increased rejections of declared values, disregard for differences among imported products in establishing import value, and improper manipulation of declared value by disreputable and non-transparent importers.

Since May 2012, Ukraine has collected duties on royalties paid on imported theatrical and home entertainment products. The procedures for assessing the value of the royalties, governed by the Cabinet of Ministers Resolution No. 446, are burdensome and costly for U.S. stakeholders. Moreover, U.S. stakeholders assert that, although the Ukrainian Supreme Court has ruled that royalties are not dutiable, Ukrainians Customs continues to collect duties on royalties.

GOVERNMENT PROCUREMENT

Government procurement of goods and services has long been associated with alleged corruption in Ukraine, creating an effective barrier to increased trade and investment in the sector. With the total value of public procurements estimated at 250 billion UAH per year, or 15 to 20 percent of GDP, the scale of potential corruption is significant.

On November 12, 2015, the World Trade Organization's Committee on Government Procurement approved the Government Procurement Agreement (GPA) accession terms for Ukraine. On May 5, 2016, Ukraine finished its internal procedures to bring the GPA into force in Ukraine, opening market opportunities for U.S. exporters. In late 2015, the Ukrainian government also implemented the ProZorro electronic procurement system which, together with the measures taken to implement the GPA, have increased transparency in procurement; however, corruption in government procurement remains a priority.

EXPORT BARRIERS

A variety of products remain subject to licensing by the Ministry of Economic Development and Trade. Products that require a license prior to export from Ukraine include: precious metals (silver and gold); natural gas of Ukrainian origin; scrap metal; ozone depleting substances; pharmaceuticals; paints and lacquers; dyes; cosmetic products; pedicure and manicure products; hygiene products including shampoos, toothpaste, and 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; insecticides; herbicides; plant growth enhancers and regulators; and other selected industrial chemical products. The Ukrainian government has eliminated most export duties, with the notable exception of duties on natural gas, livestock, raw hides, and some oil seeds (in particular sunflower seed, flaxseed and linseed). In September 2016, Ukraine temporarily increased the export duty on ferrous scrap metal.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2016, Ukraine was listed as a Priority Watch List country in the annual Special 301 Report. The need to improve its protection and enforcement of IPR was one of the major themes of the TIC meeting chaired by USTR and Ukraine's Ministry of Economy in October 2016. In spite of some progress in November 2016 (when cyber police managed to shut down a number of online pirate cinemas), Ukraine continues to lack an effective and transparent system to combat online piracy. Ukraine continues to host some of the largest Internet piracy sites in the world. Ukraine is exporting copyright piracy, especially digital piracy, by serving infringing content to European Union markets, other countries in the former Soviet Union, and India. The United States remains extremely concerned about the unfair, nontransparent administration of the system governing royalty collecting societies. Widespread and admitted use of infringing software by the Ukrainian government also remains an issue.

SERVICES BARRIERS

Audiovisual Services

Ukrainian law requires film prints and digital encryption keys to be produced in Ukraine. This requirement is a significant impediment for distributors of foreign films.

INVESTMENT BARRIERS

Value Added Tax

Companies report that Ukraine's value-added tax (VAT) administration remains a major obstacle to doing business in Ukraine. According to industry reports, the process is opaque, slow, and facilitates official corruption. In January 2015, Ukraine introduced an automated system for VAT refunds, but deactivated the system later that year. Ukraine's inability to disburse VAT refunds consistently and fully within the legal limit of 90 days remains a serious problem and a drag on companies' working capital. In addition, industry and government contacts report that the SFS, due to its own liquidity shortages, has demanded

prepayment of corporate profit tax in exchange for VAT refunds, tied up refunds in court to delay disbursement, and distributed VAT refunds in an arbitrary fashion that appears to favor government-linked companies. Furthermore, industry contacts complain that the SFS inconsistently applies VAT rates and, in some cases, attempts to collect VAT in excess of legal obligations.

Privatization

The State Property Fund oversees the technical aspects of the privatization process in Ukraine, while the Cabinet of Ministers handles the strategic aspects of this process. Privatization rules generally apply equally to both foreign and domestic investors, and, in theory, a relatively level playing field exists. However, following the cancellation of two high-profile tenders, a number of prominent international observers have suggested that the privatization terms may have been adjusted to reflect the characteristics of pre-selected bidders.

Corporate Raiding

Ukraine continues to have high-profile problems with abusive investigative activities by state law enforcement personnel. In 2015, the State Security Service, State Fiscal Service (Tax Police), and Ministry of Internal Affairs conducted numerous raids that U.S. companies have considered to be unjustified. The raids were putatively related to piracy, terrorism, and tax arrears, and complaints from U.S. businesses about the legitimacy of such raids persisted into 2016. The United States continues to raise concerns about these activities, and to stress the importance of the rule of law. The enduring uncertainty created by this practice has impacted Ukraine's investment climate and effectively creates a barrier to business in the country.

Local Content

Since 2012, Ukraine's Law on Electricity, applicable to all new investments in energy power plants, appears to have established a 50 percent local component requirement for the fixed assets of the plant, services acquired by the plant's owners, and all material inputs used in power production. In 2015, Ukraine eliminated the local content requirement associated with its renewable energy feed-in tariffs, but replaced that requirement with a bonus payment that appears conditioned on the use of local materials in the construction of renewable energy projects.

VENEZUELA

TRADE SUMMARY

The U.S. goods trade deficit with Venezuela was $5.6 billion in 2016, a 21.9 percent decrease ($1.6 billion) over 2015. U.S. goods exports to Venezuela were $5.3 billion, down 37.0 percent ($3.1 billion) from the previous year. Corresponding U.S. imports from Venezuela were $10.9 billion, down 30.0 percent. Venezuela was the United States' 39th largest goods export market in 2016.

U.S. exports of services to Venezuela were an estimated $6.8 billion in 2015 (latest data available) and U.S. imports were $819 million. Sales of services in Venezuela by majority U.S.-owned affiliates were $3.8 billion in 2014 (latest data available), while sales of services in the United States by majority Venezuela-owned firms were $443 million.

U.S. foreign direct investment in Venezuela (stock) was $9.1 billion in 2015 (latest data available), a 20.1 percent decrease from 2014. U.S. direct investment in Venezuela is led by manufacturing, nonbank holding companies, and finance/insurance.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Sanitary and Phytosanitary Barriers

Venezuela issued a directive in 2003 related to bovine spongiform encephalopathy (BSE) that banned importation of all U.S. live cattle, beef and beef products. In February 2016, the Venezuelan Ministry of Agriculture and Land negotiated and finalized a protocol with the U.S. Department of Agriculture (USDA) that allows for the importation of live cattle from the United States. U.S. beef and beef products remain banned, despite the fact that the World Organization for Animal Health (OIE) classifies the United States as presenting negligible risk for BSE.

Venezuela also effectively bans importation of U.S. poultry meat. According to Venezuelan import regulations, poultry meat from any country that has had an occurrence of avian influenza is prohibited from importation into Venezuela. Venezuelan authorities have refused to meet with USDA sanitary regulatory officials to discuss how this ban is consistent with OIE guidelines.

U.S. producers are unable to export fresh potatoes or seed potatoes to Venezuela because the Venezuelan government has not established a protocol for the issuance of import permits for these products. Venezuela's Agricultural Research Institute conducted a pest risk analysis for U.S. potatoes and seed potatoes in 2005, but has not yet issued an import protocol.

On December 28, 2015, Venezuela promulgated a seed law that bans the use and research of modern biotechnology in agriculture. This law also prohibits the production, import, use, release, and multiplication of genetically engineered seeds. Violators of this law can be subject to penalties ranging from fines to imprisonment.

IMPORT POLICIES

Venezuelan private sector importers continue to complain about the Venezuelan government's unwillingness to approve import permits, requests for foreign exchange, and other documents for importing products from the United States. In 2015, the government increasingly centralized imports for the private and public sectors under CORPOVEX, a public sector entity under the Currency Control Commission that

is responsible for managing import transactions. In addition, in 2016, most imports into Venezuela were purchased directly by public sector entities, and many private sector firms relied on the government for inputs or raw materials. Private sector importers have indicated that CORPOVEX transactions and direct public sector imports reduce their flexibility to choose suppliers and set quality standards and prices of imported products. However, it appears that the overall impact of these policies on trade has been limited because of other severe import barriers, including the overriding lack of foreign currency, the need for inputs, and the lack of supply from competing countries.

Public sector entities and state-owned enterprises are not required to present or maintain import licenses, to pay tariffs, or to present any documents or certificates related to the regulation of customs and duties, according to an executive resolution signed in March 2012. The Venezuelan government has stated that this resolution was issued in order to simplify administrative procedures for import and export. However, it creates significant competitive disadvantages for private sector entities, which are typically denied similar treatment. Venezuela has on occasion extended this treatment to private sector actors for short periods of time in order to facilitate imports of products it deems to be in shortage. According to the Caracas-based think tank Ecoanalitica, the total share of private sector imports decreased by 15.3 percent to 34.8 percent in the first six months of 2016 when compared to the same period in 2015.

Tariffs

In 2015, Venezuela's average applied tariff rates were 11.9 percent on agricultural goods and 13.0 percent on non-agricultural goods. Venezuela's average bound tariff rates are 55.3 percent on agricultural goods and 33.6 percent on non-agricultural goods.

MERCOSUR admitted Venezuela as its fifth full member on July 31, 2012. Venezuela had four years from the date of accession to adopt the MERCOSUR common external tariff (CET) and to provide duty-free treatment on all goods to its four MERCOSUR partners, with a two-year extension allowed for sensitive products. By April 1, 2014, Venezuela had adopted the CET for 50 percent of the goods in its tariff schedule, and was to have phased in the adoption of the remainder of the CET schedule on an annual basis, with full implementation of the CET by 2016. However, Venezuela was suspended as a full member of MERCOSUR on December 2, 2016, for failure to implement a range of MERCOSUR norms, including a significant number of the remaining CET tariff lines.

Venezuela's customs authorities are empowered to establish reference prices for calculating import duties. The Customs Tariff Schedule establishes 11 levels of *ad valorem* import duty rates, ranging from zero to 20 percent, with some rates in certain sectors of up to 35 percent. In addition to import duties, importers must pay one percent of the value of goods as a customs service fee, as well as a value-added tax, which is currently 12 percent of the cost, insurance, and freight value of the product.

On October 27, 2016, Venezuela published in the Official Gazette a list of 94 agricultural products with a one-year exemption from import tariffs and value-added taxes. Some of the products included in this list are planting seeds, corn, wheat, rice, soybeans, soybean meal, breeder hens, and live cattle.

Price Controls

In an attempt to regulate local production and control market prices of basic consumable products, Venezuela has instituted a number of laws and decrees that impose price controls, dictate product movements throughout the distribution chain, and limit profit margins of manufacturers and retailers. These measures have led to significant decreases in local production. Additionally, the government has favored imports, purchased at the over-valued official exchange rate, over domestic production, further depressing the capacity of domestic production to meet domestic demand.

On January 24, 2014, President Maduro used decree authority to promulgate the Fair Costs and Prices Law, which imposed profit limits on the private sector and subjected companies to audits and penalties for failing to adhere to these limits. The law applies to any resident in Venezuela conducting any type of economic activity. The law created the National Superintendent for the Defense of Socio-Economic Rights and empowered it to decide whether prices are "fair" and to identify profit limits for businesses. Businesses that are found in compliance are given a "Certificate of Fair Prices," which is required to apply for hard currency through a currency exchange mechanism, the National Center for International Trade (CENCOEX). In October 2015, the law was revised to introduce more controls, including a maximum 60 percent price increase throughout the supply chain from importer to retailer, and increased sanctions, including longer jail sentences, for infractions. Although the stated intent of the revision was to restrain price increases, according to the International Monetary Fund, Venezuela's annual inflation was 475.8 percent in 2015.

Currency Controls

Venezuela continues to maintain the strict currency controls that were implemented in 2003. The measures continue to pose a significant obstacle to most trade with Venezuela. Many companies report that they cannot obtain sufficient foreign currency to satisfy their business needs. (See also the section on Import Policies, to which currency controls also apply.)

On February 17, 2016, President Maduro used his Emergency Economic powers to announce changes to Venezuela's foreign exchange mechanisms. The three-tiered exchange rate regime was reduced to two tiers, with a 37 percent devaluation of the highest rate, now known as the Protected, or DIPRO, rate to 10.0 bolivars/dollar. On March 8, 2016, Venezuela announced the details of the new exchange rate regime. The DIPRO rate, managed by the Currency Control Commission, which falls under the jurisdiction of CENCOEX, is reserved for "essential" imports, primarily food and medicines, and international debt payments. The Complementary, or DICOM, rate is overseen by the Central Bank and is used for all other transactions, including sales of foreign exchange to individuals travelling abroad; DICOM is also known as SIMADI. The DICOM/SIMADI rate is a managed floating rate. It started trading in March 2016 at 206.8 bolivars/dollar, and was trading at 670.8 as of mid-December 2016. The Central Bank publishes the DICOM/SIMADI rate daily.

Private sector firms and independent analysts report that sales through Venezuela's foreign exchange mechanisms are arbitrary and lack transparency. The time to receive authorization for foreign currency through either of the two mechanisms varies in length, but can take more than nine months from the beginning to the end of the process and requires the submission of various supporting documents by the Venezuelan importer, with the support or cooperation of the exporter. Businesses and individuals report rejections of applications after initial approval, and long delays in payment even after approval. Venezuelan firms and financial analysts have reported that like its predecessors, neither the DIPRO nor DICOM/SIMADI mechanisms has been able to meet the market demand for hard currency.

Local Content Requirements

Venezuela has maintained a 35 percent local content requirement on domestically assembled vehicles since 2013 (the previous local content requirement was 50 percent). The limited capacity of local industry to produce components makes satisfying the 35 percent local content difficult, and the general lack of hard currency to import inputs has severely reduced production levels. Furthermore, local engine assembly, which could contribute to meeting the local content requirement, is considered prohibitively expensive given the variety of engines and the size of production runs required. Since September 2012, Venezuela

has required both domestically produced and imported vehicles to use a Venezuela-specific vehicle identification number, contrary to international practice.

Tariff-Rate Quotas

Venezuela maintains the authority to impose tariff-rate quotas (TRQs) for up to 62 tariff lines. Venezuela administers TRQs for oilseeds, corn, wheat, milk and dairy, and sugar. The procedure for issuance of import licenses under these TRQs is not transparent, and the relevant rules are inconsistently applied by Venezuelan authorities. For example, Venezuela has not published regulations establishing the TRQ mechanism for some eligible products, while for products that have established TRQ mechanisms, such as pork, the TRQ mechanism is not applied. This leads to great uncertainty for U.S. exporters, who face duties ranging from 8 percent to 20 percent depending on whether the TRQ is applied.

GOVERNMENT PROCUREMENT

Venezuela's government procurement law covers purchases by government entities, national universities, and autonomous state and municipal institutions. It is not clear to what degree the procurement law applies to joint ventures in which a state entity has a controlling interest. The law requires a procuring entity to prepare a budget estimate for a procurement based on reference prices maintained by the Ministry of Industry and Trade.

While the procurement law technically forbids discrimination between domestic and foreign suppliers, the law also provides that the President can mandate temporary changes in the bidding process "under exceptional circumstances," in accordance with "economic development plans" that promote national development or provide preferences to domestic goods and suppliers. These measures include price preferences for domestic goods and suppliers; reservation of procurements for nationals; requirements for domestic content, technology transfer, or the use of local labor; and other incentives to purchase from companies domiciled in Venezuela. For example, Government Decree 1892 establishes a 5 percent preference for bids from companies whose products have over 20 percent local content. In addition, half of that 20 percent of local content must be from small to medium domestic enterprises.

The Venezuelan government is increasingly awarding contracts directly, thus avoiding the competitive bidding required by the government procurement law.

Venezuela is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Venezuela remained on the Priority Watch List in the 2016 Special 301 Report. Key concerns cited in the report relate to the deteriorating environment for the protection and enforcement of intellectual property rights (IPR) in Venezuela. Venezuela's reinstatement of the 1956 Industrial Property Law, in conjunction with provisions in Venezuela's 1999 constitution and international treaty obligations still in effect, has created legal ambiguity for IPR and impeded the registration of patents for pharmaceutical products. The Autonomous Intellectual Property Service (SAPI), Venezuela's patent and trademark office, has not issued a new patent since 2007 and, as of May 2015, SAPI has substantially increased filing and maintenance fees for patents and trademarks and requires foreign rights holders to pay these fees in U.S. dollars calculated at an exchange rate that grossly overvalues the bolivar. The Seed Law was amended in December 2015 and now prohibits and criminalizes the granting of plant variety rights and patent protection for seed-related inventions. Venezuela also fails to provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. Copyright piracy and trademark counterfeiting remain widespread,

including piracy over the Internet. Infringing copies of movies found to be contributing to online piracy have been traced back to unauthorized camcording in Venezuelan theaters. The World Economic Forum's 2016-2017 World Competitive Report ranked Venezuela last out of 138 countries in intellectual property protection. In order to make significant improvements to its regime for IPR protection, Venezuela must update and reconcile IPR-related laws and increase enforcement against counterfeiting and piracy, both physical and online.

SERVICES BARRIERS

Venezuela maintains restrictions on a number of services sectors, including professional, financial, audiovisual and telecommunications services. Foreign employees are restricted to 10 percent of the work force of any enterprise with more than 10 workers, and Venezuelan law limits foreign employee salaries to 20 percent of the payroll.

Professional Services

Foreign equity participation in professional firms is restricted to a maximum of 19.9 percent. Only Venezuelan citizens may provide accounting and auditing services to government institutions and other government entities such as banks and hospitals. In addition, only Venezuelan citizens may act as accountants for companies in which the government has at least a 25 percent ownership interest. Foreigners are required to establish a commercial presence for the provision of engineering services.

Financial Services

Under a 2010 Venezuelan insurance law, at least half of the members of the board of an insurance company must be of Venezuelan nationality. In addition, all members of the board must be living in and have resident status in the country.

Under a 2011 banking law, foreign banks without subsidiaries in Venezuela may act only through their Venezuelan representatives. With respect to services of the foreign bank they represent, such representatives may only promote the services among companies of the same nature that operate in Venezuela; among individuals and companies interested in the purchase or sale of goods and services in foreign markets (for financing services); and among potential applicants for credits or external capital. In addition, the banking law expressly prevents representatives from carrying out operations and rendering services that constitute activities of the foreign bank that they represent; receiving funds and investing such funds directly or indirectly in Venezuela; offering or investing in securities or other foreign securities within Venezuela; or advertising their activities in Venezuela.

Audiovisual Services

Venezuela limits foreign equity participation to less than 20 percent for enterprises engaged in Spanish language TV and radio broadcasting. At least half of the TV programming must be dedicated to national programming. Additionally, half of both FM and AM radio broadcasting must be dedicated to Venezuelan-produced material. In the case of music, 50 percent of the Venezuelan-produced material must be traditional Venezuelan songs. There is also an annual quota on the distribution and exhibition of Venezuelan films. The Venezuelan government film agency determines how many copies of foreign films shown in one year may be produced and sold for distribution in the following year. At least 20 percent of those authorized copies for distribution must be made in Venezuelan reproduction facilities.

INVESTMENT BARRIERS

A 2014 foreign investment law reduced statutory rights of foreign investors by requiring that tangible goods make up at least 75 percent of the value of any foreign investment; that foreign investment have a minimum value of $1 million and be scheduled to last for at least five years (although CENCOEX may approve some exceptions); that earnings and dividends be paid in local currency; and that no more than 80 percent of earnings be repatriated in hard currency in any fiscal year.

The Venezuelan government continues to control key sectors of the economy, including oil, petrochemicals, and much of the mining and aluminum industries. Although Venezuela began an ambitious program of privatization under the Caldera administration (1994-1999), the program was halted under the Chavez administration (1999-2013), and key sectors of the economy were re-nationalized. This policy of intervention has continued under President Maduro. The industry association CONINDUSTRIA (Confederación Venezolana de Industriales) estimates that there were 700 state interventions (nationalizations or other seizures of private property) during the period 2002 to 2016.

In January 2012, former President Chavez withdrew Venezuela from the World Bank's International Center for Settlement of Investment Disputes (ICSID), an action that took effect in July of that year. There are currently 24 ICSID cases pending against Venezuela, including some relating to the Chavez administration's takeover of privately held oil and gas projects in 2007. Venezuela faces other cases brought against it by investors at other arbitral institutions, as well.

Oil and Gas

Foreign investment continues to be restricted in Venezuela's hydrocarbons sector. The government is required to have at least a 50 percent ownership stake in petrochemical companies, and controls assets and services involved in gas compression and in the injection of water, steam or gas into petroleum reservoirs.

Exploration, production, refining, transportation, storage, and foreign and domestic sale of petroleum can only be carried out by the government through operations led by the state-owned petroleum company, Petroleos de Venezuela (PDVSA). Private companies may engage in oil and gas production through joint ventures with PDVSA. Foreign and domestic private companies may participate in the exploration, production, and distribution of gas not associated with crude oil production operations, including offshore gas, alone or in joint ventures with PDVSA. Although Venezuelan law requires a competitive process for awarding stakes in exploration and production acreage to private partners for projects to be developed by PDVSA, the government may directly award contracts when the project is to be developed under "special circumstances" or is of "national interest." Oil companies from politically strategic partner countries are often identified as the preferred partners in the development of new projects without going through a competitive process.

Electricity

In 2010, the ruling party PSUV-led National Assembly passed a law merging all electricity utilities under one central holding entity with 75 percent direct government ownership and 25 percent PDVSA ownership. The state-owned electric company, Corporación Eléctrica Nacional, controls all electric power generation, transmission, and distribution, and its electricity prices are heavily subsidized.

Mining

The state-owned Corporación Venezolana de Guayana controls steel and aluminum production. In 2010, then-President Chavez ordered the cancellation of all mining concessions and the expropriation of gold and

diamond mines in Bolivar state. President Maduro, however, has recently sought to encourage foreign investment in the state's mining sector through a decree establishing the Orinoco Mineral Arc (Arco Minero), a mineral rich zone in Bolivar state in the southeastern region of the country open to private investment in joint ventures with public sector partners. Several international mining companies have signed memoranda of understanding or contracts for exploration and production in the Arco Minero in joint ventures with PDVSA or other government entities, though in most cases the projects have not yet begun.

VIETNAM

TRADE SUMMARY

The U.S. goods trade deficit with Vietnam was $32.0 billion in 2016, a 3.3 percent increase ($1.0 billion) over 2015. U.S. goods exports to Vietnam were $10.2 billion, up 43.2 percent ($3.1 billion) from the previous year. Corresponding U.S. imports from Vietnam were $42.1 billion, up 10.8 percent. Vietnam was the United States' 27th largest goods export market in 2016.

U.S. exports of services to Vietnam were an estimated $2.0 billion in 2015 (latest data available) and U.S. imports were $1.0 billion.

U.S. foreign direct investment in Vietnam (stock) was $1.3 billion in 2015 (latest data available), a 17.6 percent decrease from 2014.

Trade Agreements

Vietnam currently is party to five free trade agreements (FTAs) with ASEAN (Association of Southeast Asian Nations), Japan, Chile, South Korea, and the Eurasian Customs Union. As a member of ASEAN, Vietnam also is party to ASEAN FTAs with India, Australia and New Zealand, South Korea, Japan, and China. Vietnam has signed an FTA with the European Union, but the agreement has not yet entered into force. In addition, Vietnam is a participant in the Regional Comprehensive Economic Partnership negotiations, which include the ten ASEAN countries, Australia, China, Japan, Korea, India, and New Zealand, and is negotiating FTAs with other countries, including Israel.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical barriers to trade

Used IT products

Vietnam maintains import prohibitions on certain used information technology (IT) products. In July 2016, Vietnam enacted Decision 18, which eases import prohibitions on some used IT products if these products meet various technical regulations and standards. The products covered under the decision include used IT goods that are: imported in conjunction with the relocation of means of production of a single organization; imported for the control, operation and inspection of activities in one or all parts of a system or production line; imported for software production, business outsourcing or data processing for foreign partners; or re-imported after overseas repairs under warranty. The decision also includes refurbished goods and components out of production imported to replace or repair those being used domestically.

Sanitary and Phytosanitary Barriers

Food Safety: Decree 38

In 2012, Vietnam issued Decree 38, an implementing regulation for its comprehensive Food Safety Law. The decree is broad in scope, containing requirements for a wide variety of horticultural, seafood, and meat products, and applies to both foreign and domestic products. Uneven enforcement and lack of transparency has led to uncertainty for U.S. exporters and Vietnamese importers. The United States will continue to urge Vietnam to address these concerns.

Offal Products

In September 2013, the Ministry of Agriculture and Rural Development (MARD) removed Vietnam's ban on the importation of so-called "white offals," such as intestines. In February 2014, Vietnam reached an agreement with the United States on the terms and conditions necessary to resume trade in white offal products, pending the registration of individual U.S. beef, pork, and poultry facilities used to produce white offal products for sale in Vietnam. Following a November 2014 audit that MARD conducted of the U.S. food safety inspection system for meat and poultry, MARD continued to maintain that "white offal" was high risk. MARD increased the rate of inspection of shipments of U.S. white offal products and stopped approving new U.S. facilities to export certain types of white offals to Vietnam. The U.S. Government will continue to press Vietnam to lift this restriction.

Circular 24

In September 2016, Vietnam notified the Ministry of Health's draft Circular 24 on Maximum Residues Limits (MRLs) for Veterinary Drugs in Foods, to the WTO. The measure would ban certain drugs that previously were permitted in accordance with Codex MRLs or that are used extensively by U.S. industry. The United States submitted comments to the WTO in October 2016. Following bilateral discussions, Vietnam initially agreed to amend the draft circular to harmonize with Codex MRLs, but changed course in March 2017 and reverted to the earlier proposed ban. The United States continues to press this issue in coordination with likeminded countries, both at the WTO and bilaterally.

Circular 25

In February 2011, Vietnam implemented Circular 25, which requires U.S. meat, poultry and fishery establishments to submit a questionnaire for review that must be approved by the National Agro-Forestry-Fisheries Quality Assurance Department in order to be eligible to export to Vietnam. The United States agreed to this system with the understanding that questionnaires would be accepted and reviewed by Vietnam on a rolling basis, and that newly eligible companies would be indicated as eligible to export on a list posted by Vietnam's competent regulatory authority and updated on a monthly basis. Over the last several years, Vietnam has sometimes administered Circular 25 in a manner that has hampered trade, and the U.S. Government will continue to seek to address this issue.

Products of Plant Origin

On January 1, 2015, Vietnam implemented a new Plant Health Law and implementing decrees updating its regulatory regime in the areas of plant health quarantine, pesticide regulation, and import and export of plant origin products. These measures included Circular 30/2014/TT-BNNPTNT, which contains a list of articles for which pest risk assessments (PRAs) must be provided before the article can be imported into Vietnam.

Under this circular, MARD initially gave the United States a six-month deadline to submit hundreds of PRAs on a variety of traditionally-traded commodities. Since the MARD directive was issued, the United States submitted PRA information for a range of commodities, including planting seeds and citrus. MARD is not routinely issuing import permits for U.S. citrus despite indicating that it would do so after receiving the PRA packets, and it appears to reject the fact that U.S. citrus was traditionally traded. The United States continues to press MARD to resolve this issue expeditiously.

MARD also issued a decision (No. 2515/2015) in 2015 that subjects a number of products to plant quarantine inspection upon importation into Vietnam and requires a phytosanitary certificate from the exporting country to accompany any shipment of those products. The list of products subject to these

requirements includes many pre-packaged, consumer-oriented, or highly-processed foods of plant origin for which such certificates are not normally issued nor required. The United States continues to discuss these requirements with Vietnam.

Grains

On December 17, 2016, Vietnam implemented a suspension on imports of U.S. distillers dried grains and imposed a requirement for pre-export methyl bromide fumigation of wheat and corn. Prior to implementation, the United States sought a delay of this action until a meeting between technical experts could be convened. Vietnam has indicated that it will keep the suspension in place until August 1, 2017, when it will determine whether to lift the ban based on a review of a U.S. proposal on fumigation treatment. The United States exports approximately $200 million of this product to Vietnam annually.

IMPORT POLICIES

Tariffs

Vietnam has bound all of its tariff lines at the WTO rate, and in 2015, Vietnam's average overall applied tariff rate was 11.5 percent. In April 2016, Vietnam issued a new Law on Tariffs (No. 107) with a new applied tariff schedule, which took effect on September 1, 2016. Inputs imported for software production, medical equipment production, shipbuilding, and petroleum activities that cannot be produced domestically are eligible for tariff exemptions. Tariff exemptions and refunds are also applied to the following: animal breeds, plant varieties, fertilizers and plant protection drugs that are not produced domestically; imported machinery, inputs and spare parts used for money printing; and goods imported or exported for the purpose of environmental protection. Tariffs are applied on goods imported into Vietnam's customs territory from its export processing and free trade zones, as well as on goods imported from Vietnam into those zones.

Aside from import tariffs, Vietnam applies export taxes ranging from 5 to 40 percent. According to the new Law on Tariffs, Vietnam applies export taxes on a wide range of goods including plants and botanical parts (5-30 percent), ores (20-40 percent), coal (5-15 percent), crude oil (10 percent), chemicals (5-10 percent), skins (5-10 percent), wood (2-20 percent), charcoal (5-10 percent), gems and precious stones (5-10 percent), silver and gold (2-5 percent), jewelry (2 percent), and metals and metal products (15-22 percent). Vietnam also maintains tariff-rate quota regimes for salt, tobacco, eggs, and sugar.

In August 2016, the Ministry of Finance (MOF) issued Decree 128 that provides an export tax exemption to environment-friendly goods labeled "Green Vietnam."

Although the majority of U.S. exports to Vietnam face tariffs of 15 percent or less, consumer-oriented food and agricultural products continue to face generally higher rates. In recent years, Vietnam has increased applied tariff rates on a number of products, although rates for those products remain below Vietnam's WTO-bound levels. Products affected by such tariff adjustments include sweeteners (such as fructose and glucose), shelled walnuts, ketchup and other tomato sauces, inkjet printers, soda ash, and stainless steel bars and rods. Most of the products for which tariffs have increased are also produced by companies in Vietnam.

On July 1, 2016, Vietnam implemented Law 106, which increases the special consumption taxable base for imported alcoholic beverages from the import price to the sales price received by the importer, thereby significantly increasing the tax burden on importers relative to domestic producers.

Nontariff Barriers

Export prohibition

MARD Circular 24, issued in June 2016, included a list of certain wood products banned from exportation. These products include round timber and sawn timber made from natural wood, firewood and charcoal made from timber, and firewood made from natural wood.

Import Prohibitions

Vietnam prohibits the commercial importation of some products, including certain children's toys, second-hand consumer goods, used spare parts for vehicles, used internal combustion engines of less than 30 horsepower, certain encryption devices and encryption software, and certain cultural products. In November 2015, the Ministry of Science and Technology issued Circular 23/2015/TT-BKHCN, on the importation of used machinery, equipment, and technology. The decree rolled back some restrictions on the importation of remanufactured equipment and simplifies the documentation needed to establish the year of manufacture of used equipment.

In 2012, Vietnam's Prime Minister issued Directive 23, which banned the importation of a list of products, including some that are potentially harmful to the environment. In 2014, the Ministry of Industry and Trade (MOIT) issued Circular 05/2014, which set out a list of items subject to permanent and temporary bans on importation for re-export under Directive 23, including chemicals, plastics and plastic waste, and certain types of machinery and equipment. In addition, Circular 25, issued by the Ministry of Construction (MOC) on September 2016, prohibits the importation of asbestos of the amphibole group.

Import Licenses

In June 2015, MOIT issued Circular 12/2015/TT-BCT, which subjects some steel products to import licensing. In 2014, MOIT issued Circular 35, which subjects urea, mineral, and chemical fertilizer products to import licensing, and in 2015 the Ministry of Health issued Circular 30, which provides that an import license is required for 25 diagnostic devices and 24 treatment devices.

In 2014, the Ministry of Information and Communications (MIC) issued Circular 18/2014/TT-BTTTT, which provides that imports of mobile phones, radio transmitters, and radio transmitter-receivers require an import permit. According to the circular, which went into effect in January 2015, an import permit will be issued within seven working days after the importer submits an application to MIC.

Vietnam enacted Decree 94 on "Wine Production and Wine Trading" in January 2013. The decree established three types of licenses (liquor distribution licenses, liquor wholesale licenses, and liquor retail licenses). The decree also provided that only enterprises with liquor distribution licenses are permitted to directly import liquor.

Price Registration and Stabilization

Under Vietnam's Price Law, the Ministry of Finance (MOF) has the authority to apply price controls on a set list of products, including petroleum products, electricity, liquefied petroleum gas, nitrogen fertilizers, pesticides, animal vaccines, salt, milk products for children under the age of six, sugar, rice, and basic human medications.

In May 2014, MOF published Decision 1079/2014/QD-BTC regarding the implementation of price stabilization measures for dairy products for children under six years old. The decision set maximum prices and required price reductions on a number of branded infant and children's formula products and also set the maximum wholesale-to-retail markup for these goods at 15 percent. In April 2015, MOF extended the milk price ceiling through the end of 2016. In November 2016, the Vietnamese government issued Decree 149 moving responsibility for milk price controls from the MOF to MOIT, effective January 1, 2017. On December 31, 2016, the Vietnamese government published Decision 113/2016/QD-TTG extending the milk price controls until the end of March 2017. The United States continues to engage with Vietnam regarding these measures.

Customs and Trade Facilitation

Vietnam has implemented the WTO Customs Valuation Agreement, but importers have reported concerns with the use of reference prices by Vietnam, as well as other customs issues. The United States will continue to work with Vietnam on implementation of the WTO Customs Valuation Agreement.

Vietnam's new Law on Customs came into effect on January 1, 2015. The law provides a legal framework for the National Single Window and institutes a number of improvements, including increased electronic filing of customs forms. It also allows for more self-certification by traders and for an expanded advance rulings system, which includes rulings on classification, origin, and customs valuation.

In November 2015, Vietnam ratified the WTO Trade Facilitation Agreement. Pursuant to a memorandum of understanding, USAID is committed to support the Vietnam Trade Facilitation Alliance, which the American Chamber of Commerce in Ho Chi Minh City and the Vietnam Chamber of Commerce and Industry lead, to help Vietnam implement its WTO Trade Facilitation Agreement commitments.

Trading rights

Companies are allowed to import all goods except for a limited number of products for which imports are reserved for state trading enterprises. These products include: cigars and cigarettes, crude oil, 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.

Other Nontariff Barriers

U.S. stakeholders continue to express concern about the impact on foreign firms of product registration requirements for imported pharmaceuticals.

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. Since 2012, it has been an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Vietnam remained on the Special 301 Watch List in 2016. Online piracy and sales of counterfeit goods over the Internet and in physical markets continue to be a concern, as noted in the 2016 Out-of-Cycle

Review of Notorious Markets. Also, enforcement of IPR continues to be a challenge. Vietnam relies on administrative actions and penalties to enforce IPR, rather than other mechanisms that have a greater deterrent effect. In addition, the United States has concerns about the lack of clarity in Vietnam's system for protecting against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. The United States will continue to discuss these issues with Vietnam.

SERVICES BARRIERS

Audiovisual Services

Foreigners may invest in cinema construction and operation only through joint ventures with local Vietnamese partners. Films are subject to censorship before public viewing.

Regulations for the pay-TV industry enacted in March 2016 require the number of foreign channels on pay-TV services be capped at 30 percent of the total number of channels the service carries. Vietnam also requires that foreign pay-TV providers use a local agent to translate into Vietnamese all movies and programming on science, education, sports, entertainment, and music before they are screened. Decision 18a/2013/QD-TTG, issued in 2013, removed previous requirements for news channels to translate their broadcasts and provide a summary of the content in Vietnamese in advance of airing, but still requires foreign content providers to secure the services of a local editing company for post-production work (including translation, content review, and payment of a placement fee) in order for advertisements to be approved for placement in a Vietnamese broadcast. The United States will continue to monitor the implementation of both pay-TV measures and raise concerns as appropriate.

Telecommunications – General

Vietnam permits foreign participation in the telecommunications sector, with varying equity limitations depending on the sub-sector. For instance, foreign ownership in suppliers of closed-user networks is permitted up to 70 percent, while foreign ownership in suppliers of facility-based basic services is generally capped at 49 percent. Vietnam also allows foreign equity of up to 65 percent for suppliers of non-facilities-based public telecommunications services. Facilities-based operators are required to be majority-State-owned firms, limiting the pool of potential joint venture partners.

Telecommunications - International Roaming

All major wireless operators in Vietnam provide international roaming services in Vietnam to foreign carriers seeking to offer their mobile subscribers service when visiting Vietnam. Price competition among Vietnamese telecommunications suppliers in recent years has resulted in lowering the international roaming rate. These lower rates raised concerns among some Vietnamese operators and Vietnam Telecommunications officials that certain local suppliers were "dumping" international roaming services. In response, in October 2014, the Vietnam Telecommunications Authority issued the Order for Promulgating the Average Tariff and Regulated Rate for Inbound International Roaming Services (1469/CVT-GCKM), setting a floor rate for wholesale roaming services for data, messages, and voice service, below which an operator is prohibited from offering services to a foreign operator. This measure has raised rates for foreign operators, and likely their subscribers, to a level significantly above that in comparable regional markets. As a result of this order, at least two U.S. operators have stopped offering data roaming services in Vietnam. The United States will continue to engage with MIC on this issue.

Distribution Services

Foreign investors who seek to open additional retail establishments beyond the first store in Vietnam's retail sector are subject to an economic needs test, which is evaluated by the local authorities and approved by MOIT. MOIT issued Circular 8 in April 2013, which provides additional details on the application of the economic needs test, which was first introduced in 2007. The only companies exempt from the economic needs test requirement are small- and medium-sized retail outlets (less than 500 square meters) located in commercial zones.

Tax Withholding by Local Service Providers

MOF Circular 103, which went into effect in October 2014, requires local entities to withhold taxes of up to 2 percent when they provide many services to foreign companies. Previously, withholdings were only required for revenue generating services, but the withholding requirement now applies to services that are generally deductible for local businesses, such as advertising and after-sale warranty services.

Banking and Security Services

Foreign investors may set up 100-percent foreign-owned bank subsidiaries, or may take ownership interests in domestic "joint stock" banks (commercial banks with any amount of private ownership) or "joint venture" banks (banks set up by joint venture agreement, typically between domestic and foreign partners). Total equity held by foreign institutions and individual investors in domestic "joint stock" banks is limited to 30 percent, while total equity held by a foreign strategic investor (defined by Vietnam as a foreign credit institution meeting certain criteria related to capacity to help develop the Vietnamese bank), is limited to 20 percent. Foreign equity in "joint venture" banks is permitted up to 49 percent. Foreign bank branches and representative offices of all foreign bank and credit institutions continue to face geographic network restrictions that are not imposed on joint stock banks or joint venture banks, such as being limited to one office per province.

Foreign securities companies are permitted to establish 100-percent foreign-owned subsidiaries in Vietnam. Although there is no foreign ownership limit for local securities companies and fund management firms, no majority stakes have thus far been sold to foreign entities and further clarity in implementing regulations regarding such sales may be warranted.

Electronic Payment Services

Vietnam in recent years has sought to promote the development of a local electronic payments industry. In April 2016, two Vietnamese payment processing networks were consolidated into a *de facto* monopoly, the National Payments Corporation of Vietnam (NAPAS) that is majority owned by the State Bank of Vietnam. Additionally, in June 2016, the Vietnamese Government issued Circular 19/2016/TT-NHNN, mandating that all credit and debit transactions be processed through NAPAS starting in 2018. Processing all transactions through this national switch will significantly impede the security, speed and reliability of the transactions, as well as substantially hinder the competitiveness of foreign payment suppliers. The United States will continue to strongly urge Vietnam to consider alternative, less trade restrictive approaches.

BARRIERS TO DIGITAL TRADE

Advertising Services

Decree No. 181/2013/ND-CP, issued in 2013, introduced restrictions with respect to online advertising. The decree requires that Vietnamese advertisers contract with a Vietnam-based advertising-services

provider in order to place advertisements on foreign websites, and 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. Vietnam does not appear to be enforcing the Decree's provision prohibiting Vietnamese companies from contracting directly with online advertising-service suppliers outside of Vietnam. However, Vietnam's tax authorities reportedly do not allow advertising purchased cross-border to be deducted as a business expense, which creates a disincentive to use foreign-based advertising services providers.

Over-The-Top Services

Over-the-top (OTT) services are Internet-based voice and text services typically supplied via software applications over Internet networks managed by traditional operators in competition with those operators' voice and data services. In October 2014, the MIC released draft regulations for OTT services for public comment. The draft included a requirement for OTT voice and messaging services suppliers to enter into an undefined commercial relationship with a licensed telecommunications supplier in Vietnam as a condition of supplying OTT voice and messaging services in Vietnam. The United States provided detailed comments on this proposal when it was released and will continue to urge Vietnam not to go forward with this proposed requirement.

Internet-based Content services

The Vietnamese government continues to allow access to the Internet only through a limited number of Internet service providers, all of which are state-controlled companies or companies with substantial state control. The Vietnamese government restricts or blocks access to certain websites that it deems politically or culturally inappropriate. In July 2013, Vietnam promulgated Decree 72/2013/ND-CP, which prohibits the use of Internet services to oppose the government; harm national security, social order, and safety; or propagandize war, terrorism, hatred, violence, or superstition. The United States has raised concerns about these Internet restrictions with the Vietnamese government and will continue to monitor this issue closely.

Circular 09/2014/TT-BTTTT "Detailing Management, Provision and Use of Information on Websites and Social Networks," which guides implementation of Decree 72, requires Vietnamese companies that operate general websites and social networks, including blogging platforms, to locate a server system in Vietnam and to store posted information for 90 days and certain metadata for up to two years. To date, enforcement of the decree appears to be very limited, and MIC has not released guidance on how the decree will apply to foreign cross-border service providers.

ELECTRONIC COMMERCE AND CYBER SECURITY

Electronic Commerce

Electronic commerce is growing rapidly in Vietnam. In 2013, the Vietnamese government issued Decree 52 to regulate electronic commerce activities in Vietnam and in 2014 MOIT issued a circular to provide further guidance for the implementation of the decree related to electronic commerce websites (Circular 47/2014/TT-BCT). Both the decree and the circular regulate entities in Vietnam only. In the area of cloud computing services, stakeholders raised concerns over a MIC draft IT services decree, which would impose licensing and registration requirements on IT service providers, but MIC has reportedly shelved the draft decree. The United States will continue to monitor this issue closely.

Cybersecurity

The Law on Network Information Safety No. 86/2015/QH13, which came into effect on July 1, 2016, includes provisions related to spam, unauthorized collection and distribution of personal information, hackers, and other areas. The new law defined "network information safety" as the protection of network information and network information systems from the unauthorized access, use, disclosure, interruption, amendment or sabotage in order to ensure the confidentiality and usability of the information on the network system. Companies that produce ICT products have expressed concerns about this law and its implementing decrees – Decree 108/2016/ND-CP on conditions for granting business licenses for provision of online information security services and Decree 58/2016/ND-CP on trading and import-export of civil cryptographic products and services – due to their ambiguous language.

OTHER BARRIERS

U.S. stakeholders continue to have concerns about the lack of transparency and accountability and other governance issues in Vietnam. With the assistance of the United States and other donors, Vietnam is in the process of implementing a public administration reform program and continuing to enhance overall transparency. The United States will continue to work with Vietnam to support these reform efforts and to promote greater transparency.

As a signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Vietnam is required to recognize and enforce foreign arbitral awards within its jurisdiction, with very few exceptions. However, in 2012, dozens of Vietnamese companies signed purchase contracts with U.S. cotton suppliers, but did not honor those agreements when world cotton prices fell. In compliance with standard contract provisions, international cotton traders referred the defaults to the International Cotton Association (ICA) for arbitration. The ICA rendered arbitration awards for the defaults valued at $76 million, but Vietnamese courts have not recognized the validity of these awards.

Vietnam issued Decree 36, bringing medical device regulation for both domestically-manufactured and imported products under a unified system. The decree took effect July 1, 2016. Stakeholders have expressed concern about certain requirements of the new decree, including that it provides an insufficient amount of time to meet certain new requirements.

APPENDIX I

APPENDIX I

Report on Progress in Reducing Trade-Related Barriers to the Export of Greenhouse Gas Intensity Reducing Technologies

This Appendix provides an update on progress the Administration has made in reducing trade-related barriers to the export of greenhouse gas intensity reducing technologies (GHGIRTs), as called for by the Energy Policy Act of 2005. In October 2006, pursuant to section 1611 of the Act,[17] 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.[18] The Act also calls for USTR to report annually on progress made with respect to removing the barriers identified in the initial report. USTR submitted the first annual progress report in October 2007; this report, as well as the initial report, are available at http://ustr.gov/about-us/policy-offices/press-office/reports-and-publications. USTR will continue to submit further annual progress reports as part of the NTE Report.

As described in the initial 2006 GHGIRT report, barriers to the exports of GHGIRTs are generally similar to those identified in the NTE with respect to other exports to the 25 developing countries: *e.g.*, lack of adequate and effective intellectual property rights protections; lack of regulatory transparency and sound legal infrastructure; state-controlled oil and energy sectors, which are often slower to invest in new technologies; cumbersome and unpredictable customs procedures; corruption; import licensing schemes; local content requirements; investment restrictions, including requirements to partner with domestic firms; and, in some countries, high applied tariff rates. Progress in removing such barriers is noted in the appropriate country chapters of this NTE Report. The reader is also referred to USTR's "Special 301" report pursuant to section 182 of the Trade Act of 1974. The "Special 301" report describes the adequacy and effectiveness of intellectual property rights protection and enforcement of U.S. trading partners; the 2016 report will be released later this year.

In APEC, the United States continued its efforts to reduce barriers to trade in GHGIRTs by working to ensure that economies that had not yet implemented APEC Leaders' 2011 commitment to reduce tariffs on environmental goods to five percent or less fulfilled their commitment to cut these tariffs. As a result of USTR's efforts, Vietnam and Thailand have joined other APEC economies in cutting tariffs on environmental goods, including GHGIRTs, resulting in the reduction of tariffs on hundreds of tariff lines across the Asia-Pacific region, impacting billions of dollars of U.S. exports.

Also in 2016, the United States and 16 other WTO Members participating in the Environmental Goods Agreement (EGA) negotiations made significant progress, including by developing a "landing zone" list of over 300 environmental technologies, including GHGIRTs, that would be subject to tariff elimination, and

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[17] Section 1611 of the Act amends the Global Environmental Protection Assistance Act of 1989 (Public Law 101-240) to add new Sections 731-39. Section 732(a)(2)(A) directs the Department of State to identify the top 25 GHG emitting developing countries for the purpose of promoting climate change technology. The Secretary of State has submitted its report to Congress identifying these 25 countries. Section 734 calls on the United States Trade Representative "(as appropriate and consistent with applicable bilateral, regional, and mutual trade agreements) [to] (1) identify trade-relations barriers maintained by foreign countries to the export of greenhouse gas intensity reducing technologies and practices from the United States to the developing countries identified in the report submitted under section 732(a)(2)(A); and (2) negotiate with foreign countries for the removal of those barriers."

[18] These 25 countries were identified in the Department of State's 2006 **"**Report to Congress on Developing Country Emissions of Greenhouse Gases and Climate Change Technology Deployment." They are: Algeria; Argentina; Azerbaijan; Bangladesh; Brazil; Chile; China; Colombia; Egypt; India; Indonesia; Iraq; Kazakhstan; Libya; Malaysia; Mexico; Nigeria; Pakistan; Philippines; South Africa; Thailand; Turkmenistan; Uzbekistan; Venezuela; and Vietnam.

which was welcomed by G20 Leaders at their meeting in September in Hangzhou, China. Trade Ministers and other senior officials from all 17 EGA economies met in Geneva on December 3 and 4 and made additional progress, and participants are currently assessing appropriate next steps for advancing these negotiations in 2017. Global trade in environmental goods is estimated at nearly $1 trillion annually, and some WTO Members charge tariffs as high as 50 percent on these goods. The United States exported $130 billion of environmental goods in 2015, and U.S. exports of environmental goods have been growing at an annual rate of four percent since 2010. By eliminating tariffs on these products, we can improve access to the technologies that the United States and other countries need to protect our environment, while unlocking opportunities for U.S. exporters and spurring innovation in green technologies. In addition to the United States, Australia, Canada, China, Costa Rica, the European Union, Hong Kong, Iceland, Israel, Japan, Korea, New Zealand, Norway, Singapore, Switzerland, Chinese Taipei, and Turkey are participating in the EGA negotiations. China has remained the top GHG emitting developing country since the first GHGIRTs report in 2006.

APPENDIX II

TABLE II.1
US Goods Trade for Given Trade Partners in Rank Order of US Goods Exports
(Values in Millions of Dollars)

Country	Goods Balance 2015	Goods Balance 2016	Change 2015-16	Exports* 2015	Exports* 2016	Change 2015-16 Value	Change 2015-16 Percent	Imports** 2015	Imports** 2016	Change 2015-16 Value	Change 2015-16 Percent
World	-745,660	-734,316	11,344	1,502,572	1,454,624	-47,948	-3.2	2,248,232	2,188,940	-59,292	-2.6
Canada	-15,547	-11,240	4,307	280,609	266,827	13,782	-4.9	296,156	278,067	-18,089	-6.1
Mexico	-60,663	-63,192	-2,529	235,745	230,959	-4,786	-2.0	296,408	294,151	-2,257	-0.8
China	-367,173	-347,038	20,135	116,072	115,775	-297	-0.3	483,245	462,813	-20,432	-4.2
Japan	-68,922	-68,938	-16	62,443	63,264	822	1.3	131,364	132,202	838	0.6
United Kingdom	-1,848	1,070	2,918	56,115	55,396	-719	-1.3	57,962	54,326	-3,636	-6.3
Germany	-74,850	-64,865	9,984	49,971	49,362	-609	-1.2	124,820	114,227	-10,593	-8.5
Korea	-28,313	-27,666	647	43,446	42,266	-1,179	-2.7	71,759	69,932	-1,826	-2.5
Netherlands	23,361	24,225	865	40,196	40,377	181	0.5	16,836	16,152	-684	-4.1
Hong Kong	30,371	27,522	-2,850	37,167	34,908	-2,259	-6.1	6,796	7,386	591	8.7
Belgium	14,678	15,251	573	34,160	32,271	-1,889	-5.5	19,482	17,020	-2,462	-12.6
France	-17,712	-15,823	1,888	30,104	30,941	838	2.8	47,815	46,765	-1,051	-2.2
Brazil	4,182	4,121	-61	31,651	30,297	-1,354	-4.3	27,468	26,176	-1,293	-4.7
Singapore	10,205	9,068	-1,137	28,472	26,868	-1,604	-5.6	18,267	17,801	-467	-2.6
Taiwan	-15,048	-13,268	1,780	25,860	26,045	185	0.7	40,908	39,313	-1,595	-3.9
Switzerland	-9,211	-13,673	-4,461	22,185	22,701	516	2.3	31,397	36,374	4,977	15.9
UAE	20,536	19,026	-1,510	23,004	22,382	-622	-2.7	2,468	3,356	888	36.0
Australia	14,142	12,690	-1,452	25,036	22,225	-2,811	-11.2	10,894	9,534	-1,360	-12.5
India	-23,340	-24,309	-970	21,452	21,689	237	1.1	44,792	45,998	1,207	2.7
Saudi Arabia	-2,342	1,097	3,438	19,739	18,023	-1,716	-8.7	22,081	16,926	-5,155	-23.3
Italy	-27,955	-28,457	-502	16,204	16,754	549	3.4	44,159	45,210	1,051	2.4
Israel	-10,938	-9,009	1,929	13,539	13,197	-342	-2.5	24,477	22,206	-2,271	-9.3
Colombia	2,212	-696	-2,908	16,287	13,099	-3,187	-19.6	14,075	13,796	-279	-2.0
Chile	6,673	4,141	-2,531	15,445	12,941	-2,504	-16.2	8,772	8,799	27	0.3
Malaysia	-21,693	-24,820	-3,127	12,277	11,867	-410	-3.3	33,971	36,687	2,717	8.0
Thailand	-17,401	-18,920	-1,518	11,231	10,573	-658	-5.9	28,632	29,493	861	3.0
Spain	-3,820	-3,095	725	10,310	10,373	63	0.6	14,130	13,468	-662	-4.7
Vietnam	-30,932	-31,958	-1,026	7,088	10,151	3,064	43.2	38,020	42,109	4,089	10.8
Ireland	-30,405	-35,948	-5,543	8,931	9,556	625	7.0	39,336	45,504	6,168	15.7
Turkey	1,622	1,315	-307	9,502	9,379	-123	-1.3	7,881	8,064	183	2.3
Argentina	5,390	3,919	-1,471	9,341	8,569	-772	-8.3	3,951	4,650	700	17.7
Philippines	-2,326	-1,784	542	7,908	8,263	355	4.5	10,234	10,047	-187	-1.8
Peru	3,672	1,780	-1,892	8,726	8,029	-696	-8.0	5,053	6,249	1,196	23.7
Dominican Republic	2,449	3,102	653	7,114	7,786	672	9.4	4,665	4,684	19	0.4
Panama	7,255	5,736	-1,519	7,664	6,144	-1,519	-19.8	408	408	-1	-0.1
Indonesia	-12,481	-13,166	-685	7,121	6,037	-1,083	-15.2	19,602	19,203	-398	-2.0
Guatemala	1,686	1,951	265	5,807	5,900	93	1.6	4,120	3,948	-172	-4.2
Costa Rica	1,591	1,565	-26	6,079	5,897	-182	-3.0	4,488	4,333	-156	-3.5
Russia	-9,279	-8,715	564	7,087	5,798	-1,290	-18.2	16,366	14,512	-1,854	-11.3
Venezuela	-7,218	-5,637	1,582	8,346	5,255	-3,091	-37.0	15,564	10,892	-4,672	-30.0
Qatar	2,868	3,768	900	4,222	4,929	706	16.7	1,354	1,161	-194	-14.3
Honduras	459	227	-231	5,215	4,846	-369	-7.1	4,756	4,618	-137	-2.9
South Africa	-1,856	-2,074	-218	5,458	4,685	-773	-14.2	7,315	6,759	-555	-7.6
Ecuador	-1,672	-1,909	-236	5,795	4,153	-1,642	-28.3	7,467	6,061	-1,406	-18.8
Norway	-1,190	-492	698	3,571	3,926	355	9.9	4,760	4,417	-343	-7.2
Sweden	-5,938	-5,903	35	3,941	3,817	-124	-3.1	9,879	9,720	-159	-1.6
Austria	-7,288	-7,068	220	4,024	3,797	-228	-5.7	11,312	10,864	-448	-4.0
Poland	-1,922	-2,309	-386	3,715	3,661	-54	-1.5	5,638	5,970	332	5.9

New Zealand	-662	-484	177	3,631	3,585	-46	-1.3	4,293	4,070	-223	-5.2
Egypt	3,347	2,013	-1,334	4,753	3,507	-1,246	-26.2	1,406	1,493	88	6.2
Kuwait	-1,945	-16	1,929	2,739	3,296	557	20.3	4,685	3,312	-1,372	-29.3
El Salvador	709	466	-243	3,240	2,963	-278	-8.6	2,532	2,497	-35	-1.4
Denmark	-5,558	-5,711	-153	2,202	2,239	37	1.7	7,760	7,949	189	2.4
Algeria	-1,496	-992	504	1,876	2,237	361	19.3	3,372	3,229	-143	-4.2
Pakistan	-1,864	-1,345	519	1,838	2,101	264	14.3	3,701	3,446	-255	-6.9
Paraguay	1,352	1,823	471	1,514	1,980	466	30.7	162	157	-5	-3.2
Czech Republic	-2,522	-2,465	57	1,976	1,934	-42	-2.1	4,498	4,399	-99	-2.2
Nigeria	1,522	-2,301	-3,823	3,438	1,875	-1,563	-45.5	1,916	4,176	2,260	118.0
Morocco	613	844	231	1,625	1,866	241	14.8	1,012	1,022	10	1.0
Hungary	-4,006	-3,501	505	1,715	1,843	127	7.4	5,721	5,344	-378	-6.6
Oman	1,448	675	-773	2,355	1,784	-571	-24.3	907	1,109	202	22.2
Finland	-2,948	-3,003	-55	1,558	1,577	19	1.2	4,506	4,580	74	1.6
Jordan	-133	-62	70	1,359	1,495	136	10.0	1,492	1,557	66	4.4
Nicaragua	-1,921	-1,829	92	1,268	1,475	207	16.3	3,188	3,304	115	3.6
Luxembourg	755	949	194	1,394	1,448	54	3.9	639	499	-140	-21.9
Angola	-1,640	-1,581	60	1,166	1,276	110	9.4	2,806	2,856	50	1.8
Kazakhstan	-306	369	674	510	1,111	601	117.7	816	742	-74	-9.0
Ukraine	11	501	490	862	1,078	216	25.1	851	578	-273	-32.1
Portugal	-2,329	-2,257	72	942	948	6	0.6	3,271	3,205	-66	-2.0
Bahrain	368	134	-234	1,271	902	-369	-29.0	902	768	-134	-14.9
Bangladesh	-5,049	-5,017	32	943	895	-47	-5.0	5,991	5,912	-79	-1.3
Ghana	641	509	-131	950	830	-119	-12.6	309	321	12	3.8
Ethiopia	1,245	591	-654	1,555	827	-728	-46.8	310	236	-74	-23.9
Greece	-631	-509	122	726	720	-5	-0.7	1,356	1,229	-127	-9.4
Romania	-1,395	-1,249	146	754	714	-40	-5.3	2,149	1,963	-186	-8.6
Brunei	114	601	487	133	615	481	360.8	19	14	-6	-29.1
Tunisia	56	133	77	602	524	-78	-13.0	546	392	-155	-28.3
Lithuania	-532	-719	-187	528	464	-64	-12.2	1,059	1,182	123	11.6
Kenya	370	-158	-528	943	394	-550	-58.3	573	552	-22	-3.8
Sri Lanka	-2,528	-2,418	110	362	369	7	1.9	2,890	2,787	-103	-3.6
Cambodia	-2,634	-2,451	184	391	362	-29	-7.5	3,025	2,812	-213	-7.0
Slovenia	-332	-417	-85	346	335	-11	-3.1	678	752	74	11.0
Slovakia	-1,920	-2,242	-321	379	293	-86	-22.7	2,300	2,535	235	10.2
Croatia	-245	-225	20	332	286	-46	-13.9	577	510	-67	-11.6
Bulgaria	-309	-335	-26	289	269	-20	-6.9	598	604	6	1.0
Latvia	-8	-81	-73	295	258	-37	-12.6	303	338	35	11.7
Estonia	-215	-745	-530	288	257	-31	-10.8	504	1,002	499	99.0
Malta	249	-1,043	-1,293	491	251	-240	-48.9	241	1,294	1,053	436.4
Cyprus	70	132	62	102	185	83	81.9	32	53	21	66.8
Laos	-21	-24	-3	25	31	6	25.6	45	55	10	21.6
European Union - 28	-155,573	-146,340	9,233	271,988	270,325	-1,663	-0.6	427,562	416,666	-10,896	-2.5

TABLE II.2
US Services Trade for Given Trade Partners in Rank Order of US Services Exports
(Values in Millions of Dollars)

Country	Services 2014	Services 2015	Change 2014-15	Exports* 2014	Exports* 2015	Change 2014-15 Value	Change 2014-15 Percent	Imports** 2014	Imports** 2015	Change 2014-15 Value	Change 2014-15 Percent
World	261,993	262,203	210	743,257	750,860	7,603	1.0	481,264	488,657	7,393	1.5
United Kingdom	11,810	14,039	2,229	64,095	66,930	2,835	4.4	52,285	52,891	606	1.2
Canada	31,739	27,444	-4,295	62,016	56,436	-5,580	-9.0	30,277	28,992	-1,285	-4.2
China	30,516	33,336	2,820	44,490	48,444	3,954	8.9	13,974	15,108	1,134	8.1
Japan	15,606	14,904	-702	46,800	44,315	-2,485	-5.3	31,194	29,411	-1,783	-5.7
Ireland	26,142	26,027	-115	40,402	41,909	1,507	3.7	14,260	15,882	1,622	11.4
`	10,358	9,579	-779	30,245	31,509	1,264	4.2	19,887	21,930	2,043	10.3
Switzerland	7,094	9,789	2,695	29,128	31,112	1,984	6.8	22,034	21,323	-711	-3.2
Germany	-4,324	-1,906	2,418	28,170	29,762	1,592	5.7	32,494	31,668	-826	-2.5
Brazil	20,471	20,313	-158	28,746	28,146	-600	-2.1	8,275	7,833	-442	-5.3
Australia	14,948	15,256	308	21,444	22,264	820	3.8	6,496	7,008	512	7.9
Korea	9,530	9,385	-145	20,238	20,512	274	1.4	10,708	11,127	419	3.9
France	2,757	3,297	540	19,212	19,669	457	2.4	16,455	16,372	-83	-0.5
India	-7,179	-6,586	593	15,180	18,107	2,927	19.3	22,359	24,693	2,334	10.4
Netherlands	7,416	6,131	-1,285	17,067	16,312	-755	-4.4	9,651	10,181	530	5.5
Singapore	5,679	7,589	1,910	11,788	14,359	2,571	21.8	6,109	6,770	661	10.8
Taiwan	5,250	4,652	-598	12,656	12,302	-354	-2.8	7,406	7,650	244	3.3
Saudi Arabia	8,081	8,812	731	9,352	9,943	591	6.3	1,271	1,131	-140	-11.0
Hong Kong	1,489	1,073	-416	9,945	9,848	-97	-1.0	8,456	8,775	319	3.8
Italy	-1,512	-1,732	-220	9,056	9,091	35	0.4	10,568	10,823	255	2.4
Argentina	5,592	6,002	410	7,261	8,070	809	11.1	1,669	2,068	399	23.9
Venezuela	6,187	6,020	-167	6,868	6,839	-29	-0.4	681	819	138	20.3
Spain	1,128	988	-140	6,748	6,675	-73	-1.1	5,620	5,687	67	1.2
Luxembourg	5,001	4,750	-251	6,648	6,546	-102	-1.5	1,647	1,796	149	9.0
Colombia	3,823	3,254	-569	6,701	6,470	-231	-3.4	2,878	3,216	338	11.7
Belgium	17	341	324	5,799	6,149	350	6.0	5,782	5,808	26	0.4
Sweden	3,254	2,840	-414	6,491	6,138	-353	-5.4	3,237	3,298	61	1.9
Israel	-913	-1,288	-375	4,812	4,772	-40	-0.8	5,725	6,060	335	5.9
Russia	4,075	2,282	-1,793	6,661	4,682	-1,979	-29.7	2,586	2,400	-186	-7.2
Denmark	1,695	1,603	-92	3,954	4,284	330	8.3	2,259	2,681	422	18.7
Chile	2,271	2,438	167	3,697	4,006	309	8.4	1,426	1,568	142	10.0
Peru	877	991	114	3,034	3,879	845	27.9	2,157	2,888	731	33.9
Norway	1,134	1,135	1	3,862	3,720	-142	-3.7	2,728	2,585	-143	-5.2
South Africa	1,450	1,621	171	3,062	3,184	122	4.0	1,612	1,563	-49	-3.0
Turkey	732	1,038	306	2,839	3,118	279	9.8	2,107	2,080	-27	-1.3
Malaysia	1,069	1,044	-25	2,776	2,854	78	2.8	1,707	1,810	103	6.0
Nigeria	2,148	2,282	134	2,633	2,750	117	4.4	485	468	-17	-3.5
Thailand	204	-241	-445	2,876	2,704	-172	-6.0	2,672	2,945	273	10.2
Indonesia	1,720	1,736	16	2,458	2,516	58	2.4	738	780	42	5.7
Philippines	-2,705	-2,851	-146	2,361	2,510	149	6.3	5,066	5,361	295	5.8
Poland	677	641	-36	2,414	2,436	22	0.9	1,737	1,795	58	3.3
New Zealand	478	443	-35	2,267	2,389	122	5.4	1,789	1,946	157	8.8
Vietnam	995	1,004	9	1,885	2,043	158	8.4	890	1,039	149	16.7
Finland	-112	-247	-135	2,159	1,822	-337	-15.6	2,271	2,069	-202	-8.9
Costa Rica	-551	-820	-269	1,750	1,771	21	1.2	2,301	2,591	290	12.6
Panama	314	357	43	1,590	1,640	50	3.1	1,276	1,283	7	0.5
Austria	-301	10	311	1,571	1,563	-8	-0.5	1,872	1,553	-319	-17.0
Dominican Republic	-2,310	-2,810	-500	1,544	1,553	9	0.6	3,854	4,363	509	13.2
Guatemala	476	488	12	1,498	1,487	-11	-0.7	1,022	999	-23	-2.3
Czech Republic	187	73	-114	1,200	1,196	-4	-0.3	1,013	1,123	110	10.9
Portugal	-413	-399	14	1,205	1,118	-87	-7.2	1,618	1,517	-101	-6.2

El Salvador	115	247	132	866	1,017	151	17.4	751	770	19	2.5
Honduras	318	350	32	983	998	15	1.5	665	648	-17	-2.6
Hungary	147	182	35	907	991	84	9.3	760	809	49	6.4
Romania	-246	-378	-132	945	968	23	2.4	1,191	1,346	155	13.0
Greece	-1,420	-1,774	-354	1,023	952	-71	-6.9	2,443	2,726	283	11.6
Jordan	103	136	33	686	710	24	3.5	583	574	-9	-1.5
Morocco	-2	72	74	551	657	106	19.2	553	585	32	5.8
Bulgaria	-63	-9	54	442	445	3	0.7	505	454	-51	-10.1
Oman	80	106	26	417	434	17	4.1	337	328	-9	-2.7
Nicaragua	-189	-190	-1	401	414	13	3.2	590	604	14	2.4
Croatia	138	131	-7	363	363	0	0.0	225	232	7	3.1
Slovakia	213	200	-13	342	352	10	2.9	129	152	23	17.8
Bahrain	-738	-759	-21	347	321	-26	-7.5	1,085	1,080	-5	-0.5
Lithuania	-249	-268	-19	200	217	17	8.5	449	485	36	8.0
Slovenia	100	119	19	191	201	10	5.2	91	82	-9	-9.9
Cyprus	52	26	-26	217	185	-32	-14.7	165	159	-6	-3.6
Malta	-284	-490	-206	178	169	-9	-5.1	462	659	197	42.6
Latvia	53	54	1	125	138	13	10.4	72	84	12	16.7
Estonia	3	25	22	134	131	-3	-2.2	131	106	-25	-19.1
Brunei	76	65	-11	90	74	-16	-17.8	14	9	-5	-35.7
European Union - 28	51,574	54,033	2,459	221,366	226,817	5,451	2.5	169,792	172,784	2,992	1.8

TABLE II.3
US FDI Abroad for Given Trade Partners in Rank Order of FDI
(Values in Millions of Dollars)

Country	FDI*** 2014	FDI*** 2015	% Change 2014-15	FDI Area
World	4,829,425	5,040,648	4.4	nonbank holding companies sectors, manufacturing, Finance/Ins.
Netherlands	797,251	858,102	7.6	Nonbank Holding Companies, Manufacturing, Finance/Insurance
United Kingdom	563,055	593,028	5.3	Nonbank Holding Companies, Finance/Insurance, Manufacturing
Luxembourg	491,456	502,998	2.3	Nonbank Holding Companies, Manufacturing, Finance/Insurance
Canada	358,452	352,928	-1.5	Manufacturing, Nonbank Holding Companies, Finance/Insurance
Ireland	279,730	343,382	22.8	Nonbank Holding Companies, Information, Manufacturing
Singapore	206,958	228,666	10.5	Nonbank Holding Companies, Wholesale Trade, Manufacturing
Australia	176,881	167,401	-5.4	Nonbank Holding Companies, Mining, Finance/Insurance
Switzerland	141,371	155,221	9.8	Nonbank Holding Companies, Manufacturing, Finance/Insurance
Japan	100,077	108,535	8.5	Finance/Insurance, Manufacturing, Wholesale Trade
Germany	104,242	108,094	3.7	Nonbank Holding Companies, Manufacturing, Finance/Insurance
Mexico	89,650	92,812	3.5	Manufacturing, Nonbank Holding Companies, Mining
France	78,421	78,282	-0.2	Manufacturing, Nonbank Holding Companies, Finance/Insurance
China	67,500	74,560	10.5	Manufacturing, Wholesale Trade, Depository Institutions
Brazil	72,497	65,272	-10.0	Manufacturing, Nonbank Holding Companies, Finance/Insurance
Hong Kong	60,466	64,049	5.9	Nonbank Holding Companies, Wholesale Trade, Information
Belgium	47,515	45,087	-5.1	Manufacturing, Wholesale Trade, Finance/Insurance
Spain	35,738	35,794	0.2	Manufacturing, Nonbank Holding Companies, Finance/Insurance
Korea	33,453	34,564	3.3	Manufacturing, Finance/Insurance, Wholesale Trade
Norway	34,540	33,588	-2.8	Nonbank Holding Companies, Mining, Information
India	27,140	28,335	4.4	Prof., Scientific, And Tech. Services, Manufacturing, Wholesale Trade
Chile	27,070	27,331	1.0	Mining, Finance/Insurance, Manufacturing
Sweden	25,738	24,981	-2.9	Nonbank Holding Companies, Manufacturing, Finance/Insurance
Egypt	24,135	23,326	-3.4	
Italy	24,328	22,499	-7.5	Manufacturing, Wholesale Trade, Finance/Insurance
Austria	16,359	17,275	5.6	Manufacturing, Finance/Insurance, Wholesale Trade
UAE	15,330	15,622	1.9	Mining, Finance/Insurance, Manufacturing
Taiwan	14,778	15,005	1.5	Manufacturing, Wholesale Trade, Depository Institutions
Denmark	13,800	14,398	4.3	Nonbank Holding Companies, Manufacturing, Wholesale Trade
Malaysia	15,172	13,959	-8.0	Manufacturing, Finance/Insurance, Prof., Scientific, And Tech. Services
Indonesia	13,709	13,546	-1.2	Mining, Nonbank Holding Companies, Finance/Insurance
Argentina	13,094	13,323	1.7	Manufacturing, Information, Wholesale Trade
Thailand	11,669	11,295	-3.2	Manufacturing, Wholesale Trade, Depository Institutions
Poland	11,374	11,038	-3.0	Manufacturing, Wholesale Trade, Finance/Insurance
Saudi Arabia	9,502	10,509	10.6	Mining, Manufacturing, Wholesale Trade
Israel	9,705	10,297	6.1	Manufacturing, Information, Prof., Scientific, And Tech. Services
Russia	9,277	9,201	-0.8	Manufacturing, Information, Wholesale Trade
Venezuela	11,344	9,068	-20.1	Manufacturing, Nonbank Holding Companies, Finance/Insurance
Qatar	8,741	8,463	-3.2	
New Zealand	7,563	7,176	-5.1	Finance/Insurance, Manufacturing, Nonbank Holding Companies
Peru	6,445	6,859	6.4	Manufacturing, Wholesale Trade, Information
Hungary	6,086	6,398	5.1	Finance/Insurance, Manufacturing, Wholesale Trade
Colombia	7,102	6,157	-13.3	Mining, Manufacturing, Finance/Insurance
Czech Republic	6,554	5,831	-11.0	Manufacturing, Information, Wholesale Trade
South Africa	6,144	5,604	-8.8	Manufacturing, Wholesale Trade, Prof., Scientific, And Tech. Services
Nigeria	4,924	5,521	12.1	Mining, Manufacturing
Algeria	4,926	4,766	-3.2	
Philippines	4,549	4,724	3.8	Manufacturing, Prof., Scientific, And Tech. Services, Nonbank Holding Companies
Panama	4,616	4,055	-12.2	Nonbank Holding Companies, Finance/Insurance, Wholesale Trade
Turkey	3,700	3,661	-1.1	Manufacturing, Wholesale Trade, Prof., Scientific, And Tech. Services
El Salvador	2,855	2,605	-8.8	
Romania	2,269	2,592	14.2	

Portugal	2,089	2,042	-2.2	Wholesale Trade, Manufacturing, Finance/Insurance
Cyprus	2,054	1,954	-4.9	
Costa Rica	1,497	1,521	1.6	Manufacturing, Prof., Scientific, And Tech. Services, Information
Dominican Republic	1,213	1,357	11.9	Manufacturing, Information, Wholesale Trade
Vietnam	1,559	1,285	-17.6	
Oman		1,189		
Finland	2,643	1,177	-55.5	Information, Prof., Scientific, And Tech. Services, Wholesale Trade
Honduras	741	1,175	58.6	Manufacturing, Nonbank Holding Companies, Information
Guatemala	1,159	1,100	-5.1	
Slovakia	754	786	4.2	
Malta	604	695		
Bangladesh	474	589	24.3	
Slovenia	425	499		
Ukraine	731	446	-39.0	
Ecuador	576	429	-25.5	Mining, Wholesale Trade, Manufacturing
Bulgaria	518	406	-21.6	
Pakistan	362	392	8.3	
Kenya	388	323	-16.8	
Tunisia	360	311	-13.6	
Morocco	425	304	-28.5	
Kuwait	391	293		
Jordan		228		
Nicaragua	199	183	-8.0	
Bahrain		168		
Paraguay	144	134		
Estonia		132		
Sri Lanka	111	111	0.0	
Croatia		97		
Lithuania		89		
Latvia		37		
Angola	1,803	24	-98.7	
Greece				Manufacturing, Information, Prof., Scientific, And Tech. Services
European Union - 28	2,512,972	2,677,085	6.5	Nonbank Holding Companies, Manufacturing, Finance/Insurance