

2022 National Trade Estimate Report on  
**FOREIGN TRADE  
BARRIERS**



**UNITED STATES TRADE REPRESENTATIVE**

# ACKNOWLEDGEMENTS

The Office of the United States Trade Representative (USTR) is responsible for the preparation of this report. U.S. Trade Representative Katherine C. Tai gratefully acknowledges the contributions of all USTR staff to the writing and production of this report and notes, in particular, the contributions of Mitchell Ginsburg, David Oliver, Russell Smith, and Spencer Smith.

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



Office of the United States Trade Representative  
Ambassador Katherine C. Tai

# LIST OF FREQUENTLY USED ACRONYMS

APHIS.....	Animal and Plant Health Inspection Service, U.S. Department of Agriculture
CVA.....	WTO Customs Valuation Agreement
DOL.....	U.S. Department of Labor
EU <sup>1</sup> .....	European Union
FTA.....	Free Trade Agreement
GATT.....	General Agreement on Tariffs and Trade
GATS.....	General Agreement on Trade in Services
GI.....	Geographical Indication
GPA.....	WTO Agreement on Government Procurement
HS.....	Harmonized System
HTS.....	Harmonized Tariff Schedule
ICT.....	Information and Communication Technology
IP.....	Intellectual Property
MFN.....	Most-Favored-Nation
MOU.....	Memorandum of Understanding
MRL.....	Maximum Residue Limit
SBA.....	U.S. Small Business Administration
SME.....	Small and Medium-Sized Enterprise
SPS.....	Sanitary and Phytosanitary
TBT.....	Technical Barriers to Trade
TFA.....	Trade Facilitation Agreement
TIFA.....	Trade and Investment Framework Agreement
TRQ.....	Tariff-Rate Quota
USAID.....	U.S. Agency for International Development
USDA.....	U.S. Department of Agriculture
USTR.....	United States Trade Representative
VAT.....	Value-Added Tax
WTO.....	World Trade Organization

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<sup>1</sup> Unless specified otherwise, all references to the European Union refer to the EU-27.

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# FOREWORD

## SCOPE AND COVERAGE

The 2022 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the 37th report in an annual series that highlights significant foreign barriers to U.S. exports, U.S. foreign direct investment, and U.S. electronic commerce. This document is a companion piece to the President's 2022 Trade Policy Agenda and 2021 Annual Report, published by the Office of the United States Trade Representative (USTR) on March 1, 2022.

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

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

This Report discusses key export markets for the United States, covering 60 countries; the European Union; Taiwan; Hong Kong, China; and, the Arab League. As always, omission of particular countries and barriers does not imply that they are not of concern to the United States.

The NTE Report covers significant barriers, whether they are consistent or inconsistent with international trading rules. Tariffs, for example, are an accepted method of protection under the General Agreement on Tariffs and Trade 1994. Even a very high tariff does not violate international rules unless a country has made a commitment not to exceed a specified rate, *i.e.*, a tariff binding. Nonetheless, it would be a significant barrier to U.S. exports, and therefore covered in the NTE Report. Measures not consistent with international trade agreements, in addition to serving as barriers to trade and causes of concern for policy, are actionable under U.S. trade law as well as through the World Trade Organization and free trade agreements. Since early 2020, there were significant trade disruptions as a result of temporary trade measures taken directly as a result of the COVID-19 pandemic.

Trade barriers elude fixed definitions, but may be broadly defined as government laws and regulations or government-imposed measures, policies, and practices that restrict, prevent, or impede the international exchange of goods and services; protect domestic goods and services from foreign competition; artificially stimulate exports of particular domestic goods and services; fail to provide adequate and effective protection of intellectual property rights; unduly hamper U.S. foreign direct investment or U.S. electronic commerce; or impose barriers to cross-border data flows. The recent proliferation of data localization and other such restrictive technology requirements is of particular concern to the United States.

The NTE Report classifies foreign trade barriers in 14 categories, as follows:

- Import policies (*e.g.*, tariffs and other import charges, quantitative restrictions, import licensing, pre-shipment inspection, customs barriers and shortcomings in trade facilitation or in valuation practices, and other market access barriers);
- Technical barriers to trade (*e.g.*, unnecessarily trade restrictive or discriminatory standards, conformity assessment procedures, labeling, or technical regulations, including unnecessary or discriminatory technical regulations or standards for telecommunications products);
- Sanitary and phytosanitary measures (*e.g.*, measures applied to protect food safety, or animal and plant life or health that are unnecessarily trade restrictive, discriminatory, or not based on scientific evidence);
- Government procurement (*e.g.*, closed bidding and bidding processes that lack transparency);
- Intellectual property protection (*e.g.*, inadequate patent, copyright, and trademark regimes; trade secret theft; and inadequate enforcement of intellectual property rights);
- Services barriers (*e.g.*, prohibitions or restrictions on foreign participation in the market, discriminatory licensing requirements or standards, local presence requirements, and unreasonable restrictions on what services may be offered);
- Digital trade and electronic commerce (*e.g.*, barriers to cross-border data flows, including data localization requirements, discriminatory practices affecting trade in digital products, restrictions on the provision of Internet-enabled services, and other restrictive technology requirements);
- Investment barriers (*e.g.*, limitations on foreign equity participation and on access to foreign government-funded research and development programs, local content requirements, technology transfer requirements, export performance requirements, and restrictions on repatriation of earnings, capital, fees and royalties);
- Subsidies, especially export subsidies (*e.g.*, subsidies contingent upon export performance and agricultural export subsidies that displace U.S. exports in third country markets) and local content subsidies (*e.g.*, subsidies contingent on the purchase or use of domestic rather than imported goods);
- Competition (*e.g.*, government-tolerated anticompetitive conduct of state-owned or private firms that restricts the sale or purchase of U.S. goods or services in the foreign country's markets or abuse of competition laws to inhibit trade; fairness and due process concerns by companies involved in competition investigatory and enforcement proceedings in the country);
- State-owned enterprises (*e.g.*, subsidies to and from industrial state-owned enterprises involved in the manufacture or production of non-agricultural goods or in the provision of services, as well as industrial state-owned enterprises that could contribute to overcapacity, or discriminating against foreign goods or services, acting inconsistently with commercial considerations in the purchase and sale of goods and services);

- Labor (*e.g.*, concerns with failures by a government to protect internationally recognized worker rights, including through failure to eliminate forced labor, or failures to eliminate discrimination in respect of employment or occupation);
- Environment (*e.g.*, concerns with a government's levels of environmental protection, unsustainable stewardship of natural resources, and harmful environmental practices); and
- Other barriers (*e.g.*, barriers that encompass more than one category, such as bribery and corruption, or that affect a single sector).

The prevalence of corruption is a consistent complaint from U.S. firms that trade with or invest in other economies. Corruption takes many forms and affects trade and development in different ways. In many countries and economies, it affects customs practices, licensing decisions, and the award of government procurement contracts. If left unchecked, bribery and corruption can negate market access gained through trade negotiations, frustrate broader reforms and economic stabilization programs, and undermine the foundations of the international trading system. Corruption also hinders development and contributes to the cycle of poverty. The Foreign Corrupt Practices Act prohibits U.S. companies from bribing foreign public officials, and numerous other domestic laws discipline corruption of public officials at the State and Federal levels. The United States continues to play 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.

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

## **TRADE IMPACT OF FOREIGN BARRIERS**

Trade barriers or other trade distorting practices affect U.S. exports to a foreign market by effectively imposing costs on such exports that are not imposed on goods produced in the importing market. Estimating the impact of a foreign trade measure on U.S. exports of goods requires knowledge of the additional cost the measure imposes on them, as well as knowledge of market conditions in the United States, in the foreign market imposing the measure, and in third country markets. In practice, such information often is not available.

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

The estimation of the impact of non-tariff measures on U.S. exports is far more difficult, since no readily available estimate exists of the additional cost these restrictions impose. Quantitative restrictions or import licenses limit (or discourage) imports and thus are likely to raise domestic prices, much as a tariff does. However, without detailed information on price differences between markets and on relevant supply and

demand conditions, it would be difficult to derive the estimated effects of these measures on U.S. exports. Similarly, it would be 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.

The same limitations apply to estimates of the impact of foreign barriers to U.S. services exports. Furthermore, the trade data on services exports are extremely limited in detail. For these reasons, estimates of the impact of foreign barriers on trade in services also would be difficult to compute. With respect to investment barriers, no accepted techniques for estimating the impact of such barriers on U.S. investment flows exist. The same caution applies to the impact of restrictions on electronic commerce.

To the extent possible, the NTE Report endeavors to present estimates of the impact on U.S. exports, U.S. foreign direct investment, or U.S. electronic commerce of specific foreign trade barriers and other trade distorting practices. In some cases, stakeholder valuations estimating the effects of barriers may be contained in the NTE 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. Where government-to-government consultations related to specific foreign practices were proceeding at the time of this NTE Report's publication, estimates were excluded, in order to avoid prejudice to these consultations.

March 2022

# ALGERIA

## TRADE AGREEMENTS

### **The United States–Algeria Trade and Investment Framework Agreement**

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

## IMPORT POLICIES

### **Tariffs and Taxes**

#### *Tariffs*

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

Algeria’s average Most-Favored-Nation (MFN) applied tariff rate was 18.9 percent in 2019 (latest data available). Algeria’s average MFN applied tariff rate was 23.6 percent for agricultural products and 18.2 percent for non-agricultural products in 2019 (latest data available). Nearly all finished manufactured products, dried distillers grains, and corn gluten feed entering Algeria are subject to a 30 percent tariff rate, but some limited categories are subject to a 15 percent rate. Goods facing the highest rates are those for which equivalents are currently manufactured in Algeria. In January 2019, citing the need to encourage local production and ease pressure on the country’s foreign exchange reserves, Algeria implemented new temporary additional safeguard duties (DAPs) of 30 percent to 200 percent (the higher rate applies only to ten cement tariff lines under the Harmonized System heading 25.23) on a list of more than 1,000 manufactured and agricultural goods. The few items that remain duty free are generally European Union (EU)-origin goods that are used in manufacturing and are exempt from tariffs under the 2006 EU–Algeria Association Agreement. The original DAP list was revised in April 2019 to exempt a number of food- and agriculture-related products including tree nuts, peanuts, butter, dried fruits, and fresh or chilled beef. That list remains in effect, though the government announced in January 2022 that it would double it (details to be released separately), while still describing it as ‘temporary.’

#### *Taxes*

Most imported goods are subject to the 19.0 percent value-added tax (VAT), and an additional 0.3 percent tax is levied on a good if the applicable customs value exceeds Algerian dinars (DZD) 20,000 (approximately \$148).

### **Non-Tariff Barriers**

#### *Import Bans and Import Restrictions*

Since January 2009, Algeria’s Ministry of Health has restricted the import of a number of generic pharmaceutical products and medical devices. In 2015, the Ministry of Health published the most recent list of 357 generic pharmaceutical products whose importation is prohibited. Since 2007, the Algerian Government has banned the import of used medical equipment without a special exception. Algeria has applied the regulation broadly to block the re-importation of machinery sent abroad for maintenance under

warranty, even for equipment owned by state-run hospitals. In May 2020, Algeria issued a decree to exempt customs duties and VAT for medical devices, pharmaceutical products, and testing equipment imported to combat the COVID-19 pandemic. Algeria renewed the decree in May 2021.

Beyond medical devices, Algeria bans most types of used machinery from entry, except for refurbished assembly line equipment used in domestic industries.

In February 2021, the Ministry of Commerce issued a new schedule for 2021 that established a separate seasonal ban for each agricultural product. The new schedule adjusted a year-round restriction on almond imports to a seasonal ban from June to August 2021. In September 2021, the Algerian Government restricted the import of animal products such as tuna, yogurt, ice cream, liquid egg yolks, lamb's wool and camel hair, corned beef, live bait for fishing, and non-food products such as baseball bats. In October 2021, Algeria restricted the import of products falling under the tariff heading of "other," which includes products that are not classified within a certain category and products for which there is minimal demand. Algeria justified these decisions as necessary to reduce the country's import bill and combat fraud.

The Ministry of Finance instructed banks, in August 2021, to suspend the processing of accounts for importers of products intended for resale starting at the end of October 2021 unless importers complied with a March 2021 decree requiring them to update their import registration to include only one category of product per company. The Ministry subsequently communicated implementation instructions to the Ministry of Commerce's National Center of Commerce Registry (CNRC), but not to importers themselves. Importers must approach individually to seek guidance regarding their particular situation, rather than rely on publicly available information. The stated goal of this process is to reduce the number of importers from 15,000 to 9,000, according to the Minister of Commerce in October 2021.

### *Quantitative Restrictions*

In August 2020, Algeria released a new Book of Specifications concerning the automotive industry, replacing the previous automotive regulatory regime established in 2017. As of March 2022, the Algerian Government has not granted any company authorization to import under the new regime. The new Book of Specifications covers automobiles, buses, trucks, and construction equipment, and establishes an import quota of up to 200,000 vehicles per year, with an annual cap of \$2 billion. Due to customs, VAT, and other taxes, vehicles cost more than double the market rates when purchased by individuals overseas and imported. While the import quota on automobile kits for assembly of passenger vehicles is currently set at zero, the new regulation indicated that the Algerian Government would set a new quota for automotive companies that receive authorization to engage in local assembly or manufacturing. No new cars for sale in dealerships have been imported into Algeria since the 2020 regime was announced. A provision in the June 2021 Complementary Finance Law permits Algerians to import used cars which are three years old or less, though purchasers will be required to use their own foreign currency.

Algeria has established a maximum import volume of four million metric tons of bread (common) wheat, accounting for nearly two-thirds of annual average imports. The Algerian President announced in August 2021 that moving forward, the state grains agency (OAIC) will be the country's exclusive wheat importer, so as to counteract alleged "illicit practices" by private importers. However, the Algerian Government had not implemented this policy as of March 2022.

### *Customs Barriers and Trade Facilitation*

Clearing goods through Algerian Customs is the most frequently reported problem facing companies. Delays can take weeks or months, in many cases without explanation. In addition to a certificate of origin, the Algerian Government requires all importers to provide certificates of conformity and quality from an

independent third party. Algerian Customs requires shipping documents be stamped with a “Visa Fraud” note from the Ministry of Commerce, indicating that the goods have passed a fraud inspection before the goods are cleared. Many importations also require authorizations from multiple ministries, which frequently causes additional bureaucratic delays, especially when the regulations do not clearly specify which ministry’s authority is being exercised. Storage fees at Algerian ports of entry are high and the fees double when goods are stored for longer than 10 days.

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

## **SANITARY AND PHYTOSANITARY BARRIERS**

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

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

Algeria maintains strict animal health certificates for animals and animal products, dairy and dairy products, as well as processed products of animal origin.

## **GOVERNMENT PROCUREMENT**

Algeria announced in August 2015 that all ministries and state-owned enterprises would be required to purchase domestically manufactured products whenever available. It further announced that the procurement of foreign goods would be permitted only with special authorization at the ministerial level and if a locally made product could not be identified. Algeria requires approval from the Council of Ministers for expenditures in foreign currency that exceed DZD 10 billion (approximately \$74 million). In 2017, this requirement delayed payments to at least one U.S. company.

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

## **INTELLECTUAL PROPERTY PROTECTION**

Algeria was moved from the Priority Watch List to the Watch List in the [2021 Special 301 Report](#). Algeria has taken some positive steps to improve intellectual property (IP) protection and enforcement, including by increasing coordination on IP enforcement and engaging in capacity building and training efforts. However, concerns remain, including regarding the lack of an effective mechanism for the early resolution of potential pharmaceutical patent disputes, inadequate judicial remedies in cases of patent infringement, the lack of administrative opposition in Algeria’s trademark system, and the need to increase enforcement efforts against counterfeiting and piracy. In addition, Algeria does not provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

## **BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE**

In May 2018, Algeria enacted a law requiring electronic commerce platforms conducting business in Algeria to register with the government and to host their websites from a data center located in Algeria. Such localization requirements impose unnecessary costs on service suppliers by requiring redundant storage systems. Such requirements are disproportionately burdensome for small firms.

Algeria permits citizens to purchase goods from outside the country using international credit cards, with a maximum value per transaction of DZD100,000 (approximately \$740). Algerian foreign exchange regulations prohibit the use of certain online payment processors to transfer money from one account to another.

## **INVESTMENT BARRIERS**

Prior to 2020, Algeria's investment law required Algerian ownership of at least 51 percent in all projects involving foreign investments (known as the 51/49 rule). This restriction was lifted in 2020. However, the 2021 Finance Law re-imposed the 51 percent requirement—with retroactive application to foreign companies already established in Algeria and owning more than 49 percent of operations—on activities involving raw materials; products and goods imported for resale in the same condition (subsequently these products have been exempted from the requirement); as well as for companies in the strategic sectors of mining, upstream energy activities, industries related to the military, transportation infrastructure, and pharmaceutical production. As there is no single process for registering foreign investments, prospective investors must work with the ministry or ministries relevant to a particular project to negotiate, register, and set up their businesses. U.S. businesses have commented that the process is subject to political influence and that a lack of transparency in the decision-making process makes it difficult to determine the reasons for any delays.

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

## **STATE-OWNED ENTERPRISES**

State-owned enterprises (SOEs) comprise about two-thirds (by market value) of the Algerian economy. The national oil and gas company Sonatrach is the most prominent SOE, but SOEs are present in all sectors of the economy. SOEs leverage their position in the market to gain advantage over privately-owned competitors. For example, state-owned telecommunications provider Algerie Telecom holds a monopoly over all undersea data cable traffic in and out of Algeria, offering services at a considerable advantage over private companies operating in the telecommunications sector.

# ANGOLA

## TRADE AGREEMENTS

### The United States–Angola Trade and Investment Framework Agreement

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

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

Angola's average Most-Favored-Nation (MFN) applied tariff rate for all products was 10.2 percent in 2019 (latest data available). Angola's average MFN applied tariff rate was 19.3 percent for agricultural products and 8.7 percent for non-agricultural products in 2019 (latest data available). Angola has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 59.1 percent, and average bound rates of 52.7 percent for agricultural products, and 60.1 percent for non-agricultural products.

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

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

#### *Taxes*

In October 2019, Angola introduced a 14 percent value-added tax (VAT) and revoked a 10 percent consumer tax previously imposed on all products, domestic and imported, albeit with numerous product and service exemptions. In August 2020, the Government of Angola decreased the VAT for certain agricultural products.

Law No. 42/20, approving the 2021 State Budget, entered into force January 1, 2021. The law introduced a new VAT – the Simplified VAT Regime – which applies to taxpayers whose annual turnover and import operations for the previous 12 months was approximately \$580,000 or less.

The law also increased the taxable basis of some imported goods, especially luxury products, by specifying that the VAT will be charged based on an amount that includes duties, taxes, and ancillary expenses, among others. Separately, the law reduced from 14 percent to 5 percent the VAT applied to the import and supply of certain goods, including food stuffs, detergents, and agricultural seeds and raw materials, the latter two to boost local agricultural production.

On October 28, 2021, Angola approved the reduction of VAT from 14 percent to 7 percent for additional items of the basic food basket not covered in Law 42/20. The measure was intended to lower the cost of 28 regularly consumed items that comprise the basic food basket, as well as the cost of industrial and agricultural production equipment and small- to medium-sized fishing boats, with the goal of boosting agricultural and fisheries production.

## **Non-Tariff Barriers**

### *Import Licensing*

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

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

### *Import Restrictions*

Presidential Decree No. 23/19, which entered into force in January 2019, appears aimed to restrict the importation of certain products unless the importer can demonstrate the product is not available domestically. The Decree currently includes more than 54 products, mainly agricultural goods and applies to any imports that compete with goods produced in the Luanda-Bengo special economic zone. Impacted products include poultry, maize flour, and diapers. The United States continues to raise concerns about this decree with Angola bilaterally and at the WTO Council for Trade in Goods, the WTO Committee on Market Access, and the WTO Committee on Agriculture.

In 2020, Angola announced that it would stop providing treasury funds for the import of products of high domestic consumption which Angola has the capacity to produce. However, as of March 2022, the measure has not been put into effect. The Ministry of Industry and Trade stated this measure, part of the Program to Support Production, Diversification of Exports and Import Substitution, aims to protect national production and promote local economic development. The measure focuses on 11 products: sorghum, millet, beans, peanuts, carrots, garlic, onions, tomatoes, sweet potatoes, bottled water, and dishwashing soap. Importers may import these items provided they have access to their own sources of foreign exchange. *(For further information see Foreign Exchange section.)*

### *Customs Barriers and Trade Facilitation*

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

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

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

In January 2021, Angola announced that it will start requiring imports of basic food basket products in bulk rather than pre-packaged purportedly to save foreign exchange and support the local packaging industry. On March 17, 2021, Angola published Executive Decree No. 63/21 and it took effect on June 17, 2021. The decree requires that imports of 15 agricultural and food products be imported in containers of 25-50 kg and the packaging into retail denominations must be performed in Angola. The decree applies to sugar, rice, wheat and corn flour, beans, powdered milk, cooking oil, animal feed, coarse and refined salt, wheat semolina, pork and beef, margarine, and soap, with some exceptions. Industry stakeholders have raised concerns over the lack of advance consultation with importers or notification to the WTO and have expressed concern the measure may lead to monopolies in packaging and labeling as well as shortages. The United States requested Angola to notify the decree to the WTO via the Angola TBT Enquiry Point to allow for stakeholder comments. However, Angola did not notify the decree, and it went into effect on June 17, 2021. The United States will continue to monitor the implementation of the decree.

### **Sanitary and Phytosanitary Barriers**

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

#### *Agricultural Biotechnology*

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

## **GOVERNMENT PROCUREMENT**

According to investors, the bidding process for government procurement remains deficient in terms of transparency and objectivity, and information about government projects and tenders is often not readily available from authorities. In February 2021, an international port services company filed an appeal at the Supreme Court of Angola challenging a 20-year multipurpose terminal service contract awarded to a different company in January 2021. The complainant cited irregularities and changes to the tender conditions throughout the bidding process.

In an effort to address investor concerns, on December 23, 2020, the Angolan National Assembly approved Law No. 41/20, revising its Public Procurement Law (PPL) and revoking Law 9/16 of June 2016. The revised PPL entered into force on January 22, 2021. The revised law seeks to increase transparency in public resources utilization and to simplify procedures in public works and public services procurement, in addition to the acquisition of goods by public entities. The most important changes in the law include encouraging administrative concessions regarding the granting of rights, land or property related to public works, public services, and exploration of the public domain. The law calls for such contracts to be carried out through public-private-partnerships. The law also provides that public procurement contract values in

the amount of at least 500 million Kwanzas (approximately \$770,000) or more be approved by the President of the Republic and submitted to the Tribunal de Contas (Supreme Audit Institution) for oversight.

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

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

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

## **INTELLECTUAL PROPERTY PROTECTION**

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

## **INVESTMENT BARRIERS**

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

The law, however, does not apply to investment in the petroleum, diamond, and financial sectors, which remain governed by sector-specific legislation, including requirements to form joint venture partnerships with local companies and to use Angola-domiciled banks for many services.

Reforms around improving the investment climate for investors are encouraging; however, investors report that the regulatory and judicial framework of enforcement institutions remains challenging. Reports indicate that a lack of local judicial capacity to resolve investment disputes is a challenge for foreign investors.

## **OTHER BARRIERS**

### **Bribery and Corruption**

Corruption remains prevalent in Angola for reasons including an inadequately trained civil service, a highly centralized bureaucracy, a lack of funding to improve capacity, and a lack of uniform implementation of anticorruption laws. “Gratuities” and other facilitation fees often are requested to secure quicker service and approval. It is common for government officials to have substantial private business interests that are not publicly disclosed. Likewise, it is difficult to determine the ownership of some Angolan companies and the ownership structures of banks. Access to investment opportunities and public financing continues to favor those connected to the government and the ruling party. Laws and regulations regarding conflicts of interest, though now codified, are yet to be widely implemented or enforced. Some investors report pressure to form joint ventures with specific Angolan companies believed to have connections to political figures.

While levels of corruption and bribery have declined, they still exist. The new Criminal Law and Criminal Procedure Codes (Law No. 38/20 and Law No. 39/20) entered into force in February 2021. Notable changes include corporate criminal liability, harsh penalties for corruption of public officials, criminalization of private corruption, and provisions for seizure of proceeds of a crime, among others. The law also contains provisions that criminalize bribery of national and foreign public officials; seek an appropriate balance between immunities and the ability to effectively investigate, prosecute, and adjudicate offenses; enhance cooperation within local law enforcement authorities; and designate a central anticorruption authority.

Enforcement of anticorruption laws remains poor. The United States and the international community have engaged in anticorruption initiatives to help Angola attain its anticorruption objectives. For instance, on February 16, 2021, the U.S. Department of State opened a competition for a project that supports Angolan civil society and independent media to increase public awareness and support for anticorruption and transparency reform.

### **Export Taxes**

In December 2019, a revised customs tariff code entered into force, which among other things eliminated the five percent export tax on crude ores.

### **Foreign Exchange**

For many years, a leading business challenge in Angola has been the scarcity of foreign exchange, and the resulting difficulty of foreign investors to repatriate profits and Angolan companies to pay foreign suppliers. International and domestic companies operating in Angola face significant delays in securing foreign exchange approval for remittances to cover key operational expenses, including to import goods and expatriate salaries. Profit and dividend remittances are even more problematic for most companies. However, since January 2020, oil companies with Angolan exploration and production rights have been permitted to sell foreign exchange directly to Angolan commercial banks. The decision ended a five-year policy that ensured that the international oil companies sold \$240 million in foreign exchange monthly to the BNA, which in turn resold to commercial banks in monthly and eventually daily auctions.

In addition, in August 2020, the National Bank of Angola (BNA) issued Notice 17/20, which implemented new rules and procedures governing foreign exchange transactions applicable to individuals. Among other amendments, as of September 2020, foreign employees working in Angola must open a local bank account into which income from their employer will be deposited in local currency; employers may no longer transfer remunerations to foreign employees’ accounts abroad. However, a foreign employee may purchase

foreign currency upon presentation of a valid employment agreement and work permit. Under the notice, Angolan banking institutions should also verify that the employee's income was transferred by a tax compliant employer.

In 2021, the BNA issued two notices intended to regulate foreign exchange transactions and procedures. Notice 4/21 took effect on April 14, 2021, and provides that: (i) import operations are no longer subject to licensing by the BNA regardless of the relevant settlement period; (ii) the maximum period allowed for advance payments in import operations is 90 days (reduced from 180 days); and (iii) regardless of the method of payment, commercial banks will only debit the relevant amount in the importer's bank account when the funds are ready to be transferred abroad. The new notice provides greater flexibility in export operations, and may allow exporters to dispose more freely of revenues from their export operations. This contrasts with the previous regime, which contained burdensome requirements on the sale and disposition of foreign currency.

Notice 5/21 took effect on May 14, 2021, and introduces generally more restrictive rules and procedures for individuals carrying out foreign exchange transactions, with the goal of combating money-laundering and terrorist financing. Under this notice, foreign exchange transactions may only be carried out: (1) at the request of customers who have properly opened accounts; (2) if the financial capacity of the originator is confirmed, to ensure the legitimacy of the possession of the funds used to purchase the foreign currency; and (3) if the total amount of the requested transaction and the transactions already carried out in the calendar year are compatible with the originator's financial capacity. The notice also more than doubles the cumulative annual limit on foreign exchange transactions carried out by residents, from \$120,000 to \$250,000. The BNA may approve exceptions to this limit on a case-by-case basis. Several types of transactions are not subject to the annual \$250,000 limit, including payments for health care, education, accommodation, transport, and legal services, and certain transfers of funds of foreign exchange residents. Foreign workers who are not residents are required to deposit their income into an account at a financial institution registered in Angola. However, the notice establishes an exception for foreign workers in the oil sector, who may have their remunerations transferred abroad by their employers.

### **Business Licensing**

In October 2021, the National Assembly approved Law No. 26/21, which revoked the Law of Commercial Activities No. 1/07 of May 2007. Under Law No. 26/21, the authority to license business activity, which previously rested with the Ministry of Commerce and since July 2021 with provincial governments and municipal administrations, was transferred to the President. The law also expands business licensing eligibility. Commercial stakeholders have expressed concern that the transfer of authority could create dependence on higher governmental powers to authorize commercial activity.

# ARAB LEAGUE

The 22 Arab League members are the Palestinian Authority and the following countries: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Kuwait, Jordan, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates, and Yemen. The effect of the Arab League's boycott of Israeli companies and Israeli-made goods (originally implemented in 1948) on U.S. trade and investment in the Middle East and North Africa varies from country to country. On occasion, the boycott can pose a barrier (because of potential legal restrictions) for individual U.S. companies and their subsidiaries doing business in certain parts of the region. However, efforts to enforce the boycott have for many years had an extremely limited practical effect overall on U.S. trade and investment ties with many key Arab League countries. About half of the Arab League members are also Members of the World Trade Organization (WTO), and are thus obligated to apply WTO commitments to all current WTO Members, including Israel. To date, no Arab League member, upon joining the WTO, has invoked the right of non-application of WTO rights and obligations with respect to Israel.

In 2020, the United Arab Emirates, Bahrain, Morocco, and Sudan announced normalization agreements with Israel. The normalization agreements include an intent to expand formal trade and investment ties, among other economic operations, between these Arab League countries and Israel. Egypt and Jordan, having earlier signed peace treaties with Israel, have long engaged in formal bilateral trade with Israel and publish official statistics regarding that trade. Currently, such statistics from other Arab League members either are not published at all or are not regularly updated.

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

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

The U.S. Government's efforts to oppose the Arab League boycott include alerting appropriate officials in the boycotting countries to the presence of prohibited boycott requests and the adverse impact of those requests on U.S. firms and on Arab League members' ability to expand trade and investment ties with the

United States. In this regard, OAC officials periodically visit Arab League members to consult with appropriate counterparts on antiboycott compliance issues. These consultations provide technical assistance to those counterparts to identify language in commercial documents that may constitute or be related to prohibited and/or reportable boycott requests under Part 760 of the EAR.

Boycott activity can be classified according to three categories. The primary boycott prohibits the importation of goods and services from Israel into the territory of Arab League members. This prohibition may conflict with the obligation of Arab League members that are also Members of the WTO to treat products of Israel on a Most-Favored-Nation basis. The secondary boycott prohibits individuals, companies (both private and public sector), and organizations in Arab League members from engaging in business with U.S. firms and firms from other countries that contribute to Israel's military or economic development. Such foreign firms may be placed on a boycott list maintained by the Central Boycott Office (CBO), a specialized bureau of the Arab League. In the past, the CBO has often provided this list to Arab League member governments for their use in implementing national boycotts. The tertiary boycott prohibits business dealings with U.S. and other firms that do business with companies on the boycott list.

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

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

**ALGERIA:** Algeria does not maintain diplomatic, cultural, or direct trade relations with Israel, although indirect trade reportedly takes place. The country has legislation in place that in general supports the Arab League boycott, but there are 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. However, regulations issued by individual government agencies have at times banned contact with Israeli companies and entities, effectively barring the entry of Israeli products.

**COMOROS, DJIBOUTI, AND SOMALIA:** None of these countries have taken steps to effectively enforce a boycott against Israel.

**EGYPT:** Egypt has not enforced any aspect of the boycott since 1980, pursuant to its peace treaty with Israel. In past years, Egypt has included boycott language drafted by the Arab League in documentation related to tenders funded by the Islamic Development Bank.

**IRAQ:** As a matter of policy, Iraq does not adhere to the Arab League boycott. Most Iraqi ministries and state-owned enterprises have agreed not to comply with or have rescinded regulations enforcing the boycott, following a 2009 Council of Ministers decision to cease boycott-related implementation practices. However, individual Iraqi Government officials and ministries continue to violate that policy. As a result of U.S. Government engagement with the Iraqi Government, the overall number of boycott-related requests,

of which the U.S. Government is aware, issued by Iraqi entities declined slightly from 47 in 2019 to 37 in 2020; in 2021, the number rose slightly to 39. The Ministry of Health's procurement arm (Kimadia) was among the government entities that still issued boycott-related requests.

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

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

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

**LIBYA:** Prior to its 2011 revolution, Libya did not maintain diplomatic relations with Israel and had a law in place mandating adherence to the Arab League boycott. The Qadhafi regime enforced the boycott and routinely inserted boycott-related language in contracts with foreign companies and maintained other restrictions on trade with Israel. The Libyan Government of National Accord has not articulated a stance on the Arab League boycott, and the status of pre-2011 revolution laws requiring local firms to comply with the boycott is unclear.

The United States will continue to monitor Libya's treatment of boycott-related issues.

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

**MOROCCO:** Morocco agreed to normalize relations with Israel in August 2020. Morocco and Israel signed a Joint Declaration re-establishing diplomatic relations on December 22, 2020. In January 2021, Morocco and Israel agreed to establish joint working groups to promote cooperation in a variety of areas, including investments, transportation, environment, energy, and tourism. Prior to the normalization agreement, Morocco did not enforce the boycott consistently. Moroccan law contained no specific references to the Arab League boycott and the government did not enforce any aspect of it. In recent years, Morocco reportedly has been Israel's third largest trading partner in the Arab world, after Jordan and Egypt. U.S. firms have not reported boycott-related obstacles to doing business in Morocco. Moroccan officials do not appear to attend CBO meetings.

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

**SUDAN:** Sudan and Israel announced a normalization agreement in October 2020 that would include Sudan renouncing the boycott. In 2021, Sudan repealed the boycott, publishing the repeal in the Sudan Registry. This move ends Sudan's official adherence to the boycott.

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

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

**YEMEN:** Although Yemen renounced observance of the secondary and tertiary aspects of the boycott in 1995, in the years since, Yemen has continued to enforce the primary boycott and certain aspects of the secondary and tertiary boycotts. Ongoing political turmoil in the country has made it impossible to ascertain current official Yemeni attitudes toward the boycott.

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

The situation in individual GCC member countries is as follows:

*Bahrain:* In 2020, Bahrain agreed to normalize relations with Israel and expand already robust economic ties including establishing flights between the two countries. Bahrain participated in the September 15, 2020, commemoration in Washington, D.C. of the Abraham Accords, and signed the Abraham Accords Declaration with the United States and the UAE. Unlike the UAE, Bahrain did not formally rescind the 1963 Israeli Products Boycott Law, which remains listed in Bahrain's Official Gazette. Responding to U.S. and international banks seeking legal certainty, the Central Bank of Bahrain issued a circular on August 30, 2021, assuring banks that no legal restrictions prevent economic engagement with Israeli entities. Initial reactions to the circular, which has not been publicized in the Official Gazette, from banking sector and other business community contacts were positive, with most expressing optimism that the new guidance addressed the concerns of legal ambiguity and clarified the removal of all Israeli Boycott Law restrictions. Since the official start of normalization in October 2020, Bahrain and Israel signed a joint communique and several sectoral memoranda of understanding, which were subsequently ratified by both governments' legislative bodies. The Israeli prime minister became the first Israeli official at that level to visit Bahrain in February 2022.

*Kuwait:* Kuwait continues to recognize the 1994 GCC decision and no longer adheres to what they consider to be the secondary or tertiary aspects of the boycott. Kuwait claims to have eliminated all direct references to the boycott in procurement documentation as of 2000. Kuwait has a three-person boycott office, which is part of the General Administration for Customs. Although Kuwaiti officials reportedly regularly attend CBO meetings, Kuwait since 2016 has refrained from establishing barriers to trade, investment, or commerce that are directed against U.S. persons operating or doing business in Israel, with Israeli entities, or in any territory controlled by Israel.

*Oman:* Boycott-related language rarely appears in tender documents, reflecting Omani Government officials' professed commitment to ensuring that such language is not included in new tender documents. Officials have removed boycott-related language when the language is brought to their attention. Omani customs processes Israeli-origin shipments entering with Israeli customs documentation, although Omani firms typically avoid marketing consumer products that can be identified as originating from Israel. Oman's Ministry of Foreign Affairs prohibits its diplomatic missions from taking part in Arab League boycott meetings.

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

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

*The United Arab Emirates:* In August 2020, the United Arab Emirates signed a normalization agreement with Israel. As part of its agreement, the Emirati Government issued a decree ending the UAE's adherence to the Arab League boycott. Since that announcement, the two countries have rapidly established commercial connections, opening direct trade, phone, mail, banking, and passenger flight connections. The UAE has clarified to the U.S. Treasury Department that the August 2020 Decree confirms that there is no Emirati law or legislation that stipulates any boycott of Israel, its nationals, or its companies, and no Emirati law or legislation that requires a boycott of companies or individuals that do business with Israel, or imposes restrictions on other trading partners' companies or individuals that do business with Israel. Prior to the normalization agreement, the UAE had been one of the leading sources of prohibited boycott requests. In 2021, there were 18 prohibited requests, down from 79 in 2019. The Department of State and interagency partners have engaged UAE officials in detail on the boycott repeal, with UAE officials unequivocally confirming that UAE participation in the boycott has been terminated. U.S. Government officials will continue to engage the UAE on the issue.

# ARGENTINA

## TRADE AGREEMENTS

### The United States–Argentina Trade and Investment Framework Agreement

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

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

Argentina's average Most-Favored-Nation (MFN) applied tariff rate was 13.4 percent in 2020 (latest data available). Argentina's average MFN applied tariff rate was 10.3 percent for agricultural products and 13.9 percent for non-agricultural products in 2020 (latest data available). Argentina has bound 100 percent of its tariff lines in the WTO, with an average WTO bound tariff rate of 31.8 percent.

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

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

According to MERCOSUR procedures, any good imported into any member country (not including free trade zones) is subject to the payment of the CET to that country's customs authorities. If the product is then re-exported to another MERCOSUR country, the CET must be paid again to the second country.

In 2010, MERCOSUR took a step toward the establishment of a customs union by approving a Common Customs Code (CCC) and launching a plan to eliminate the double application of the CET within MERCOSUR. All MERCOSUR members must ratify the CCC for it to take effect. Only Argentina has done so; it ratified the CCC in November 2012.

MERCOSUR members are also allowed to set import tariffs independently for some types of goods, including computer and telecommunications equipment, sugar, and some capital goods. Argentina imposes a 14 percent tariff on imports of capital goods that are also produced domestically. Imports of certain other capital goods that are not produced domestically are subject to a reduced tariff of two percent.

Argentina has bilateral agreements with Brazil and Uruguay to provide preferential treatment for automobiles and automotive parts. In October 2019, Argentina and Brazil submitted to the Latin American Integration Association a revised bilateral agreement to extend the time period to implement bilateral free trade in automobiles and automotive parts from June 20, 2020 to July 1, 2029. Argentina also has a separate bilateral trade agreement with Mexico regarding quotas for automobiles and automotive parts. In March

2019, Argentina and Mexico agreed to retain quotas for three final years before implementing bilateral free trade in these goods.

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

### *Taxes*

Argentina maintains a variety of taxes on, and tax exemptions for, imported goods. On December 23, 2019, the Argentine Congress passed Public Emergency Law 27,541, raising to 3 percent the rate of the statistical tax, a fee charged on goods imported for consumption. Temporary imports, inputs used to produce goods for export, and imported goods for scientific and technological research are exempted from this tax. Pursuant to Decree 901/2021, the 3 percent statistical tax rate is extended until December 31, 2024.

Decree 332/2019 established caps for taxes on imported goods. Decree 99/2019 raised the caps by 20 percent as follows: imports with a value of less than \$10,000 have a maximum tax of \$180; imports between \$10,000 and \$100,000 have a maximum tax of \$3,000; imports between \$100,000 and \$1,000,000 have a maximum tax of \$30,000; and imports greater than \$1,000,000 have a maximum tax of \$150,000. Decree 1057/2020 extended these caps through December 31, 2021. Pursuant to Decree 548/2019, in the case of capital goods imported exclusively for renewable energy projects included in the RenovAr Program, the maximum tax is set at \$500.

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

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

In 2016, Argentina passed Law 27263, implemented by Resolution 599-E/2016, which provides tax credits to automotive manufacturers for the purchase of locally-produced automotive parts and accessories incorporated into specific types of vehicles. The tax credits range from 4 percent to 15 percent of the value of the purchased parts. In 2018, Argentina issued Resolution 28/2018, simplifying the procedure for obtaining the tax credits. The resolution also establishes that if the national content of the automobile drops below the minimum required by the resolution because of relative price changes due to exchange rate

fluctuations, automotive manufacturers will not be considered non-compliant with the regime. However, the resolution sets forth that tax benefits will be suspended for the quarter when the drop was registered.

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

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

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

## **Non-Tariff Barriers**

### *Import Bans*

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

Pursuant to Decree 509/2007, Annex 6, Argentina prohibits imports of used clothing.

### *Import Restrictions*

Domestic legislation requires compliance with strict conditions on the entry of those used capital goods that are not prohibited from being imported into Argentina, as follows: (1) used capital goods can only be imported directly by the end user; (2) overseas reconditioning of the goods is allowed only if performed by the original manufacturer and third-party technical appraisals are not permitted; (3) local reconditioning of the good is subject to technical appraisal to be performed only by the state-run Institute of Industrial Technology, except for aircraft-related items; (4) the imported used capital good cannot be transferred (sold or donated) for a period of four years; (5) regardless of where the reconditioning takes place, the Argentine Customs Authority requires the presentation of a “Certificate of Import of Used Capital Goods” at the time of importation. This certificate is issued by the Secretariat of Foreign Trade following approval by the Secretariat of Industry. Pursuant to Joint Resolutions 12/2014 and 4/2014 of January 2014, the import certificate for used capital goods has a duration of 60 working days from the issue date. Through Decree

406/2019, issued June 6, 2019, the Argentine Government exempted a list of products from the requirement to obtain the import certificate.

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

Resolution 253/2020 restricts imports of books to 500 units per month for a one-year period beginning September 15, 2020. That policy was extended through Resolution 868/2021, issued August 2021 and in effect indefinitely. Resolution 868/2021 also expanded these import restrictions to children's picture books, drawing or coloring books, information brochures, and booklets.

Under the “Por una Argentina Inclusiva y Solidaria” tax, all imported services purchased through travel and tourism agencies and all international transportation tickets for travel by air, land (except to countries that border Argentina), or water sold in Argentina (through a physical or online point of sale) are subject to a 30 percent tax, pursuant to Public Emergency Law 27,541, issued on December 23, 2019, and Decree 99 issued on December 28, 2019. Under Resolution 4815, as of September 16, 2020, when international transportation tickets and international tourism services are sold in Argentina, an amount equal to 35 percent of the price of the ticket or service is collected as income tax withholding. Through Decree 99/2019, the government also established an 8 percent tax for some imported digital services that are already subject to the VAT.

### *Import Licensing*

Argentina subjects imports to automatic or non-automatic licenses that are managed through the Comprehensive Import Monitoring System (SIMI), established in December 2015 by AFIP through Resolutions 5/2015 and 3823/2015. The SIMI system requires importers to submit detailed information electronically about goods to be imported into Argentina, including whether the products are subject to automatic or non-automatic import licenses. Once the information is submitted, relevant Argentine Government agencies review the application through a “Single Window System for Foreign Trade”. Products deemed import-sensitive by the Argentine Government, including goods such as automobiles, paper and cardboard, iron and steel, nuclear reactors, electrical and construction materials and parts, toys, textiles and apparel, and footwear, are subject to the non-automatic import licensing regime. On January 9, 2020, through Resolution 1/2020, Argentina moved 300 tariff lines from the automatic import licensing system to the non-automatic import licensing system. Since 2020, a total of 1,446 tariff lines are subject to non-automatic licenses. Through Resolution 1/2020, Argentina reduced the validity period for a non-automatic import license from 180 days to 90 days after approval. Firms in a variety of sectors report extensive delays and rejections in the import license application process, making it difficult to supply manufacturing facilities and reach Argentine consumers. Firms have also reported a lack of transparency in information required to apply for import licenses and in the reasons for rejection, further increasing the unpredictability of doing business in Argentina.

### *Customs Barriers and Trade Facilitation*

Argentina continues to use reference prices for goods that originate in, or are imported from, specified countries for customs valuation purposes. If a good is imported and the invoice price is lower than the

reference price, Argentina requires importers to obtain an authenticated invoice. Argentina publishes a list of reference prices and covered countries.

AFIP requires importers of apparel to obtain and apply special government-issued labels, in addition to standard garment labeling, in order to receive customs clearance, a process that results in additional costs and delays in release of goods.

### *Certificates of Origin*

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

### *Consularization*

Shipments to Argentina require commercial invoices and packing lists to be legalized by the Argentine Consulate in the country of export. Consulates will only legalize a commercial document after it has been signed by a Chamber of Commerce that is recognized by the Consulate in their region. The consulate assesses a \$200 fee per document for these consularization services.

### *Ports of Entry*

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

### *Consumption Incentives*

The "Ahora 12" program, launched in October 2013, allows individuals to finance the purchase of certain domestically manufactured goods, ranging from clothing to toys to home appliances, in addition to domestic tourism, in monthly installments (originally 12 months) with certain credit cards without interest. On July 29, 2019, the government expanded the program by adding small appliances, cosmetics, and self-care products, and increased the price limit for purchases of eyeglasses and motorcycles. The Argentine Government further extended the programs – which now include Ahora 12, Ahora 18, and Ahora 3 y 6 – through March 31, 2021, through resolution 730/2020. The new resolution removed cellphones from the list and included some medical equipment (such as defibrillators and sterilization equipment), prescription medicine, and some domestic services such as educational services (language and drama courses, among other, excluding educational services offered in schools and universities), personal care services (hairdressers, barber shops, and beauty salon services), and automobile and motorbike repair services. On July 30, 2021, the government extended the programs through January 31, 2022 through resolution 753/2021, and created the Ahora 24 and Ahora 30 programs, which allow individuals to finance the

purchase of home appliances and construction materials. In January 2022, the government issued Resolution 34/2022 to extend these programs, except for Ahora 30, until June 30, 2022..

## **SANITARY AND PHYTOSANITARY BARRIERS**

### **Live Cattle**

Argentina banned imports of U.S. cattle and beef products in 2002 due to purported concerns regarding bovine spongiform encephalopathy. In 2018, the market reopened to U.S. beef. However, the market for U.S. cattle remains closed pending an audit of the U.S. animal health system by Argentina and negotiation of a sanitary certificate.

### **Poultry**

Argentina does not allow imports of fresh, frozen, or chilled poultry, nor day-old chicks or hatching eggs from the United States due to purported concerns over Highly Pathogenic Avian Influenza (HPAI) and virulent Newcastle Disease, and because Argentina does not recognize the U.S. sanitary inspection system as equivalent to the Argentine system. Over the past several years, the United States has provided Argentina with updates on the status of HPAI in the United States and on the success of the U.S. Government's mitigation and eradication efforts. Most recently, the United States requested market access for day-old chicks and hatching eggs. The U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) continues to negotiate the sanitary requirements with Argentina.

In addition, the United States requested that Argentina regionalize its restrictions related to HPAI in the event of future outbreaks, as recommended by the World Organization for Animal Health. The United States continues to engage with Argentina to resolve the market access issues for poultry.

### **Pet Food with Ruminant Ingredients**

Market access for exports of U.S. pet food containing ruminant ingredients to Argentina has been pending for thirteen years. USDA and Argentine authorities engaged in 2021 to resolve outstanding technical issues.

## **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. In May 2018, Argentina issued Law 27,437 giving additional priority to Argentine small and medium-sized enterprises and requiring that foreign companies that win a tender must subcontract domestic companies to cover 20 percent of the value of the work. The preference applies to procurement by all government agencies, public utilities, and concessionaires. There is similar legislation at the provincial level. In September 2018, Argentina issued Decree 800/2018, which provides the regulatory framework for Law 27,437. In November 2016, Argentina passed a law No. 27,328, which regulates public-private contracts. The law lowered regulatory barriers to foreign investment in public infrastructure projects with the aim of attracting more foreign direct investment. However, the law contains a "Buy Argentina" clause that mandates at least 33 percent local content for every public project.

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

## **INTELLECTUAL PROPERTY PROTECTION**

Argentina remained on the Priority Watch List in the [2021 Special 301 Report](#). The situation for innovators in the pharmaceutical and agrochemical sectors presents significant challenges. First, the scope of patentable subject matter remains significantly restricted under Argentine law. Second, there is inadequate protection against unfair commercial use and unauthorized disclosure of undisclosed test and other data submitted to the Argentine Government in conjunction with its lengthy marketing approval process. In addition, the United States encourages Argentina to provide transparency and procedural fairness to all interested parties in connection with potential recognition or protection of geographical indications, including in connection with trade agreement negotiations. Finally, a backlog continues for patent applications for pharmaceuticals and biosimilar products, resulting in unreasonable delays for these products.

In addition, the absence of sustained enforcement efforts – including under criminal laws – sufficient to have a deterrent effect, coupled with judicial inefficiency and outdated intellectual property (IP) laws, diminishes the competitiveness of U.S. IP-intensive industries in Argentina. For example, “La Salada” continues to be one of South America’s largest black markets for counterfeit and pirated goods. The existing legislative regime and weak enforcement hinder the ability of rights holders, law enforcement, and prosecutors to halt, through legal action, the growth of illegal online markets. The United States will continue to monitor these issues and engage Argentina on IP matters at large.

## **SERVICES BARRIERS**

### **Audiovisual Services**

Argentina imposes restrictions on the showing, printing, and dubbing of foreign films in Argentina. The National Institute of Cinema and Audiovisual Arts taxes foreign films screened in local movie theaters. Distributors of foreign films in Argentina must pay screening fees that are calculated based on the number and geographical locations of theaters at which the films will be screened within Argentina. Films screened in 15 or fewer movie theaters are exempted. According to Resolution 1087/2019, which came into force July 23, 2019, all movie theaters must project at least one domestically produced film for the entirety of one week per quarter.

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

### **Express Delivery**

Pursuant to Decree 221/2019, consumers are subject to annual limits on the tax-free allowance on purchases. Consumers can purchase goods valued at up to \$50 per month tax free, with an annual tax-free limit of \$600. If the monthly purchase total exceeds \$50, the consumer must pay a 50 percent tax on the value above the \$50 threshold. Non-commercial courier shipments with a value of \$1,000 or less and a weight not greater than 50 kilograms are exempt from import licensing and other import requirements, subject to certain conditions, including an annual limit of five shipments per person. Due to significant import-related delays and lack of transparency, such as non-automatic import licenses, the express and postal channels are essential for electronic commerce.

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

### **Insurance Services**

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

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

### **Telecommunications Services**

In 1998, Argentina and the United States entered into the Agreement Concerning the Provision of Satellite Facilities and the Transmission and Reception of Signals to and from Satellites for the Provision of Satellite Services to Users in the United States of America and the Argentine Republic (Bilateral Satellite Agreement). The Bilateral Satellite Agreement included the Protocol Concerning the Transmission and Reception of Signals from Satellites for the Provision of Direct-to-Home Satellite Services and Fixed-Satellite Services in the United States of America and the Argentine Republic, and was accompanied by an exchange of letters between the United States Federal Communications Commission and the Argentina Ministry of Communications. In the Bilateral Satellite Agreement, Argentina committed that U.S.-licensed satellites will be permitted to provide service to, from, and within Argentina and that Argentina will ensure that any authorization needed for transmission of satellite services within Argentina shall be issued as efficiently and expeditiously as possible. In the exchange of letters, the Argentina Ministry of Communications stated the following regarding fixed-satellite services: “Given all the related internal processes, it usually takes approximately 30 days to issue a license.” U.S. stakeholders are concerned that, despite the existence of this Agreement, Argentina is not processing authorizations for fixed satellite services in a timely manner.

As part of a set of measures adopted in 2020 intended to address economic issues created by the COVID-19 pandemic, the Argentine Government issued Decree 311/2020, which froze prices and prohibited the suspension of delinquent accounts for a number of information communication technology (ICT) services, including fixed and mobile telephone services, Internet access services, and pay television services, until August 31, 2020. On August 21, 2020, the Argentine Government issued Decree 690/2020, which extended the freeze on the prices for these ICT services until December 31, 2021 and amended the Information and Communications Technologies Law to change the regulatory status of these ICT services to “essential and strategic public services” and therefore subject to additional regulation by the National Communications Agency (ENACOM), including full rate regulation and additional universal service obligations. On July 12, 2021, ENACOM issued Resolution 862/2021, allowing for a five percent price increase for telecommunications services. The increase is well below the annual inflation rate in Argentina.

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

## **INVESTMENT BARRIERS**

### **Foreign Exchange and Capital Controls**

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

As of September 15, 2020, pursuant to Communication A71067/2020, Argentine nationals and residents must limit purchases of foreign currency (or of goods and services denominated in foreign currency) to no more than \$200 per month. Individuals must receive Central Bank approval to purchase foreign currency in excess of the \$200 quota.

Purchases of goods or services abroad with credit and debit cards issued by Argentine banks count against the \$200 monthly quota. Although no limit on credit or debit card purchases is imposed, if monthly expenditures surpass the \$200 quota, the card owner will be prevented from purchasing foreign currency in Argentina for the number of months needed to cover the amount of excess spending. Also, the regulation prohibits individuals who receive government assistance and high-ranking government officials from purchasing foreign currency.

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

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

As of October 2019, Communication A6815 limits cash withdrawals made abroad with local debit cards to only foreign currency bank accounts owned by the client in Argentina. Pursuant to Communication A6823, cash advances made abroad from local credit cards are limited to a maximum of \$50 per transaction.

Companies and individuals will need to obtain prior clearance from the Central Bank before transferring funds abroad, including dividend payments or other distributions abroad, or to pay for services rendered to a company by foreign affiliates. If transfers are made from their own foreign currency accounts in Argentina to their own accounts abroad, individuals do not need to obtain Central Bank approval. Through Communication A6869 issued by the Central Bank in January 2020, companies will be able to repatriate dividends without Central Bank authorization equivalent to a maximum of 30 percent of new FDI made by the company in the country. To promote FDI, the Central Bank announced in Communication A7123 in October 2020 that it will allow free access to the official foreign exchange market to repatriate investments, provided that the capital contribution was transferred and sold in Argentine pesos through the foreign exchange market as of October 2, 2020 and that the repatriation takes place at least two years after the transfer and settlement of those funds. On April 6, 2021, the government issued Presidential Decree 234 creating a program to grant the private sector access to foreign exchange to attract new investment in key export sectors, including mining, hydrocarbons, agriculture, forestry, and manufacturing. To participate in the program, companies must invest more than \$100 million in new projects. Through Communication A7259 on April 8, 2021, the Central Bank grants companies up to 20 percent of the foreign exchange generated from an approved export project to service loans, pay dividends, or deposit into dollar-denominated accounts domestically or abroad. On June 3, 2021, the Central Bank issued Circular A7361

to promote exports by allowing companies to access the foreign exchange market for import, dividend and debt payments. Exporting companies of industrialized and extractive goods can access the foreign exchange market for a percentage of the increase in exports recorded in 2021 compared to 2020. The percentages range from 5 to 15 percent, depending on the value added of the exports and the time to settle the proceeds in the foreign exchange market.

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

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

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

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

In February 2021, the Central Bank issued Communication A7230, extending Circular A7106 and including debt coming due from April 1, 2021 to December 31, 2021. Circular A7106, originally issued by the Central Bank in September 2020, limited companies' ability to purchase foreign currency to repay any external financial debt (including intercompany debt) and dollar-denominated local securities. Companies have access to no more than 40 percent of the principal amount coming due from October 15, 2020 to December 31, 2021 (as amended), and for the remaining 60 percent of the debt, the company must file a refinancing plan with the Central Bank. Debt from international organizations or their associated agencies or guaranteed by them and debt to official credit agencies or guaranteed by them are exempt from this restriction. In addition, the Central Bank, through Communication A701, prohibited access to the foreign exchange market to pay for external debt, imports, and for saving purposes for individuals and companies that sold securities with settlements in foreign currency or transfers to foreign depository entities within the previous 90 days and may not make additional sales during the following 90 days.

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

## **Local Content Requirements**

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

## **SUBSIDIES**

### **Local Content Subsidies**

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

## **OTHER BARRIERS**

### **Export Policies**

Argentina maintains export taxes on most exports of goods and services. Decree 37/2019 sets the export tax rate on goods at 12 percent, with several exceptions. Products listed in Annex II of Decree 37 are subject to a 9 percent export tax. Products that were listed in Annex II of Decree 793, issued September 4, 2018, but that were not also included in Annex II of Decree 37/2019, are required to pay an export tax of three Argentine pesos per dollar exported. On October 1, 2020, through Decree 785/2020, the government established an 8 percent export tax on a set of products including gold, marble, and granite until December 31, 2021.

On December 23, 2019, when Public Emergency Law 27,541 came into effect, Argentina established export tax ceilings on exports of certain agricultural commodities, industrial products, oil, gas, minerals, and services. In the case of exports of services, the maximum tax that applies is 5 percent. Micro and small enterprises exporting less than \$600,000 in services per year are exempted from the tax, and those exporting more than \$600,000 are required to pay the export tax on exports above the \$600,000 threshold. Goods produced in and exported from the Special Customs Area (SCA) located in Tierra del Fuego province are exempt from export taxes.

Argentina maintains additional percentage-based export taxes on a range of products. Annex I of Decree 1126/2017 and its modifications detail the full list of additional export duties applied in Argentina. Soybeans, soy meal, and soy oil are taxed at 18 percent; leathers at 5 and 10 percent; cork at 10 and 5 percent; paper and cardboard waste for recycling at 20 percent; and alloy steel waste at 5 percent. On May 28, 2018, the Argentine Government issued Decree 486, increasing the export tax on biodiesel from 8 percent to 15 percent as of July 1, 2018. In October 2020, the Argentine Government issued Decrees 789/2020 and 790/2020 reducing export taxes on soybean products for three months to encourage exports. Export taxes on soybeans were lowered from 33 percent to 30 percent during October 2020, to 31.5 percent

during November 2020, and 32 percent during December 2020, returning to 33 percent in January 2021. Processed soybean products (including soymeal and soybean oil) were taxed at 28 percent instead of 33 percent during October 2020, 29.5 percent during November 2020, and 30 percent during December 2020, and were set for 33 percent as of January 2021. This differential provides an incentive to export processed soybean oil and soymeal instead of whole soybeans. On May 8, 2021, the government issued decree 302/2021, modifying Decree 790 to exempt micro- and small and medium-sized enterprises (SMEs) from paying the export tax if exports do not exceed \$500,000 Free On Board (FOB). For exports between \$500,000 and \$1 million, SMEs would pay 50 percent of the export duty. Decree 150/2021, published on March 8, 2021, established the elimination of the export tax for automobiles and automotive parts exports that surpassed the 2020 exported volume. Automobiles and automotive parts exports below the 2020 exported volume will continue paying a 3 percent to 4.5 percent export tax depending on the product. Pursuant to decree 1034/2020, issued in December 2020, all information technology service exports from companies enrolled in the knowledge-based economy promotion regime are exempt from the export tax. The MERCOSUR CCC, if entered into effect, would restrict future export taxes and transition to a common export tax policy.

## **Export Ban**

In 2016, pursuant to Decree 823/2016, Argentina implemented a 360-day ban on all exports of scrap of iron, steel, copper, and aluminum. The Argentine Government consistently extended the ban in subsequent years, although a current extension is still pending.

In May 2021, the Secretary of Domestic Trade banned meat exports for 30 days due to increasing domestic meat prices. On June 23, 2021, Decree 408/2021 established a 50 percent export quota on a set of meat cuts not consumed locally until December 31, 2021. After several amendments to the decree, on October 11, 2021, the government issued Decree 700/2021 ending the 50 percent export quota. Some export limitations remained on the seven most popular meat cuts consumed locally until December 31, 2021. Pursuant to Decree 911/2021, the measure was extended through December 31, 2023.

## **Export Registrations and Permits**

Since December 29, 2015, Argentina has required exporters of certain grains, pulses, cotton, oilseeds, and their derivatives to obtain Affidavits of Foreign Sales (DJVE) and register the exportation with the Office of Coordination and Evaluation of Subsidies to Domestic Consumption. In October 2019, the Ministry of Agriculture, Livestock, and Fisheries released resolution 78/2019 that updated regulations for DJVE and reduced the term of validity for short-term DJVE from 45 to 30 days. Exporters are now required to pay 90 percent of the export tax within five days of registration. For short-term DJVE, exporters must pay the full export tax immediately upon approval of the DJVE registration, based on the official Free On Board value on the date of the sale.

### *Consumer Goods Price Control Program*

In January 2014, Argentina launched a consumer goods price control program called “Precios Cuidados.” Under the voluntary program, participating consumer goods manufacturers and supermarkets agreed to adhere to price caps on nearly 200 basic consumer goods. Since January 2016, the program has been extended several times, with prices adjusted for inflation and additional products added to the program. In September 2018, the Secretary of Domestic Trade issued Disposition 46/2018, including small retail stores in the program. In January 2020, the government extended the program through January 31, 2021, and changed the products included in the program, reducing the number of products to 310, subject to a quarterly review. On October 6, 2020, through Disposition 14/2020, the government increased the number of products included in the program to a total of 400, with prices adjusting to the level registered in July 2020.

On October 20, 2021, the Secretary of Domestic Trade issued resolution, extending the program until January 7, 2022.

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

On June 8, 2021, the Secretary of Domestic Trade discontinued the “Precios Máximos” program that had been in place since 2020 and controlled the prices of 18 categories of products, including food and beverage, cleaning and hygiene products. On the same date, it was replaced with a new price control program “Super Cerca.” This program seeks to include small retail stores into a price control program as they are not part of the Precios Cuidados” program. The new program includes 70 basic necessity items.

### **Supply Law**

In 2014, Argentina amended the 1974 National Supply Law to expand the ability of the government to regulate private enterprises by setting minimum and maximum prices and profit margins for goods and services at any stage of economic activity. Private companies may be subject to fines and temporary closure if the Argentine Government determines they are not complying with the law. Although the U.S. Government has not received any reports of it being applied since December 2015, in October 2021, the government publicly stated that it would apply the law if companies do not comply with price freeze programs.

### **Pension System**

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

# AUSTRALIA

## TRADE AGREEMENTS

### The United States–Australia Free Trade Agreement

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

## SANITARY AND PHYTOSANITARY BARRIERS

### Animal Health

#### *Beef and Beef Products*

Australia requires completion of a complex approval process before it will permit the importation of bovine products from a country that has reported any indigenous cases of bovine spongiform encephalopathy (BSE). In 2003, Australia closed its market to U.S. beef after the detection of BSE in the United States. In 2017, Food Standards Australia New Zealand conducted an individual country risk analysis and determined that U.S. beef imports are safe for human consumption. The findings also confirmed that U.S. beef meets the negligible BSE risk requirements of the World Organization for Animal Health (OIE). As a result, in May 2018, Australia lifted its ban on heat-treated, shelf-stable beef products from the United States. However, Australia's market remains closed to fresh U.S. beef and beef products. In August 2019, Australia completed an on-site audit of the U.S. fresh meat processing sector. The United States continues to engage the Australian government to reach an agreement on the terms and conditions for U.S. fresh beef and beef product exports to Australia.

#### *Pork*

Pork and pork products are the top U.S. agricultural export to Australia, valued at approximately \$196.9 million in 2021. However, due to Australia's stated concerns about porcine reproductive and respiratory syndrome (PRRS) and post-weaning multi-systemic wasting syndrome (PMWS), imports of fresh/chilled pork and bone-in products from the United States are not permitted. The United States has requested that Australia remove all PRRS- and PMWS-related restrictions and has provided scientific evidence to document the safety of U.S. pork products. Although the OIE approved an international standard for PRRS in May 2017, Australia has requested additional scientific information from the United States. In December 2017, the U.S. Department of Agriculture Animal and Plant Health Inspection Service sent a scientific review paper on PRRS to the Australian Government with a request that Australia should re-open the import risk assessment for U.S. origin fresh/chilled/frozen pork. The United States and Australia discussed this issue during an FTA Sanitary and Phytosanitary (SPS) Committee Meeting in 2020, but this issue remains unresolved. Access to the Australian market for fresh/chilled/frozen pork, bone-in pork, and pork products remains a high priority for the United States.

#### *Poultry*

Australia prohibits imports of uncooked poultry meat from all countries except New Zealand. While cooked poultry meat products may be imported, current import requirements (as set out in an import risk analysis) mandate that imported poultry meat products be cooked to a minimum core temperature of 74°C

for 165 minutes or the equivalent. Given this temperature requirement, Australia does not permit importation of cooked poultry product that would be suitable for sale in restaurants or delicatessens.

In 2012, Australia initiated an evaluation of whether it would grant access for U.S. cooked turkey meat to the Australian market under amended import conditions. Since then, the United States and Australia have exchanged technical information on this issue. Market access for U.S. cooked turkey meat was also discussed in the FTA SPS Committee Meeting in 2020. Negotiations are ongoing. The United States has identified this issue as a high priority and will continue to work with Australia to gain meaningful commercial market access for cooked turkey meat.

## **Plant Health**

### *Apples and Pears*

Australia prohibits the importation of apples and pears from the United States based on concerns regarding several pests. In October 2009, Australia published a pest risk analysis for apples from the United States and identified three additional fungal pathogens of concern to Australian regulatory authorities. In December 2014, the United States provided information to Australia to support the U.S. systems approach to address pest risk issues. The Australian government requested additional information. In November 2018, Australia announced it was commencing a new risk analysis for fresh apples from U.S. Pacific Northwest states, and in October 2020, Australia published the draft risk analysis for a 90-day comment period. The United States provided comments in response to Australia's draft risk analysis for U.S. apples on January 13, 2021. Australia also prohibits the importation of pears from the United States for phytosanitary issues, including fire blight.

## **INTELLECTUAL PROPERTY PROTECTION**

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

Under the FTA, Australia must notify a pharmaceutical product patent owner of a request for marketing approval by a third party for a product claimed by that patent owner. Australia must also provide measures in its marketing approval process to prevent persons other than the patent owner from marketing a patented product during the patent term. U.S. and Australian pharmaceutical companies have expressed concerns about delays in this notification process. In October 2020, the Australian Government announced planned reforms to the notification procedures for pharmaceutical products that are under evaluation. These reforms, if fully implemented, could increase transparency and promote the early resolution of potential pharmaceutical patent disputes. These reforms require legislation to be passed and implemented. However, no legislation had been introduced in the Australian Parliament as of March 2022. . The United States has also raised concerns about certain provisions in Australian law regarding potential civil damages in cases where a patent owner seeks a preliminary injunction. The United States will continue to monitor these issues.

## **SERVICES BARRIERS**

### **Audiovisual Services**

Australia is considering legislation that would impose local content obligations on streaming video services. In November 2020, the Australian Government issued the Media Reform Green Paper to raise and consult on options to implement such requirements. Following this consultation process, the government released a Streaming Services Reporting and Investment Scheme discussion paper. The paper outlines a proposed

regulatory scheme in which streaming services would be expected to invest at least five percent of their Australian revenues in commissioning new Australian content. Companies that do not meet this threshold could be designated by the Minister of Communications as non-compliant, following which the minister would have broad powers to impose investment obligations on that company (not necessarily limited to investing up to the five percent threshold). As an interim measure the Australian government has required streaming services to report their annual spending on local content. The United States will continue to monitor this issue to ensure Australia's compliance with Australia's FTA obligations, which discipline measures that discriminate in favor of domestic content.

## **BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE**

### **Internet Services**

#### *Mandatory Bargaining Code of Conduct*

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

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

The United States will continue to monitor this issue.

#### *Online Content*

Australia enacted an Online Safety Act in June 2021 that places additional responsibilities on digital platforms and internet service providers (ISPs) to monitor and remove harmful content posted on their services. Specifically, the Act reduces the time a site owner or ISP has to remove harmful content from 48 hours to 24 hours when served with a removal notice by the eSafety Commissioner. It also provides the eSafety Commissioner additional information collection powers and the power to require ISPs to disable access to material depicting violent conduct for a limited period during "crisis situations." Some U.S. companies expressed concern about the reduced time to remove harmful material, arguing it may be infeasible in some situations and that good faith efforts to remove such content were already in place.

On February 10, 2022, the government has introduced new “anti-trolling” legislation (the Social Media (Anti-Trolling) Bill 2022) to enable defamation cases to be prosecuted where defamatory material was posted anonymously on online platforms. The legislation, if passed, would require foreign social media services with at least 250,000 Australian account-holders (or services specified in the legislative rules) to “nominate” an “entity” in Australia. The legislation would also require digital platforms and/or the nominated entity to enable the identification of posters on their services where the posts originate in Australia. The legislation is being reviewed by the Senate Legal and Constitutional Affairs Committee, which was due to report back to Parliament by March 24.

## **INVESTMENT BARRIERS**

Foreign direct investment into Australia is regulated by the Foreign Acquisitions and Takeovers Act 1975, as amended, and associated regulations, and is screened by the Foreign Investment Review Board (FIRB). Generally, foreign investors are required to apply to FIRB for acquisitions of a “substantial interest” in an Australian business valued above A\$281 million (approximately \$200 million). Decisions are based on the “national interest” test, which includes national security concerns and are ultimately made by the Australian Treasurer based on advice from FIRB. Foreign persons must get approval before acquiring residential land, regardless of the value. All investments, including greenfield investments, by foreign government investors must also get approval by FIRB, regardless of the value or industry of the business.

Under the FTA, all U.S. greenfield investments are exempt from having to apply to FIRB. Under the FTA, non-greenfield U.S. investments above a higher threshold value are required to apply to FIRB, which stands at A\$1.216 billion (approximately \$887 million) for non-sensitive businesses and A\$281 million (approximately \$200 million) for sensitive businesses. As with other investors, U.S. investors are subject to a zero-dollar threshold for investments in residential land or vacant commercial land and for any acquisition providing greater than five percent ownership in any media enterprise. The Australian Government has generally approved U.S. investments.

Under new legislation that entered into force in January 2021, any foreign acquisition of a “direct interest” in a “national security business” must be filed with FIRB regardless of its value. National security businesses include critical infrastructure; businesses that develop, manufacture, or supply critical goods or critical technology intended for use by the Australian military or intelligence community, or foreign militaries or intelligence communities; and businesses that provide critical services to Australia’s military or intelligence community, including the storage of Australian classified information or personal information of Australian personnel. If such an investment is not otherwise subject to the broader national interest test, FIRB will apply a narrow national security test. The Treasurer also has the power, for up to 10 years after the investment, to “call in” any foreign investment not filed with FIRB if the Treasurer considers it may pose a national security concern.

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

# BAHRAIN

## TRADE AGREEMENTS

### The United States–Bahrain Free Trade Agreement

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

## IMPORT POLICIES

### *Taxes*

In 2016, the Gulf Cooperation Council (GCC) Member States agreed to introduce common GCC excise taxes on carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products (100 percent). U.S. beverage producers report that the current tax structure for carbonated drinks, which also applies to sugar-free carbonated beverages, fails to address public health concerns and disadvantages U.S. products. Sugary juices, many of which are manufactured domestically within GCC countries, remain exempt from the tax.

### *Import Bans*

On January 1, 2019, Bahrain introduced a ban on the importation of plastic waste.

## TECHNICAL BARRIERS TO TRADE

### *Restrictions on Hazardous Substances – Electrical Goods*

In March 2018, GCC Member States notified to the World Trade Organization (WTO) a draft Gulf Standardization Organization (GSO) technical regulation that would, among other things, require pre-market testing by accredited labs for certain hazardous substances in electrical goods. The measure would also require each type of good to be registered annually and includes a requirement to submit sample products prior to receiving approval for use in the GCC. The United States has raised concerns that the proposed regulatory requirements would have a significant negative impact on the imports of U.S. electrical and electronic equipment (such as information and communications technology, medical equipment, machinery, and smart fabrics), especially as the trade restrictive third party certification requirements differ from international best practices, which typically permit a supplier's declaration of conformity, supported by documentation requirements, such as test results and manufacturing specifications, in conjunction with integrated enforcement mechanisms, such as regulatory sanctions, liability in tort law, and mechanisms to monitor or remove nonconforming products from the market.

### *Degradable Plastics*

In September 2018, Bahrain notified to the WTO the Technical Regulation on Degradable Plastics Products. The regulation phased out single-use plastic bags and banned the import of non-biodegradable plastic bags beginning in July 2019. In July 2020, the regulation banned polyethylene and polypropylene sheets, such as table covers. Bahrain has stated that it will notify future changes in product coverage to the WTO.

### *Plastic Water Bottles*

In July 2021, Bahrain's Ministry of Industry, Commerce and Tourism issued Resolution No. 77, which will ban the manufacture, import or circulation of plastic water bottles with volumes less than 200 milliliters. Water bottles manufactured for export are excluded. The resolution took effect on January 9, 2022.

### *Halal Regulations*

In April 2020, GCC Member States notified to the WTO a draft GSO technical regulation establishing halal requirements and certification for animal feed. The U.S. animal feed, beef, and poultry industries have expressed concerns that the new technical regulation may place additional requirements on U.S. producers without offering additional assurance of meeting Member States' legitimate regulatory objectives. The United States submitted comments to GCC Member States in July 2020 noting the unprecedented and potentially trade-restrictive nature of the measure.

### *Energy Drinks*

In September 2021, Bahrain began to implement Executive Regulations for the Public Health Law on Energy Drinks restricting the sale of such products to individuals under the age of 18. Under these regulations, all locations selling energy drinks must display a prominent notice indicating that energy drinks cannot be sold to individuals under the specified age. In addition, manufacturers are required to place a statement on energy drink labels warning that the product is not suitable for pregnant and nursing women, those under 18 years of age, those who are allergic to caffeine or other ingredients contained in the product, individuals with heart problems, those suffering from high blood pressure or diabetes, and athletes engaged in exercise. The regulations also: (1) prohibit the sale of energy drinks in restaurants, cafeterias, educational facilities, and health facilities; (2) require prior licensing in order to advertise energy drinks through any form of media; and, (3) ban free samples of the product.

The United States has submitted comments and held bilateral discussions with Bahrain regarding questions and concerns over the regulations, including the timetable for implementation and the criteria and rationale for some of the requirements. The United States has also raised concerns with Bahrain that it had accelerated the implementation of the final measures without providing the necessary comment period and without notifying the final measure as required by the WTO Agreement on Technical Barriers to Trade.

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

## **GOVERNMENT PROCUREMENT**

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

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

## **INTELLECTUAL PROPERTY RIGHTS PROTECTION**

As part of its United States–Bahrain FTA obligations, Bahrain continues to enact laws to improve protection and enforcement of copyrights, trademarks, patents, and plant varieties. However, Bahrain has yet to accede to the International Convention for the Protection of New Varieties of Plants (1991), a requirement under the FTA. Bahrain’s record on intellectual property (IP) enforcement is mixed. Over the past several years, Bahrain has launched several campaigns to block illegal signals and prohibit the sale of decoding devices in order to combat piracy of cable and satellite television, and has launched several public awareness campaigns regarding copyright piracy. However, many counterfeit consumer goods continue to be sold openly.

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

## **LABOR**

The United States and Bahrain have been engaged in labor consultations under Article 15.6 of the United States-Bahrain FTA since 2013, regarding Bahrain's obligations under Article 15.1. The United States formally requested consultations after the U.S. Department of Labor released a report in response to a submission from the public. The consultations concern employment discrimination and repression of workers’ right to organize.

## **OTHER BARRIERS**

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

# BANGLADESH

## TRADE AGREEMENTS

### **The United States–Bangladesh Trade and Investment Framework Agreement**

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

## IMPORT POLICIES

Bangladesh’s import policies are outlined in the Import Policy Order (IPO) 2015-18 issued by the Ministry of Commerce. The IPO has two lists, the “List of Controlled Goods” and the “List of Prohibited Goods.” The Bangladesh Ministry of Commerce is revising the IPO for 2021-24 but has not released the results.

### **Tariffs and Taxes**

#### *Tariffs*

Bangladesh’s average Most-Favored-Nation (MFN) applied tariff rate was 14.0 percent in 2019 (latest data available). Bangladesh’s average MFN applied tariff rate was 17.5 percent for agricultural products and 13.4 percent for non-agricultural products in 2019 (latest data available). Bangladesh has bound only 17.9 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 156.3 percent.

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

Products and sectors that are generally exempt from tariffs include generators, information technology equipment, raw cotton, textile machinery, certain types of machinery used in irrigation and agriculture, animal feed for the poultry industry, certain drugs and medical equipment, and raw materials imported for use in specific industries. Commercial samples in reasonable quantities can be carried by passengers during travel and are not subject to tariffs; however, commercial samples are subject to tariffs if sent by courier.

#### *Taxes*

Other charges applicable to imports are an advance income tax of five percent, a value-added tax (VAT) of zero percent to 15 percent, with exemptions for certain input materials, and a supplementary duty of zero percent to 500 percent, which applies to new vehicles with large engines. VAT and supplementary duties are also charged on certain domestically produced goods. On July 1, 2019, Bangladesh implemented a new VAT law to simplify VAT rates to four possible rates (5 percent, 7.5 percent, 10 percent, and 15 percent). The National Board of Revenue (NBR) waived duties and VAT on the import of personal protective equipment and other emergency medical supplies in March 2020 in response to the COVID-19 pandemic.

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

## **Non-Tariff Barriers**

### *Quantitative Restrictions*

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

### *Registration*

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

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

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

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

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

Foreign exchange is controlled by the Bangladesh Bank in accordance with foreign exchange regulations and policies.

## *Customs Barriers and Trade Facilitation*

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

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

As of March 2022, 55 imported products are subject to mandatory standards certification from the Bangladesh Standards and Testing Institution (BSTI). Importers must present these certifications before customs clearance at ports of entry. BSTI draws samples from all consignments of products that require mandatory standards certification instead of adopting a risk-based testing approach. BSTI's infrastructural and capacity constraints often lead to significantly long wait times for testing and certification of imported products. While the testing and certification of most imported products is generally available within two weeks, the wait time could be longer for certain products for various reasons, including a lack of capacity and automation.

The Hazardous Waste (e-waste) Management Rules, authorized under the Bangladesh Environment Conservation Act, went into effect on June 10, 2021. A scheduled list of products is covered under the rules, including home appliances, monitoring and control equipment, medical equipment, automatic machines, and IT and communication equipment. The rules outline obligations for manufacturers, retailers, transporters, recyclers, and others for registering with the Department of Environment. Manufacturers must obtain an environmental clearance and establish collection centers for e-waste. Sellers of listed products must ensure their names, addresses, contact information, and registered collection center are displayed on product labels. The new rules also establish a list of restricted hazardous substances, setting a threshold limit for each. Industry has raised concerns related to a lack of guidance regarding registration and disposal procedures for each party in the e-waste processing chain and the absence of exemptions for substances critical to electronics manufacturing. Bangladesh had notified to the WTO a summary of the measure in 2020 and provided an updated summary in 2021, but has not responded to a request from the United States in October 2021 seeking further information on the measure or to requests to notify the full measure made at meetings of the WTO Committee on Technical Barriers to Trade.

### **Sanitary and Phytosanitary Barriers**

#### *Fumigation of U.S. Origin Cotton*

Bangladesh requires fumigation of imported U.S. cotton at the port of entry, allegedly to protect locally grown cotton from possible boll weevil infestation. U.S. cotton exporters and Bangladeshi cotton importers assert that this requirement is unnecessary because of mitigation measures taken prior to export to eliminate any presence of the pest in larval or adult form. These measures include ginning, cleaning, and bale compression. This fumigation is also unnecessary because the United States has eradicated boll weevil from all cotton-producing areas of the United States, with the exception of three counties in southern Texas along the border with Mexico (less than 0.5 percent of the U.S. cotton acreage). This requirement hinders demand for U.S. cotton because it adds significant costs and delays entry.

Technical experts from the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS), along with their Bangladeshi counterparts, visited the Chittagong port in September 2018 to inspect imported U.S. cotton and demonstrated there was no presence of boll weevil. In September 2020, APHIS and the U.S. Cotton Council hosted the Bangladeshi Secretary of Agriculture for a virtual tour of

U.S. cotton production, ginning, baling, and shipping to address any outstanding concerns related to boll weevil. As recently as October 2020, the Ministry of Agriculture said Bangladesh would continue to require fumigation of imported U.S. cotton. The United States continues to press Bangladesh to eliminate the unnecessary fumigation requirement for U.S. cotton. In 2021, Bangladesh was the sixth largest export market for U.S. cotton, with exports valued at approximately \$311 million.

## **GOVERNMENT PROCUREMENT**

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

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

## **INTELLECTUAL PROPERTY PROTECTION**

Bangladesh continues to make slow progress towards establishing a comprehensive legal framework to adequately and effectively protect and enforce intellectual property (IP). While the Patents and Designs Act of 1911 remains in effect, two new laws to replace it are under consideration: Bangladesh Patents Bill 2021; and Bangladesh Industry-Designs Bill 2021. The Prime Minister’s cabinet has approved these draft bills, but before becoming law they would need to undergo review by the Law Ministry and final approval by Parliament. In addition, the Department of Patents, Designs and Trademarks (DPDT) has drafted an “Innovation & IP Policy Strategy.” However, Bangladesh failed to consult all relevant stakeholders and the policy lacks wide acceptance or support.

Bangladesh devotes limited resources to IP protection and enforcement. Counterfeit and pirated goods are readily available. U.S. firms, including pharmaceutical companies, manufacturers of consumer goods, apparel, and software firms have reported violations of their IP. Investors note police are willing to investigate counterfeit goods distributors when informed but are unlikely to initiate independent investigations. In addition, right holders have raised concerns about the fairness of court decisions in IP cases. In May 2021, at the request of the Bangladesh IP office, the U.S. Patent and Trademark Office (USPTO) hosted a virtual session to demonstrate how U.S. policies on examination of well-known marks and handling of bad faith filings are applied to real cases.

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

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

## **SERVICES BARRIERS**

In many sectors, foreign companies must obtain permission from relevant ministries or authorities before providing services. New market entrants face significant restrictions to obtaining such permission in most regulated commercial fields, including telecommunications, banking, and insurance. There have been reports that licenses are not always awarded in a transparent manner.

### **Audiovisual Services**

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

### **Financial Services**

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

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

### **Insurance Services**

Section 22 of the Insurance Act of 2010 prohibits foreign investors from holding more than 60 percent equity in a domestically registered insurance company. Although foreign insurance branches are allowed, only one foreign insurance company currently has the permission to operate in Bangladesh as a branch office. The process of obtaining permission to carry out insurance business in Bangladesh can be politically influenced.

U.S. companies have raised concerns that Bangladesh Bank is not permitting the marketing and signing of life insurance products via commercial banks. The United States has continued to press Bangladesh Bank to reconsider this restriction, and in 2020 Bangladesh Bank formed a committee to assess the implementation of new rules to allow insurance distribution.

### **Telecommunications Services**

The Bangladesh Telecommunication Regulatory Commission (BTRC) limits foreign equity in the telecommunications service suppliers to a maximum of 60 percent. According to the National Telecommunication Policy, foreign investors in the telecommunications sector are encouraged to demonstrate their commitment to Bangladesh by forming joint ventures with local companies. Frequent

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

Bangladesh imposes the highest taxes on mobile telecommunications services of any country in South Asia. Under the present tax regime, the mobile industry is taxed like a supplier of luxury goods, with taxes imposed at various levels of operation. Mobile network operators pay 5.5 percent of their revenue to the BTRC as a spectrum fee, 1 percent of their revenue into a social obligation fund, and BDT 50 million (approximately \$587,700) as an annual licensing fee. A tax of BDT 200 (approximately \$2.35) is imposed on the sale of subscriber identification model (SIM) cards, and a 10 percent supplementary duty is applied to charges for phone usage. Smartphones are subject to a 25 percent duty while all other handsets are subject to a 10 percent import duty. The corporate income tax rate for telecommunications companies listed in the Bangladeshi capital market is 40 percent, while the corporate income tax rate for mobile service providers that are not publicly listed in the Bangladesh capital market is 45 percent.

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

## **BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE**

The Digital Security Act of 2018 (DSA) criminalizes a wide range of online activities, creating challenges for online platforms and digital media firms. The Act criminalizes publication of information online that hampers the nation, tarnishes the image of the state, spreads rumors, or hurts religious sentiment. The Act provides for criminal penalties up to \$120,000 and up to 14 years in prison for certain infractions. Those charged with violating the DSA are frequently jailed pending court hearings, which leads to the use of the DSA as a censorship tool, further restricting the use of online platforms.

The Information and Communication Technology Act of 2006, amended in 2013, authorizes the Government of Bangladesh to access any computer system for the purpose of obtaining any information or data, and to intercept information transmitted through any computer resource. Under this law, Bangladesh may also prohibit the transmission of any data or voice call and censor online communications. The BTRC ordered mobile operators to limit data transmissions for political reasons on several occasions in 2019 and in 2020 ahead of politically sensitive events, including local and national elections. The BTRC ordered mobile operators to block all services except for voice calls in the Rohingya refugee camps in Cox's Bazar from September 2019 until August 2020. In November 2018 the BTRC instructed all international Internet gateway licensees to temporarily block a U.S. Voice over IP service supplier; the block lasted for one day. Such interference, even on a temporary basis, undermines the value of Internet-based services, decreasing the incentive to invest.

The Bangladesh Road Transport Authority's (BRTA) Ride-Sharing Service Guidelines came into force in March 2018. These new regulations included requirements that app-based transportation service providers maintain data servers within Bangladesh.

Effective July 1, 2019, the NBR imposed a 15 percent VAT on foreign satellite television service suppliers and social media service suppliers and required such firms to open local offices or appoint local representatives to facilitate tax collection. U.S. and global social media platforms reported paying VAT to NBR beginning in July 2020.

## **SUBSIDIES**

Bangladesh provides export cash incentives to selected export sectors. Bangladesh Bank updates the sectors and the respective rates every year through its circulars. Such cash incentives are provided only to those exporters who do not avail themselves of the bonded warehousing facility or the duty drawback facility. Current incentives include those for ready-made garment exports of new products or to new markets, home electronics and appliances, and products made in special economic zones or high-technology parks.

In the agricultural sector, incentives are provided for a variety of products including vegetables, fruits, and processed agricultural products. Processed agricultural products include: potatoes; rice, tea, jute products; halal meat products; coconut coir; seeds of horticultural products; live crabs; frozen shrimp; prawns; and fish products. Subsidies are also given to keep the price of production inputs within the purchasing capacity of producers. Bangladesh provides non-product-specific support through subsidized fertilizers, diesel, electricity, and agricultural machinery. The subsidized fertilizer is distributed through a controlled channel, which keeps prices reasonably stable.

## **INVESTMENT BARRIERS**

Bangladesh frequently promotes local industries resulting in some discriminatory policies and regulations. In practical terms, foreign investors frequently find it necessary to have a local partner even though this requirement may not be statutorily defined.

Bangladesh's foreign direct investment as a percentage of GDP in 2020 (latest data available) was only 0.79 percent. Overlapping administrative procedures and a lack of transparency in regulatory and administrative systems can frustrate investors seeking to undertake projects in the country. Frequent transfers of top- and mid-level officials in various Bangladeshi ministries, directorates, and departments are disruptive and prevent timely implementation of both strategic reform initiatives and routine duties.

Repatriation of profits and external payments are allowed, but U.S. and other international investors have raised concerns that the procedures and requirements for outbound transfers from Bangladesh remain cumbersome and that applications to repatriate profits or dividends can be held up for additional information gathering or otherwise delayed. In June 2020, Bangladesh Bank announced that it would ease the requirements for repatriating the sales proceeds of nonresident equity investment in non-listed public limited companies and private limited companies. The Central Bank announced in July 2020 that it would enable local banks to transfer foreign investors' dividend income into their foreign currency bank accounts, and relaxed its oversight of remittances of dividends by foreign shareholders, allowing banks and non-bank financial institutions to extend credit facilities to foreign companies in local currency against foreign guarantees. However, U.S. insurance companies report that agency-level regulators continue to present significant obstacles to securing required approvals for remittances, which are required before insurance companies can seek central bank clearance.

Additionally, foreign entities that have taken equity stakes in non-publicly traded Bangladeshi firms must receive Bangladesh Bank approval to sell the stakes at any premium over face value, thereby limiting foreign entities' ability to take investment profits from the country. While the central bank follows commonly used valuation methodologies to determine the maximum price at which equity investments can be sold, some of the numbers used in the valuation process are discretionary. In some instances, Bangladesh Bank has withheld approval because it considered the valuation to be too high.

International companies, including U.S. companies, have raised concerns the NBR has arbitrarily reopened decades-old tax cases, particularly targeting cases involving multinational companies. In October 2018, the NBR established the International Taxpayers' Unit to handle the income tax files of foreign companies

operating in Bangladesh. The unit closely scrutinizes issues related to tax avoidance and capital flight. U.S. firms have voiced concern over the transparency and predictability of the new unit's review process.

## **ANTICOMPETITIVE PRACTICES**

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

Despite the work of the BCC since 2011 and significant reforms in the domestic economy, Bangladesh still possesses a weak competition regime to address anticompetitive conduct. Although the BCC finally came into full operation in 2016, it has experienced operational delays due to a lack of staff and resources.

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

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

## **LABOR**

In 2013, the United States suspended all of Bangladesh's tariff benefits under the Generalized System of Preferences (GSP) program due to Bangladesh's failure to meet statutory eligibility requirements related to worker rights, particularly with regard to acceptable conditions of work in the ready-made garment sector, including fire and building safety, and freedom of association. As of March 2022, Bangladesh remained ineligible for duty-free treatment under GSP.

## **OTHER BARRIERS**

### **Corruption**

Corruption is a pervasive and longstanding problem in Bangladesh. Bribery and extortion in commercial dealings are common features of business. U.S. companies have complained about long delays in obtaining approval of licenses and bids as bureaucrats seek bribes. While Bangladesh has established legislation to combat bribery, embezzlement, and other forms of corruption, enforcement is inconsistent. There have been continuous efforts to water down public procurement rules and proposals to curb the independence of the Anti-Corruption Commission (ACC), the main institutional anticorruption watchdog. A 2013 amendment to the ACC Law removed the ACC's authority to sue public servants without prior government permission. Parliament passed the *Sarkari Chakori Ain* Bill (Government Job Act) in October 2018. The Government Job Act made it mandatory for the ACC to seek permission of the authorities concerned before arresting any government officer. The Government Job Act further limits the efficiency of the ACC in investigating corruption allegations against government officers. While the ACC has increased pursuit of cases against lower-level government officials and some higher-level officials, there remains a large backlog of cases. The Code of Criminal Procedure, the Prevention of Corruption Act, the Penal Code, and the Money Laundering Prevention Act criminalize attempted corruption, extortion, active and passive bribery, bribery of foreign public officials, money laundering, and using public resources or confidential

state information for private gain. However, anticorruption legislation is inadequately enforced. Facilitation payments and gifts are illegal, but common in practice.

### **Export Policies**

During 2020, Bangladesh implemented export duties on 18 product categories, including rice bran, cigarettes, liquefied petroleum gas cylinders (capacity below 5,000 liters), cotton waste, and ceramic bricks.

# BOLIVIA

## IMPORT POLICIES

Bolivia's constitution, adopted in February 2009, establishes broad guidelines to give priority to local production. However, as of March 2021, the only legislation enacted with respect to this prioritization is Law 144 (the Productive Revolution Law), approved on June 26, 2011. The Productive Revolution Law supports communal groups and unions of small producers in an effort to bolster domestic food production. It allows the production, importation, and commercialization of genetically engineered (GE) products, though it requires labeling. Since January 2018, all GE products must include a yellow, triangular shaped-label. The Mother Earth Law (Ley de Madre Tierra), enacted on October 15, 2012, calls for the phased elimination of all GE products from the Bolivian marketplace. However, implementing regulations have not yet been issued, due in part to objections from Bolivian agriculture and other industries, which have sought the reform of many import policies they consider onerous, including those related to biotechnology.

## Tariffs and Taxes

### *Tariffs*

Bolivia's average Most-Favored-Nation (MFN) applied tariff rate was 11.8 percent in 2019 (latest data available). Bolivia's average MFN applied tariff rate was 13.2 percent for agricultural products and 11.6 percent for non-agricultural products in 2019 (latest data available). Bolivia has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 40 percent.

Bolivia's MFN tariff structure consists of 7 rates ranging from zero percent to 40 percent. The rates in principle apply according to the category of the product: zero percent for certain capital goods (machinery and equipment) and meat and grain products; 5 percent for other capital goods and inputs; 10 percent for various products including production inputs, food items, and equipment; 15 percent for fruit, vegetables, fish, and raw materials for manufacturing plastics; 20 percent for other manufactures and value-added products; 30 percent for cigarettes, wooden doors, and windows; and 40 percent for clothing and accessories, alcoholic beverages, wooden furniture, and footwear. Bolivian law allows the government to raise tariffs if necessary to protect domestic industry, or alternatively, to lower tariffs if supplies run short.

### *Taxes*

On August 31, 2021, Bolivia implemented law number 1391, Tax Incentive for the Agricultural, Industrial, Construction, and Mining Sectors, to reactivate the economy in light of the COVID-19 pandemic and promote local production. This law provides a temporary exemption and zero percent rate of the value-added tax for capital goods, industrial plants, high-capacity cargo vehicles in volume and tonnage destined for the agricultural and industrial sectors, and heavy machinery for construction and mining sectors.

## Non-Tariff Barriers

### *Import Licensing*

Bolivia maintains a broad import licensing regime for more than 700 10-digit tariff lines identified as affecting public health or State security. Import licenses are required for the importation of arms and ammunition, certain articles of clothing and furniture, coins and other monetary instruments, drugs and controlled substances, gambling games and machines, mineral and chemical products, environmentally hazardous products, certain books, transportation and communication products, and washing machines.

Article 9 of Supreme Decree 24440, adopted on December 13, 1996, establishes the regulations governing import licensing procedures.

### *Import Bans*

Bolivian law authorizes prohibitions on the import of goods that may affect human and animal life or health, or are harmful to the protection of plants, morality, the environment, the security of the state, or the nation's financial system. In 2021, import prohibitions applied to 33 tariff lines. Prohibited items included: radioactive residues; halogenated derivatives of hydrocarbons; arms, ammunition, and explosives; used clothing; and some types of vehicles and motor vehicles, in particular vehicles using liquefied gas, used motor vehicles more than one year old, motor vehicles more than three years old for the transport of more than ten persons, and special-purpose motor vehicles more than five years old.

### *Customs Barriers and Trade Facilitation*

Bolivia ratified the WTO Trade Facilitation Agreement in January 2018. Bolivia has not yet submitted three transparency notifications related to: (1) import, export, and transit regulations; (2) the use of customs brokers; and (3) customs contact points for the exchange of information. Those notifications were due to the WTO on February 17, 2017, according to Bolivia's self-designated implementation schedule.

## **SANITARY AND PHYTOSANITARY BARRIERS**

The National Agricultural Health and Food Safety Service (SENASAG) is responsible for certifying the health safety status of products for domestic consumption, including imports, and for issuing sanitary and phytosanitary import permits. Importers have voiced concerns regarding SENASAG's transparency, and with the inconsistent application of agricultural health and food safety standards and regulations.

## **GOVERNMENT PROCUREMENT**

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

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

As a general matter, the tendering process is nontransparent. Government requirements and the details of the tender are not always defined, and procurement notices are not always made public. For example, none of the government-owned strategic sector companies, including the state-owned oil and gas company, Yacimientos Petrolíferos Fiscales Bolivianos (YPFB); the state-owned electricity company, Empresa

Nacional de Electricidad; and the state lithium company, Yacimientos de Litio Bolivianos; are required to publish tenders through the official procurement website, Sistema de Contrataciones Estatales (SICOES). Concerns have been raised that these state-owned companies are not required to follow the procedures established in the national procurement law. Direct procurement of goods and services by the Bolivian Government continue to grow.

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

## **INTELLECTUAL PROPERTY PROTECTION**

Bolivia remained on the Watch List in the [2021 Special 301 Report](#). The report noted that significant challenges continue with respect to adequate and effective intellectual property (IP) protection and enforcement. While certain Bolivian laws provide for the protection of copyrights, patents, and trademarks, significant concerns remain about trade secret protection. Significant challenges also persist with respect to widespread piracy and counterfeiting. As stated in years past, the Special 301 Report again encouraged Bolivia to improve its weak protection and enforcement of IP. Bolivia's IP agency, Servicio Nacional de Propiedad Intelectual (SENAPI), signed a memorandum of understanding (MOU) with the United States Patent and Trademark Office in 2020 to help address Bolivia's challenges. However, the Bolivian administration which took office at the end of 2020 does not recognize the MOU.

## **SERVICES BARRIERS**

### **Audiovisual Services**

Bolivia's 2011 Telecommunications Law stipulates that foreign investment in broadcasting companies may not exceed 25 percent and that broadcasting licenses may not be granted to foreign persons.

## **INVESTMENT BARRIERS**

Bolivia's constitution calls for a limit on foreign companies' access to international arbitration in cases of conflicts with the government. The constitution also states that all bilateral investment treaties must be renegotiated to adjust to this and other new constitutional provisions. Citing these provisions, in June 2012, the Bolivian Government terminated its Bilateral Investment Treaty (BIT) with the United States. Existing U.S. investors in Bolivia at the time of termination continue to be protected by the United States–Bolivia BIT, though those protections will end in June 2022, *i.e.*, 10 years after the termination of the BIT.

Bolivian labor law limits the number of foreign employees to 15 percent of the work force in foreign firms.

## **STATE-OWNED ENTERPRISES**

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

Bolivia has used means other than nationalization to re-establish public sector control over the economy. In the past few years, the government created dozens of public companies in “strategic” sectors such as food production, industrialization of natural resources, air travel, banking, and mining. U.S. stakeholders have expressed concern that these state-owned enterprises engage in unfair subsidized competition leading to a state-driven economic system.

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

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

With respect to the broader mining sector, Bolivia changed the mining code in 2014, requiring all companies wishing to operate in the mining sector to enter into joint ventures with the state mining company, Corporación Minera de Bolivia.

# BRAZIL

## TRADE AGREEMENTS

### The United States–Brazil Agreement on Trade and Economic Cooperation

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

On November 17, 2021, the Brazilian Congress ratified the 2020 U.S.–Brazil Protocol Regarding Trade Rules and Transparency, and it entered into force on February 2, 2022. The Protocol updated the ATEC with state-of-the-art provisions on trade facilitation and customs administration, good regulatory practices, and anticorruption. Once implemented, the Protocol will reduce red tape in Brazil and improve regulatory processes, as well as serve as a foundation for future bilateral engagement. The United States will continue to work with Brazil to monitor the full implementation of the Protocol.

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

Brazil's average Most-Favored-Nation (MFN) applied tariff rate was 13.3 percent in 2020 (latest data available). Brazil's average MFN applied tariff rate was 10.1 percent for agricultural products and 13.9 percent for non-agricultural products in 2020 (latest data available). Brazil has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 31.4 percent. Brazil's maximum bound tariff rate for non-agricultural products is 35 percent, while its maximum bound tariff rate for most agricultural products is 55 percent.

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

MERCOSUR provisions allow its members to maintain a limited number of national and sectoral list exceptions to the CET for an established period. Brazil is permitted to maintain a list of 100 exceptions to the CET, subject to renewal by MERCOSUR members. Using these exceptions, Brazil maintains different tariffs than its MERCOSUR partners on certain goods, including wind turbines, ethanol, certain chemicals, and pharmaceuticals. In March 2021, Brazil reduced its tariffs for capital and computer goods by 10 percentage points and zeroed out tariffs for products with a CET up to 2 percent. These and the other existing special provision exceptions to the CET have been renewed by the MERCOSUR members through 2028. Modifications to MERCOSUR tariff rates are made through resolutions and are published on the MERCOSUR [website](#).

In November 2021, Brazil unilaterally reduced tariffs on 87 percent of tariff lines. The temporary reductions are set to expire December 31, 2022.

According to MERCOSUR procedures, any good imported into any member country (not including free trade zones) is subject to the payment of the CET to that country's customs authorities. If the product is then re-exported to another MERCOSUR country, the CET must be paid again to the second country.

In 2010, MERCOSUR took a step toward the establishment of a customs union by approving a Common Customs Code (CCC) and launching a plan to eliminate the double application of the CET within MERCOSUR. All MERCOSUR members must ratify the CCC for it to take effect, but only Argentina has done so. On September 10, 2018, the Brazilian Congress passed a legislative decree which requires promulgation by Brazil's executive branch to complete the process for ratification of the CCC. Brazil has not yet completed this step.

Given the large disparities between Brazil's WTO bound and its applied rates, U.S. exporters face significant uncertainty in the Brazilian market because the government frequently increases and decreases tariffs, within the flexibilities of MERCOSUR, possibly as a means of protecting domestic industries from import competition and managing prices and supply. The lack of predictability with regard to tariff rates makes it difficult for U.S. exporters to forecast the costs of doing business in Brazil.

Brazil imposes relatively high tariffs on imports across a wide range of sectors, including automobiles, automotive parts, information technology and electronics, chemicals, plastics, industrial machinery, steel, and textiles and apparel. Brazil has bilateral agreements with Argentina and Uruguay to provide preferential treatment for automobiles and automotive parts. In October 2019, Argentina and Brazil submitted to the Latin American Integration Association a revised bilateral agreement to extend the time period to implement bilateral free trade in automobiles and automotive parts from June 20, 2020 to July 1, 2029.

#### *Wheat Tariff-Rate Quota*

Brazil's WTO schedule provides for a 750,000 metric ton (MT) duty-free MFN tariff-rate quota (TRQ) for wheat imports. In November 2019, Brazil implemented the commitment, first as a temporary one-year measure and then permanently on December 1, 2020, through Decree 10.557. The TRQ fill-rate only reached 12 percent in 2021 compared to 100 percent utilization in 2020. Recognizing exchange rate volatility and supply chain challenges as factors, the United States will monitor administration of the TRQ to ensure that full utilization is not unduly impeded.

#### *Ethanol Tariff-Rate Quota*

Between 2011 and 2017, bilateral trade of ethanol between the United States and Brazil, the world's two largest producers and consumers of ethanol, was virtually duty-free. Ethanol imports into the United States enter at the MFN rate of 1.9 percent or 2.5 percent, depending on Harmonized System code, while imports into Brazil entered duty-free. However, in September 2017, Brazil implemented a 24-month TRQ on ethanol imports, whereby imports above 600 million liters per year, distributed evenly each quarter, were subject to a 20 percent tariff; in-quota imports continued to enter duty free. Although the tariff was below Brazil's WTO bound tariff rate of 35 percent, the TRQ limited the otherwise robust bilateral trade of ethanol. On August 31, 2019, Brazil established a new 12-month TRQ which limited duty-free imports to 750 million liters of ethanol, a 25 percent increase from the 2017 TRQ, while retaining the 20 percent tariff for out-of-quota imports and imposing seasonal restrictions. The expiration of that TRQ was extended for 90 days, but it expired on December 15, 2020, and has not been renewed. Since then, all imports of ethanol into Brazil have been subject to the MERCOSUR CET of 20 percent. On average, ethanol makes up half of U.S. agricultural exports to Brazil, and Brazil represents the second largest market for U.S. ethanol. In 2021, U.S. exports of ethanol to Brazil were \$154 million, a 45 percent decrease from 2020. The United States continues to press Brazil to return to the conditions for the trade of ethanol that existed prior to implementation of the TRQ in September 2017.

## *Taxes*

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

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

## **Non-Tariff Barriers**

### *Import Bans*

Brazil generally prohibits imports of used consumer goods, including automobiles, clothing, tires, medical equipment, and information and communications technology (ICT) products. However, Secretariat of Foreign Trade (SECEX) Ordinance 23/2011 establishes an exceptions list of more than 25 categories of used goods approved for import under certain circumstances.

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. In June 2021, SECEX opened a public consultation requesting input on regulatory alternatives for remanufactured goods.

### *Import Licensing*

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

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

Brazil's National Institute of Metrology, Quality, and Technology (INMETRO) is undertaking steps to address current bottlenecks in the import licensing process, but sustainable reforms in line with international best practices will be necessary to improve processing and fully automate data exchange. Since 2014, Brazil has been updating SISCOMEX to implement a single window for import and export of goods, which includes consolidation of import licensing processing by implementation of a new module on SISCOMEX called LPCO (Licenses, Permissions, Certificates, and Other Documents), which will eventually replace individual import licenses. LPCO will centralize all information and documentation necessary for import licensing, thereby eliminating requirements to register with other ministries for permission to import certain products. LPCO has been implemented for exports, but currently only certain agricultural commodities have been included in this new process for imports.

In March 2021, the federal government issued a Provisional Measure (MP 1040/2021), known as the “Doing Business” law. This measure was approved by the Brazilian Congress as Law 14/195/2021 in August 2021. Under a phased implementation schedule, it requires participation of Brazil’s 22 regulatory bodies in the SISCOMEX portal and prohibits additional requirements for importers beyond the single window. In addition, the Doing Business law prohibits the imposition of an import licensing requirement due to the characteristics of goods, unless a law or other legal measure issued by the competent authority requires such licensing. Previously, regulatory agencies used licensing to collect information on importations. The new centralized database (SiscomexData) will provide this information in the future. The Doing Business law also requires that the government consult with the public before amending licensing requirements or implementing new licensing requirements.

U.S. footwear and apparel companies have expressed concern about non-automatic import licensing requirements for footwear, textiles, and apparel from non-MERCOSUR countries, which have negatively impacted the ability to sell U.S.-made and U.S.-branded footwear, textiles, and apparel in the Brazilian market.

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

#### *Customs Barriers and Trade Facilitation*

Brazil ratified the WTO Trade Facilitation Agreement (TFA) on April 3, 2018, and notified that it had completed implementation in 2019. Additional customs modernization in Brazil, including through implementation of the Protocol to the ATEC signed in 2020, will significantly improve the movement of goods.

U.S. companies continue to complain of burdensome and inconsistent documentation requirements for the importation of certain types of goods, such as heavy equipment, that apply even if imports are on a temporary basis and are destined for use in other countries. Brazil has made strides in improving its trade facilitation environment by working towards a mutual recognition agreement with the United States for its Authorized Economic Operator Program. It also instituted an ATA Carnet program to facilitate the temporary admission of goods, but halted it on January 1, 2022, due to the lack of an entity willing to fulfill the role of the National Guaranteeing and Issuing Association.

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

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

#### *Telecommunications*

Pursuant to Resolution 715 of April 2020, the Brazilian National Telecommunications Agency (ANATEL) implements testing requirements for telecommunication products and equipment. Resolution 715 eliminates approval fees, allows ANATEL to more easily update technical procedures, including conformity assessment requirements, and seeks to create a post-market surveillance program. Through subsequent operational procedures, ANATEL has reduced the frequency of testing requirements, removed the homologation fee, and introduced conformity assessments based on a risk analysis. ANATEL has also introduced an option for e-labelling. In addition, ANATEL still requires domestic testing for many

products. In January 2021, ANATEL published Act 77 of 2021, which sets out cybersecurity criteria for telecommunications equipment. Among other requirements, the Act mandates a cybersecurity declaration during the certification process. U.S. industry noted several concerns with the scope and definitions in Act 77, including on the products affected and lack of reliance on relevant international standards.

### *Bulletproof Vests Testing Standards*

In August 2020, the Brazilian Ministry of Defense published New Regulatory Rules for Products Used by the Brazilian Army (EB20-N-04.003). The rules include a regulation for the ballistic testing of bulletproof vests that references an outdated standard, NIJ 0101.04 (NIJ04). The current standard is NIJ 0101.06 (NIJ06), and it is subject to an update to a new standard, NIJ 1010.07. Laboratories in the United States are no longer approved to test the NIJ04 standard. Other Brazilian government entities at the state and federal levels, including the Ministry of Justice National Public Security Secretariat, require that bulletproof vests procured for law enforcement and security officers meet the NIJ06 standard. The United States raised concerns with Brazil regarding the outdated standard on the margins of meetings of the WTO Committee on Technical Barriers to Trade (WTO TBT Committee) in 2021.

### *Wine Regulations*

On July 9, 2021, Brazil announced a consultation period for revisions to its draft ordinance No. 346, which would establish the identity and quality standards and derivatives of grapes and wine. The United States submitted comments on the draft, including on the lack of scientific justification for many of the requirements for wine. In addition, the United States sought clarity on several inconsistencies between the draft ordinance and Technical Regulation No. 75 (Consolidated Regulations for Beverages, Vinegars, Wines, and Wine and Grape Byproducts), which outlines the specific testing and certification requirements for wine exports to Brazil. Of particular concern is that Technical Regulation No. 75 requires both a Certificate of Analysis and an Import Inspection Pre-Certification Report generated by a Brazilian lab upon importation, which is in addition to the analysis required in the Certificate of Analysis. The United States has raised these issues with Brazil on the margins of WTO TBT Committee meetings and in bilateral engagements throughout 2021.

## **Sanitary and Phytosanitary Barriers**

### *Pork*

U.S. fresh, frozen, and further processed pork products are ineligible for export to Brazil due to issues related to regionalization for the control of certain animal diseases. In a Joint Statement on March 19, 2019, the United States and Brazil agreed to establish science-based conditions to allow for the exportation of U.S. pork to Brazil. Discussions between the U.S. Department of Agriculture Animal and Plant Health Inspection Service and MAPA have yet to establish conditions for U.S. access to the Brazilian market.

## **GOVERNMENT PROCUREMENT**

Since 2017, when Brazil adopted Normative Instruction 10, foreign companies can participate in government procurement tenders without the establishment of legal representation in Brazil or the requirement to provide sworn translations of incorporation documents (although these documents are required if a company is awarded a contract).

In April 2021, Brazil enacted Law N. 14.133/2021, which updated federal procurement regulations, created new procurement models, standardized the stages of tendering, defined crimes relating to procurement processes, and defined the roles of federal, state, and municipal governments. Key changes from previous

procurement regulations include the creation of guarantee insurance in tenders to mitigate against the possibility of projects not being completed; creation of a national public procurement portal to centralize the bidding procedures of federal entities; a new hiring modality called Competitive Dialogue, in which the government can solicit proposals for new forms of services, especially for technology and innovation; and the end of “price taking” and “invitation” procurement models. The scope of the law includes all bidding and contracts made by public agencies in Brazil for procuring projects and services, including advertising, sales and leases, covering federal, state, and municipal entities. The law does not apply to state-owned or partly state-owned enterprises.

By statute, a Brazilian state enterprise may subcontract services to a foreign firm only if domestic expertise is unavailable. Additionally, U.S. and other foreign firms may only bid to provide technical services where there are no qualified Brazilian firms. U.S. companies without a substantial in-country presence regularly face significant obstacles to winning government contracts and are, comparatively, more successful in serving as subcontractors to larger Brazilian firms instead.

Brazil grants procurement preference to firms that produce in Brazil and that fulfill certain economic stimulus requirements, such as generating employment or contributing to technological development, even if those firms’ bids are up to 25 percent more expensive than bids submitted by foreign firms not producing in Brazil. U.S. technology companies have concerns regarding the potentially prohibitive costs of certifying a system for an individual market.

The Brazilian National Oil and Gas Regulatory Agency (ANP) maintains minimum local content requirements (LCRs) for all oil companies operating in Brazil’s upstream exploration and production phases, including procurement for state-controlled companies, such as Petrobras. The LCRs vary by hydrocarbon resource block (the geographic area that is awarded by the Brazilian Government to companies for oil and gas exploration), and within each block the LCRs differ for equipment, workforce, and services. Brazil reformed the LCRs for Brazil’s critical oil and gas sector in 2017. LCRs for deepwater oil and gas exploration fell to a minimum of 18 percent. LCRs for deepwater production fell to between 25 percent and 40 percent, depending on the activity, and LCRs for onshore exploration and development decreased to 50 percent. In January 2020, ANP issued Resolution 809, allowing the certification of imported final products or services for the oil and gas sector if domestic components or services are incorporated into production.

Brazil is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since October 2017. On May 18, 2020 Brazil applied for accession to the GPA. In October 2020, it submitted to the WTO GPA Committee its Replies to the Checklist of Issues as part of the accession process. Accession negotiations began in February 2021 when Brazil submitted its initial market access offer. In November 2021 Brazil submitted its first revised offer.

## **INTELLECTUAL PROPERTY PROTECTION**

Brazil remained on the Watch List in the 2021 Special 301 Report. Brazil is an increasingly important market for intellectual property (IP)-intensive industries; however, administrative and enforcement challenges continue, including high levels of counterfeiting and piracy online and in physical markets. The United States identified Rua 25 de Marco in Sao Paulo in the 2021 Notorious Markets List for selling counterfeit and pirated goods. Increased emphasis on enforcement at the tri-border region between Argentina, Brazil, and Paraguay, and stronger deterrent penalties, are critical to make sustained progress on these IP concerns. The National Council on Combating Piracy and Intellectual Property Crimes (CNPC) recently launched the National Plan to Combat Piracy, which aims to address many of these concerns.

Other concerns include the pendency of patent applications and the impact on the effective patent term. Also, while Brazilian law and regulations provide for protection against unfair commercial use of undisclosed test results and other data generated to obtain marketing approval for veterinary and agricultural chemical products, similar protection is not provided for pharmaceutical products for human use. In addition, the United States encourages Brazil to provide transparency and procedural fairness to all interested parties in connection with potential recognition or protection of geographical indications, including in connection with trade agreement negotiations.

The United States will continue to engage Brazil on these and other IP-related issues.

## **SERVICES BARRIERS**

### **Audiovisual Services**

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

Remittances to foreign producers of audiovisual works are subject to a 25 percent income withholding tax. As an alternative to paying the full tax, producers can elect to invest 70 percent of the tax value in local independent productions. In addition, local distributors of foreign films are subject to a tax equal to 11 percent of remittances to the foreign producer. This levy, a component of the Contribution to the Development of a National Film Industry (CONDECINE) tax, is waived if the distributor agrees to invest an amount equal to three percent of the total remittances in local independent productions. The CONDECINE levy is also assessed on foreign-produced video and audio advertising. Remittances for video on demand are no longer subject to CONDECINE after approval of Law 14.173/2021. Brazil also maintains domestic film quotas for theatrical screening and home video distribution.

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

Brazil’s Pay TV law bans cross-ownership between distributors and content producers in Brazil’s paid-television sector. The law has been tested by a merger between two foreign entities operating in Brazil. The merged entity, based in the United States but owning an acquired Brazilian broadcaster, asserts that the law’s cross-ownership restrictions apply only to producers and programmers based in Brazil and none of its paid-television production or programming companies are headquartered in Brazil. Brazil’s antitrust regulator, the Administrative Council for Economic Defense, cleared the merger in 2017 under Brazil’s antitrust laws, and ANATEL approved the merger in February 2020.

## **Express Delivery**

U.S. express delivery service companies face significant challenges in the Brazilian market, including an automated express delivery clearance system that is only partially functional.

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

## **Financial Services**

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

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

The United States is closely monitoring developments with respect to the retail electronic payments market in Brazil to ensure that Brazil's Central Bank (BCB) facilitates a level playing field for all market participants, given BCB's dual role as a regulator and operator of PIX, a real-time retail payment service.

## **Telecommunications Services**

Under Law 13.879 of October 2019, known as Projeto de Lei de Camara (PLC) 79, service providers were allowed to purchase government assets used under their previous concession and maintain ownership after the concession expired. Determining the value of government assets will likely require a lengthy process among Brazil's telecommunications regulator, ANATEL, the Federal Accounts Court, and the Office of the Solicitor General (AGU). In June 2020, ANATEL initiated a public bid to hire a consulting company to assess the costs of migrating to the authorization model, which is expected to be finalized in 2022.

The Doing Business Law of 2021 amended the General Telecommunications Law to allow greater foreign investment in the telecommunications sector by removing executive authority to invoke foreign capital limits on a telecommunications service provider. It also removed the requirement that telecommunications service providers must locate their headquarters and administrative operations in Brazil.

## *Satellites*

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

## *Roaming*

In 2012, ANATEL ruled that FISTEL, a local regulatory tax applied to active subscriber identity module cards (SIMs) within Brazil, may only be applied to domestic carriers utilizing domestic SIMs with corresponding local numbering. As foreign-based carriers using foreign SIMs are not subject to FISTEL, ANATEL concluded that these value-added services may only be provided by locally licensed carriers using local SIMs. This ANATEL interpretation restricts permanent roaming options for international machine-to-machine (M2M) and Internet of things (IoT) providers, thus requiring development of devices solely for the Brazilian market, and requiring service infrastructure in Brazil. In 2018, ANATEL held a public consultation to review barriers to M2M and IoT, and despite public comments in support of allowing permanent roaming, ANATEL held that such arrangements remain illegal in Brazil. This interpretation is at odds with those of other jurisdictions that have consistently permitted foreign carriers to utilize foreign SIMs to provide permanent roaming for M2M or IoT services to their respective OEM customers. The United States continues to encourage Brazil to adopt changes to its law and regulation such that foreign providers of M2M and IoT services may participate in the market without the current restrictions on the use of foreign numbering resources.

## **BARRIERS TO DIGITAL TRADE**

### **Data Localization Requirements**

Brazil's General Law for the Protection of Personal Data (LGPD) took effect on September 18, 2020. Because of Brazil's assertion of extraterritorial jurisdiction for the LGPD, as well as its broad impact on many areas of the economy, U.S. companies have expressed concerns that there remains a need for clear guidance in its implementation and enforcement. The LGPD includes provisions concerning restrictions on the transfer of personal data outside of Brazil that will be implemented after promulgation of regulations required for international transfers of personal data. Restrictions on the flow of data have a significant effect on the conditions for the cross-border supply of numerous services and for enabling the functionality embedded in intelligent goods (i.e., smart devices). The United States has encouraged Brazil to work closely with companies and organizations affected by the LGPD to resolve implementation and enforcement issues in a reasonable and consistent manner.

Brazil established a Data Protection Authority (DPA) to administer the LGPD, but it does not have full independence from the executive branch of the Government of Brazil. The Brazilian Presidency has until August 2022 to review the current DPA structure, during which time it may convert the DPA into an independent public authority. The DPA has the authority to impose sanctions of up to R\$50 million (approximately \$9 million) per infringement of the LGPD. The United States is monitoring implementation of the law, including assurances that the DPA will operate independently and enforce the law in a non-trade restrictive manner.

## INVESTMENT BARRIERS

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

## SUBSIDIES

The Greater Brazil Plan industrial policy, established by Law 12546 in 2011, offers a variety of tax, tariff, and financing incentives to encourage local firms to produce goods for export. For example, Brazil allows tax-free purchases of capital goods and inputs to domestic companies that export more than 50 percent of their output. Similarly, the Reintegra Program exempts exports of goods covered by more than 8,000 tariff lines from certain taxes, and allows Brazilian exporters to receive up to 0.1 percent of gross receipts from exports in tax refunds. 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.

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 supplied by companies that commit to export software and information technology services if those exports account for more than 50 percent of the company's annual gross income. The Special Regime for the Acquisition of Capital Goods by Exporting Enterprises suspends PIS and COFINS taxes on new machines, instruments, and equipment imported by companies that commit for a period of at least two years to export goods and services that account for at least 50 percent of the company's overall gross income for the previous calendar year.

In 2018, Brazil established the Rota 2030 incentive program for the automotive sector. The program provides tax incentives for manufacturers that improve energy efficiency and automobile safety. Automobile manufacturers in Brazil may also receive tax reductions if they invest in research and innovation projects in Brazil. Brazil will grant up to R\$1.5 billion (approximately \$278 million) in tax credits per year, if the automobile industry invests at least R\$5 billion (approximately \$928 million) in research and development. The program does not apply to automobile importers. The law provides these benefits for a period of five years, but in September 2021, Receita Federal sent a proposal to the Brazilian Congress to gradually reduce tax incentives by R\$22 billion (approximately \$4.1 billion) through 2026. The bill, PL 3203/21/reduces IPI exemptions for auto parts imports from the current R\$667 million (approximately \$124 million) to R\$469 million (approximately \$83 million).

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

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

The Special Regime for the Chemical Industry (REIQ), established by Law 12.859/2013 provides an exemption from PIS/CONFINS on the purchase of first and second generation petrochemical basic raw materials. In March 2021, the federal government issued Provisional Measure 1034 (ratified as Law 14.183/2021), which will phase out the benefits by 2025.

For the oil and gas industry, Brazil has two special customs and tax regimes for goods related to research and exploration activities. Repetro-SPED, established by Normative Instruction 1.78/2017, provides tax and import tariff exemptions to oil and gas operating companies, their contractors and subcontractors, for purchase of goods related to oil and natural gas exploration and production. REPETRO-Industrialização, established by Normative Instruction 1.901/2019, provides special tax and import conditions to national industries that provide final or intermediary goods to the sector. Repetro-Industrialização aims to increase domestic producers' competitiveness compared to imported machinery and equipment, which receive benefits under Repetro-SPED. In July 2021, Receita Federal extended REPETRO-Industrialização beyond goods to include services for oil and gas operators.

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

# BRUNEI DARUSSALAM

## TRADE AGREEMENTS

### The United States–Brunei Trade and Investment Framework Agreement

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

## IMPORT POLICIES

### Tariffs

Brunei's average Most-Favored-Nation (MFN) applied tariff rate was 0.2 percent in 2019 (latest data available). Brunei's average MFN applied tariff rate was zero percent for agricultural products and 0.3 percent for non-agricultural products in 2019 (latest data available). Brunei has bound 95.5 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 25.4 percent. Brunei's highest WTO bound tariff rate for non-tobacco products is 50 percent.

### Non-Tariff Barriers

#### *Customs Barriers and Trade Facilitation*

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

Brunei ratified the WTO Trade Facilitation Agreement (TFA) in December 2015, and the TFA entered into force in February 2017. Brunei is overdue in submitting four transparency notifications related to: (1) import, export, and transit regulations; (2) the operation of the single window; (3) the use of customs brokers; and, (4) customs contact points for the exchange of information. These notifications were due to the WTO in February 2017, according to Brunei's self-designated TFA implementation schedule. Brunei's online publication of the details of its advance ruling system is not clear or easily accessible, making it difficult for traders to understand Brunei's system and how to apply for a ruling.

## TECHNICAL BARRIERS TO TRADE

### *Halal Standards*

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

exporter's expense, to inspect the food production process. This requirement constrains the ability of food product exporters to enter the Brunei market.

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

## **GOVERNMENT PROCUREMENT**

Under current Brunei regulations, government procurement is conducted by individual ministries and departments, which must comply with financial regulations and procurement guidelines issued by the State Tender Board of the Ministry of Finance and Economy. Tender awards above BND \$500,000 (approximately \$373,000) must be approved by the Sultan in his capacity as Minister of Finance and Economy, based on the recommendation of the State Tender Board.

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

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

## **INTELLECTUAL PROPERTY PROTECTION**

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

## **OTHER BARRIERS**

### **Localization Requirements**

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

### **Land Ownership Restrictions**

Brunei's Land Code restricts non-citizens, including foreign businesses and long-term permanent residents, from freehold land ownership. The Land Code also places restrictions on the sale and transfer of land by

non-citizens. The government is heavily involved in all land deals and may grant long-term leases of state land to foreign firms for large investments.

### **Residency Requirement**

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

### **Transparency**

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

# CAMBODIA

## TRADE AGREEMENTS

### The United States–Cambodia Trade and Investment Framework Agreement

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

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

Cambodia’s average Most-Favored-Nation (MFN) applied tariff rate was 10.4 percent in 2020 (latest available). Cambodia’s average MFN applied tariff rate was 12.7 percent for agricultural products and 10.0 percent for non-agricultural products in 2020. Cambodia has bound 100 percent of its tariff lines in the World Trade Organization (WTO) with an average WTO bound tariff rate of 19.3 percent. Cambodia’s highest applied tariff rate is 35 percent, which is imposed across a number of product categories, including a wide variety of prepared food products, bottled and canned beverages, cigars, table salt, paints and varnishes, cosmetic and skin care products, glass and glassware, electrical appliances, cars, furniture, video games, and gambling equipment.

### Non-Tariff Barriers

#### *Customs Barriers and Trade Facilitation*

As of February 2019, the General Department of Customs and Excise (GDCE) became the only institution authorized to carry out the inspection of goods at Cambodia’s entry points, following the termination of the Ministry of Commerce’s Cambodia Import-Export Inspection and Fraud Repression Directorate General presence at all border checkpoints.

Both local and foreign businesses have raised concerns that the GDCE engages in practices that are nontransparent and that appear arbitrary. Importers frequently cite problems with undue processing delays, burdensome paperwork, and unnecessary formalities. Some importers have noted that duties imposed on the same products, shipped in the same quantity but at different times of the year, can vary for unknown reasons. Importers have also cited customs delays for goods coming into Cambodia’s lone deep-water port in Sihanoukville, and being asked to pay “unofficial” fees to expedite shipments into and out of the port.

## GOVERNMENT PROCUREMENT

Government procurement is often not transparent, and the Cambodian Government frequently provides short response times to public announcements of tenders, which are posted on the Ministry of Economy and Finance’s website. For construction projects, only bidders registered with the Ministry are permitted to participate in tenders. As an additional complication, different prequalification procedures exist at the provincial level, making some bids particularly complex for prospective contractors.

Irregularities in the government procurement process are common despite a strict legal requirement for audits and inspections. Despite allegations of malfeasance at a number of ministries, the Cambodian Government has taken little action to investigate irregularities. In February 2018, the government issued a new regulation on procedures to resolve complaints about irregularities in government procurement. The regulation covers all procurement conflicts except those already being addressed through arbitration, those involving military secrets, and concession projects that are regulated separately. A draft Law on Public-Private Partnerships, pending passage by the National Assembly as of March 2022, aims to enhance the management and implementation of public infrastructure projects in Cambodia. U.S. stakeholders had not observed any noticeable changes to government procurement processes.

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

## **INTELLECTUAL PROPERTY PROTECTION**

Despite efforts to raise intellectual property (IP) awareness, the sale of counterfeit and pirated goods remains commonplace in Cambodian markets. Central Market in Phnom Penh continues to be included in the [2021 Notorious Markets List](#). The rates of signal and cable piracy also remain high, and online sites purveying pirated music, films, electronic books, software, and television shows remain popular. In addition, sales of legitimate films have been negatively affected due to the popularity of illegal cinemas that show pirated material.

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

Draft legislation that would address the protection of trade secrets has been under review at the Ministry of Commerce but has not been passed into law. In addition, draft legislation on encrypted satellite signals is under review at the Ministry of Posts and Telecommunications, and draft legislation on semiconductor layout designs is under review at the Ministry of Industry, Science, Technology, and Innovation (MISTI). MISTI's Office of Patents and Industrial Design has indicated that it is planning to join the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure in the future, but has not yet committed to a timeline.

Although the United States Patent and Trademark Office and Cambodia's MISTI signed a Memorandum of Understanding in October 2020 on patent validation to expedite the process by which U.S. patents are recognized and registered in Cambodia, official guidance for the patent validation application process is not yet publicly available, and right holders must go through an IP agent or legal representative to apply for patent validation in Cambodia.

The United States continues to meet with Cambodia under the TIFA and in other fora to urge Cambodia to take steps to improve IP protection and enforcement.

## **BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE**

Cambodia passed an electronic commerce law in November 2019, which was fully implemented in May 2020. It governs the conduct of electronic commerce within Cambodia and from overseas. Cambodia's National Assembly passed a sub-decree in February 2021 that establishes a National Internet Gateway that would require internet providers to route all online traffic through a single node regulated by a government-appointed operator. Cambodia's implementation of the sub-decree is reportedly delayed, but concerns remain by both the private sector and human rights organizations. The sub-decree failed to incorporate feedback received from public consultations on an earlier version of the sub-decree. The only notable change that the National Assembly made in the final version was to include an appeals procedure, but stakeholders have noted that the procedure lacks third-party independent oversight. Separate laws governing cybersecurity and cybercrime are in draft form.

In April 2021, Cambodia issued a regulation obligating all electronic commerce businesses, including those operating from outside of Cambodia, to pay a value-added-tax (VAT) of 10 percent.

## **INVESTMENT BARRIERS**

Cambodia's constitution restricts foreign ownership of land. A 2010 law allows foreign ownership of property above the ground floor of a structure, but stipulates that no more than 70 percent of a building can be foreign-owned, and that foreigners cannot own property within 30 kilometers of the national border. Although foreign investors that received approvals in 2010 and 2011 may use land through concessions and renewable leases, the Cambodian Government in 2012 imposed a moratorium on Economic Land Concessions (ELCs), which allowed long-term leases of state-owned land. The Cambodian Government reportedly also has reviewed and revoked previously granted ELCs on the grounds that the recipients had not complied with the ELC terms and conditions. As of March 2021, there were 229 active ELC projects covering 1.1 million hectares within the country, though land rights activists have asserted the figure is much higher. It is estimated that 40 percent of ELCs generate government revenue. In 2019, ELC-generated revenue topped \$3 million, according to Cambodian Government figures.

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

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

## **SUBSIDIES**

Cambodia submitted two subsidies notifications to the WTO Committee on Subsidies and Countervailing Measures (SCM Committee) covering lending programs to small and medium enterprises in May 2021. The United States submitted questions to Cambodia through the SCM Committee regarding tax and duty incentives under Cambodia's Qualified Investment Projects initiative and other incentives available in special economic zones. Some of these incentives may be contingent on exportation. The United States will continue to seek clarity on these incentives.

## **OTHER BARRIERS**

### **Bribery and Corruption**

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

Cambodia began publishing official fees for public services at the end of 2012 in an effort to combat "facilitation payments," but this exercise had yet to be completed. Public service fees of some Ministries are not yet available on their official websites. In September 2021, Cambodia rolled out the second phase of an online business registration platform via a single portal aimed to eliminate the need for cash payments and reduce overall fees. However, the portal does not include all Ministries. Businesses have noted that signing an anticorruption memorandum of understanding with the ACU has helped them avoid paying "facilitation payments." However, obtaining licenses and permits may entail red tape and other forms of corruption.

# CANADA

## TRADE AGREEMENTS

### The United States–Mexico–Canada Agreement

The United States–Mexico–Canada Agreement (USMCA or Agreement) entered into force on July 1, 2020. The USMCA maintains the zero tariffs among the three countries that were in place under the North American Free Trade Agreement (NAFTA), while also modernizing the agreement to include provisions covering digital trade and small and medium-sized enterprises (SMEs). The Agreement importantly recognizes that SMEs are a driving force of economic growth and includes new mechanisms to help SMEs make better use of the Agreement. The USMCA also includes strong, enforceable labor and environmental obligations in the core text of the Agreement. Finally, the USMCA also includes a number of groundbreaking provisions to combat non-market practices that have the potential to disadvantage U.S. workers and businesses, such as currency manipulation and the provision of subsidies to state-owned enterprises.

## IMPORT POLICIES

### Non-Tariff Barriers

#### *Agricultural Supply Management*

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

The USMCA expands market access opportunities for dairy products through new TRQs exclusively for U.S. products. For example, by year six of the USMCA, quota volumes will reach 50,000 metric tons (MT) for fluid milk, 10,500 MT for cream, 4,500 MT for butter and cream powder, 12,500 MT for cheese, and 7,500 MT for skim milk powder. Under the USMCA, Canada will eliminate tariffs on whey in 10 years and margarine in 5 years. Canada has opened new TRQs for U.S. chicken (quota volume will reach 57,000 MT by year six of the USMCA) and for U.S. eggs and egg products (quota volume will reach 10 million dozen eggs equivalent by year six of the USMCA). In addition, Canada expanded access for U.S. turkey. Canada and the United States also agreed to strong rules to ensure TRQs are administered fairly and transparently to help ensure exporters benefit from the full market access negotiated in the USMCA.

On May 25, 2021, the United States requested and established a dispute settlement panel under the USMCA to review Canada's dairy TRQ allocation measures that undermine the value of the TRQs by setting aside and reserving access to in-quota quantities exclusively for processors. On December 21, 2020, Canada and the United States held consultations, which did not resolve the matter. On October 25 and 26, a panel hearing was held in Ottawa. The final panel report was released to the public on January 4, 2022. The Panel agreed with the United States that Canada's allocation of dairy TRQs, specifically the set-aside of a percentage of each dairy TRQ exclusively for Canadian processors, is inconsistent with Canada's commitment in Article 3.A.2.11(b) of the USMCA not to "limit access to an allocation to processors."

While Canada has proposed to stop setting aside and reserving access to in-quota quantities exclusively for processors, the United States remains concerned with Canada's proposal to implement the panel's finding

and continues to discuss the matter with Canada with the aim of agreeing on a resolution of the dispute. The United States also remains concerned about potential Canadian actions that would further limit U.S. exports to the Canadian dairy market, and continues to monitor closely any tariff reclassifications of dairy products to ensure that U.S. market access is not negatively affected.

### *Milk Classes*

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

Under the USMCA, Canada was obligated to eliminate Class 7 within six months of entry into force. In addition, Canada is obligated to ensure that the price for non-fat solids used to manufacture skim milk powder, milk protein concentrates, and infant formula will be no lower than a level based on the USDA price for nonfat dry milk. Transparency provisions obligate Canada to provide information necessary to monitor compliance with these commitments. Canada is obligated to apply charges to exports of skim milk powder, milk protein concentrates, and infant formula in excess of thresholds specified in the USMCA.

### *Ministerial Exemptions*

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

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

### *Customs Barriers and Trade Facilitation*

The United States chaired the second meeting of the USMCA’s trilateral Committee on Trade Facilitation on December 15, 2021, where the Parties discussed new customs regulations, changes in certain customs processes, and other issues under the Agreement.

### Personal Duty Exemption

Canada’s personal duty exemption for residents who bring back goods from trips outside of its borders is considerably more limited than the U.S. personal duty exemption. U.S. residents returning from abroad are entitled to an \$800 duty-free exemption after 48 hours abroad and \$200 for trips under 48 hours. Canadians

who spend more than 24 hours outside of Canada can bring back C\$200 (approximately \$160) worth of goods duty free, or C\$800 (approximately \$640) for trips over 48 hours. U.S. retailers have raised concerns about the effect of this policy on purchases by Canadians on short trips to the United States.

### Wine, Beer, and Spirits

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

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

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

#### *Cheese Compositional Standards*

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

#### *Front-of-Package Labeling on Prepackaged Foods*

In 2021, the United States continued to monitor Canada's proposed regulation to implement requirements for front-of-package (FOP) labeling on prepackaged foods deemed high in sodium, sugars, and saturated fat, and updating requirements for other FOP information, including certain claims and labeling of sweeteners. The approach under consideration uses Canada's nutrient content claim framework to determine whether a food would be required to carry a FOP symbol, including a nutrient content message. The United States submitted comprehensive comments on the proposed regulations notified to the WTO in April 2018. Since then, the United States has regularly consulted with Canada regarding its plans to produce an updated draft or final regulation. In 2020, U.S. exports of processed foods to Canada were valued at approximately \$14.5 billion.

#### *Proposed Integrated Management Approach to Plastic Products*

In June 2019, Canada signaled its intent to reduce plastic waste by banning certain single-use plastics. Canada then announced in an October 2020 discussion paper, entitled *A Proposed Integrated Management Approach to Plastic Products to Prevent Waste and Pollution*, that its proposed ban would include plastic checkout bags, straws, stir sticks, six-pack rings, cutlery, and food ware made from hard-to-recycle plastics. Canada's plan to manage plastics also proposes improvements to recover and recycle plastic and establish recycled content requirements for products and packaging. The United States commented on the discussion

paper and the proposed order in December 2020, and requested any implementing measures be notified to the World Trade Organization (WTO). Canada published the final order adding “plastic manufactured items” to Schedule 1 (“the Toxic Substances List”) of the Canadian Environmental Protection Act (CEPA) on May 12, 2021. This designation provides the Canadian Government with the regulatory authority to manage plastic production, importation, and use. On December 25, 2021, Canada published draft regulations to prohibit the manufacture, import, and sale of certain single-use plastics in the Canada Gazette, which started a 70-day public comment period. Canada notified the draft regulations to the WTO on January 7, 2022. The United States will continue to engage with Canada on these measures and will closely monitor their impact.

## **Sanitary and Phytosanitary Barriers**

### *Restrictions on U.S. Seeds Exports*

For many major field crops, Canada’s Seeds Act generally prohibits the sale or advertising for sale in Canada, or import into Canada, of any variety of seed that is not registered with Canada’s Food Inspection Agency (CFIA). Canada’s variety registration gives CFIA an oversight role in maintaining and improving quality standards for grains in Canada. The registration is designed to facilitate and support seed certification and the international trade of seed; verify claims made, which contributes to a fair and accurate representation of varieties in the marketplace; and to facilitate varietal identity, trait identity, and traceability in the marketplace to ensure standards are met. However, there are concerns that the variety registration system is slow and cumbersome, and disadvantages U.S. seed and grain exports to Canada. Under the Canada Grain Act, only grain of varieties produced from seed of varieties registered under the Seeds Act may receive a grade higher than the lowest grade allowable in each class. The USMCA includes a commitment to discuss issues related to seed regulatory systems. In January 2021, CFIA announced that it was beginning seed regulatory modernization efforts. The United States will continue to discuss with Canada steps to modernize and streamline Canada’s variety registration system.

## **GOVERNMENT PROCUREMENT**

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

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

## **INTELLECTUAL PROPERTY PROTECTION**

Canada remained on the Watch List in the [2021 Special 301 Report](#). As noted in the Special 301 Report, the most significant step forward Canada has made is its agreement to important Intellectual Property (IP) provisions in the USMCA. Canada’s commitments under the USMCA will significantly improve Canada’s IP environment, addressing areas of longstanding concern, including enforcement against counterfeits, inspection of goods in-transit, transparency with respect to new geographical indications (GIs), and application of full national treatment for copyright. With respect to GIs, the United States remains highly concerned about countries negotiating product-specific IP outcomes as a condition of market access from

the European Union and reiterates the importance of each individual IP right being independently evaluated on its individual merits. Because shortfalls in protection and enforcement of IP constitute a barrier to exports and investment, these issues are a continuing priority in bilateral trade relations with Canada. Issues of concern include deficient copyright protection and poor enforcement with respect to counterfeit or pirated goods at the border and within Canada. The United States identified Pacific Mall in Toronto in the [2021 Notorious Markets List](#) for selling pirated and counterfeit goods.

## **Pharmaceuticals**

Regulatory changes to Canada's Patented Medicine Prices Review Board were announced on August 9, 2019. Canada informed stakeholders of its decision to delay the implementation of these regulations to July 1, 2022. The United States will monitor carefully the implementation and effects of these regulatory changes and encourages trading partners to provide appropriate mechanisms for transparency and opportunities for public engagement.

## **SERVICES BARRIERS**

### **Audiovisual Services**

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 Canadian Radio-television and Telecommunications Commission (CRTC). Upon an appeal from a Canadian licensee, the CRTC may determine that a non-Canadian channel competes with a Canadian pay or specialty service, in which case the CRTC may either remove the non-Canadian channel from the list (thereby revoking approval to supply the service) or shift the channel into a less competitive location on the channel dial. Alternatively, non-Canadian channels can become Canadian by ceding majority equity control to a Canadian partner, as some U.S. channels have done.

The United States is monitoring Canada's implementation of USMCA commitments to allow for the cross-border supply of U.S. home-shopping programming.

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

The CRTC's Wholesale Code entered into force in January 2016 and governs certain commercial arrangements between distributors (*e.g.*, cable companies) and programmers (*e.g.*, channel owners). The Code is binding for vertically integrated suppliers in Canada (*i.e.*, suppliers that own infrastructure and programming) and applies as guidelines to foreign programming suppliers (who by definition cannot be vertically integrated, as foreign suppliers are prohibited from owning video distribution infrastructure in Canada).

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

## *Digital Media*

Canada continues to explore legislative proposals that could force Internet companies to compensate Canadian news publishers for displaying and linking to their content, as well as ensure that certain digital media suppliers contribute to the creation, production, and distribution of Canadian content. The United States will closely monitor whether any new obligations on tech companies or foreign streaming providers are compliant with Canada's international trade obligations.

## **Telecommunications Services**

Canada maintains a 46.7 percent limit on foreign ownership of certain existing suppliers of facilities-based telecommunication services, including the cable television industry. In 2012, Canada made a small change to this regime by allowing foreign investment of more than 46.7 percent in suppliers with less than 10 percent market share. In addition to foreign equity restrictions, Canada requires that Canadian citizens comprise at least 80 percent of the membership of boards of directors of facilities-based telecommunication service suppliers.

## **BARRIERS TO DIGITAL TRADE**

### **Data Localization**

The Province of Quebec adopted a law in September 2021 that amends its data protection regime. Under the new law, the transfer of personal data outside of Quebec is limited to jurisdictions with data protection regimes deemed equivalent to Quebec's. Implementation of the law will be phased in over the next three years. The United States will monitor the implementation of this provincial law and any other proposed measures to ensure they do not place restrictions on the cross-border transfer of data in a manner inconsistent with the obligations set forth in USMCA.

### **Digital Services Taxation**

On December 14, 2021, the Canadian Government published draft legislation for a unilateral digital services tax (DST). Canada's proposed DST was open to public comment until February 22, 2022. Canada has taken these steps despite joining the October 8, 2021 OECD/G20 Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy which called for all parties to commit not to introduce DSTs in the future. As noted in U.S. comments to Canada, most DSTs have been designed in ways that discriminate against U.S. companies, as they single out U.S. firms for taxation while effectively excluding national firms engaged in similar lines of business. Further, Canada's proposed DST would create the possibility of significant retroactive tax liabilities with immediate consequences for U.S. companies. The United States has expressed serious concerns that Canada continues to pursue a unilateral DST.

## **INVESTMENT BARRIERS**

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

those thresholds are assessed based on whether they are of “net benefit” to Canada and must wait for affirmative approval before implementation.

On June 22, 2017, a provision entered into force to increase the threshold for pre-implementation review to C\$1 billion (approximately \$800 million) from C\$600 million (approximately \$480 million) for investors that are from countries that are Members of the WTO and that are not state-owned enterprises (SOEs). Subsequently, on September 21, 2017, the threshold for review was increased to C\$1.5 billion (approximately \$1.2 billion) for investors that are not SOEs from countries that are party to certain designated trade agreements with Canada, which now includes the USMCA. These thresholds are adjusted annually. The thresholds for 2022 are C\$454 million (approximately \$363.2 million) for SOE WTO investments, C\$1.141 billion (approximately \$912.8 million) for private sector WTO investments and C\$1.711 billion (approximately \$1.369 billion) for private sector investments under preferential trade agreements.

### **Real Estate Tax**

Canada’s 2021 budget announced the government’s intent to implement a national, annual one percent tax on the value of non-resident, non-Canadian owned real estate considered to be vacant or underused. Legislation to introduce the Underused Housing Tax Act was tabled in the House of Commons on December 14, 2021. It is proposed that the tax be effective for the 2022 calendar year. The tax’s differentiation between Canadian and non-Canadian-owned real estate raises questions regarding whether this tax is compliant with Canada’s international trade obligations.

# CHILE

## TRADE AGREEMENTS

### The United States–Chile Free Trade Agreement

The United States–Chile Free Trade Agreement (FTA) entered into force on January 1, 2004. Under this Agreement, as of January 1, 2015, Chile provides duty-free access to all U.S. exports. The liberalization of the Chilean goods and services markets has supported increased U.S. exports to Chile. However, the United States continues to have significant concerns with Chile’s failure to implement fully some FTA commitments on protection and enforcement of intellectual property (IP) rights. The United States and Chile meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

## IMPORT POLICIES

### Taxes

Importers must pay a 19 percent value-added tax (VAT) calculated based on the cost, insurance, and freight (CIF) value of the import. The VAT is also applied to nearly all domestically produced goods and services. Certain products (regardless of origin) are subject to additional taxes. Luxury goods, defined as jewelry and natural or synthetic precious stones, fine furs, fine carpets or similar articles, mobile home trailers, caviar conserves and their derivatives, and air or gas arms and their accessories (except for underwater hunting), are subject to a 15 percent tax. Electric and high-value vehicles are also defined as luxury goods, but U.S.-made vehicles are exempt from the tax under terms of the FTA. Pyrotechnic articles, such as fireworks, petards, and similar items (except for industrial, mining, or agricultural use), are subject to a 50 percent tax.

### Non-Tariff Barriers

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

Chile’s import licensing requirements appear to be used primarily for statistical purposes. Legislation requires that most import licenses be granted as a routine procedure.

Companies are required to contract a customs broker when importing goods valued at more than \$3,000 Free On Board (FOB) or exporting goods valued at over \$2,000 FOB. Companies established in any of Chile’s free trade zones are exempt from the obligation to use a customs broker when importing or exporting goods. Noncommercial shipments, which include product samples, product replacements, or shipments from individuals, require the use of a customs broker for shipments valued at over \$500.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

#### *Marketing and Labeling Requirements*

In September 2019, Chile notified to the World Trade Organization (WTO) a “Draft Law Establishing Standards on the Marketing and Labelling of Milk.” The law establishes revised standards for the manufacturing, naming, and labeling of milk products, or products derived from milk. The United States has concerns with requirements established by this legislation, including: (1) restrictions on the circumstances under which products made from reconstituted and recombined milk can be labeled and marketed, which may potentially be inconsistent with Codex Alimentarius Commission standards and for which Chile has not provided justification; and (2) requirements that dairy products be labeled with the name and representative flag of the country of origin of the milk contained therein, which also go beyond Codex labeling standards, and are particularly restrictive for dairy products exported for further processing. The United States and several other Members raised concerns at meetings of the WTO Committee on Technical Barriers to Trade that the measure may not have considered international standards and may be more trade restrictive than necessary. The United States will monitor implementing regulations on the marketing and labeling of milk once they are finalized and the final regulations are notified to the WTO.

### Sanitary and Phytosanitary Barriers

#### *Import Bans*

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

## GOVERNMENT PROCUREMENT

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

## INTELLECTUAL PROPERTY PROTECTION

Chile remained on the Priority Watch List in the [2021 Special 301 Report](#). The United States remains concerned about the adequacy and effectiveness of the protection and enforcement of IP rights in Chile and about the implementation of certain IP obligations under the FTA.

Longstanding concerns remain about the lack of effective remedies to address the unlawful circumvention of technological protection measures, failure to ratify the 1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV 1991), and an ineffective Internet Service Provider liability regime that has failed to promote effective and expeditious action against online piracy. In 2018, Chile made progress in establishing criminal penalties for the importation, commercialization, and distribution of decoding devices used for the theft of encrypted program-carrying satellite signals, but the United States continues to urge Chile to clarify the full scope of criminalized activities in the implementation of the law and to address other remaining aspects of its FTA commitments on satellite piracy. In addition, pharmaceutical stakeholders continue to raise concerns over the efficacy of Chile’s system for resolving patent issues expeditiously in connection with applications to market pharmaceutical products and over the

provision of adequate protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval.

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

## **SERVICES BARRIERS**

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

Since July 2020, the Chilean Congress has approved three pension withdrawals and one advanced annuity withdrawal. U.S. pension companies are concerned about the effect of these withdrawals, particularly advanced annuity withdrawals. As of November 2021, three U.S. companies have requested investor-state consultations under Article 10.14 of the FTA.

# CHINA

## TRADE AGREEMENTS

In January 2020, the United States and China signed an economic and trade agreement, commonly referred to as the “Phase One Agreement.” This agreement included commitments from China to improve market access for the agriculture and financial services sectors, along with commitments relating to intellectual property and technology transfer, and a commitment by China to increase its purchases of U.S. goods and services.

On agriculture trade, the Phase One Agreement addresses many non-tariff barriers and has expanded market access for a variety of U.S. food, agriculture and seafood product exports. This includes the implementation of significant reforms in some agricultural sub-sectors, such as meat and poultry products and facility registration. However, there has been a notable lack of meaningful action in other areas, including some of the more significant commitments on agricultural biotechnology and a required risk assessment for the use of ractopamine in the production of beef and pork.

Many of the commitments in the Phase One Agreement reflected changes that China had already been planning or pursuing for its own benefit or that otherwise served China’s interests, such as the changes involving intellectual property protection and the opening up of more financial services sectors. Other commitments to which China agreed reflected a calculation, as it saw them as appeasing U.S. priorities of the prior Administration, as evidenced by the attention paid to the agriculture sector in the Phase One Agreement and the novel commitments relating to China’s purchases of U.S. goods and services ostensibly as a means to reduce the bilateral trade deficit.

While China followed through in implementing some provisions of the Phase One Agreement, it has not yet implemented some of the more significant commitments and fell far short of implementing its commitments to purchase U.S. goods and services in 2020 and 2021. It is clear that this Agreement has not led to fundamental changes to China’s state-led, non-market trade regime and their harmful impact on the U.S. economy and U.S. workers and businesses.

## STATE-LED, NON-MARKET TRADE REGIME

### Industrial Plans

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

One of the more far-reaching and harmful industrial plans is Made in China 2025. China’s State Council released this industrial plan in May 2015. It is a 10-year plan targeting 10 strategic sectors, including advanced information technology, automated machine tools and robotics, aviation and spaceflight equipment, maritime engineering equipment and high-tech vessels, advanced rail transit equipment, new energy vehicles (NEVs), power equipment, farm machinery, new materials, biopharmaceuticals, and advanced medical device products. While ostensibly intended simply to raise industrial productivity through more advanced and flexible manufacturing techniques, Made in China 2025 is emblematic of China’s evolving and increasingly sophisticated approach to “indigenous innovation,” which is evident in numerous supporting and related industrial plans. Their common, overriding aim is to replace foreign

technologies, products, and services with Chinese technologies, products, and services in the China market through any means possible so as to enable Chinese companies to dominate international markets.

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

In pursuit of these goals, subsequently released documents set specific targets for capacity and production levels and market shares for the dozens of industries that comprise the 10 broad sectors targeted in Made in China 2025. In October 2015, China's National Strategic Advisory Committee on Building a Powerful Manufacturing Nation published the Made in China 2025 Key Area Technology Roadmap, and since then it has updated this document twice. The first update took place in February 2018, with the issuance of the Made in China 2025 Key Area Technology and Innovation Greenbook – Technology Roadmap (2017), which updates and replaces the 2015 document. Like its predecessor, the updated document sets explicit market share and other targets to be attained by Chinese producers, both domestically and globally, in dozens of high-technology industries. For example, it calls for “indigenous new energy vehicle annual production” to have a “supplying capacity that can satisfy more than 80 percent of the market” by 2020, up from a 70 percent target set in the 2015 document. In December 2020, the 2017 document was updated with the issuance of the Made in China Key Area Technology Innovation Greenbook (2019).

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

Made in China 2025 also differs from industry support pursued by other WTO Members by its level of ambition and, perhaps more importantly, by the scale of resources the government is investing in the pursuit of its industrial policy goals. Indeed, by some estimates, the Chinese government is making available more than \$500 billion of financial support to the Made in China 2025 sectors, often using large government guidance funds, which China attempts to shield from scrutiny by claiming that they are wholly private. Even if China fails to fully achieve the industrial policy goals set forth in Made in China 2025, it is still likely to create or exacerbate market distortions and create severe excess capacity in many of the targeted sectors. It is also likely to do long-lasting damage to U.S. interests, as China-backed companies increase their market share at the expense of U.S. companies operating in these sectors.

The Section 301 investigation that USTR launched in August 2017 and resulting tariff and other actions seek to address China's forced technology transfer regime. This regime is one of the instruments through which China intends to meet its Made in China 2025 targets.

While public references to Made in China 2025 subsided after June 2018 reportedly in response to an order from the central government, it is clear that China remains committed to achieving the goals of Made in China 2025 and continues to seek dominance for Chinese firms in the sectors that it views as strategic, both in China's market and globally. For example, in September 2020, the central government issued a guiding opinion encouraging investment in “strategic emerging industries” and, among other things, called for the

support and creation of industrial clusters for strategic emerging industries, along with the use of various types of government support and funding. The guiding opinion specifically encouraged provincial and local governments to support industries such as advanced information technology, NEVs, and biopharmaceuticals.

In March 2021, the National People's Congress passed the 14th Five-Year Plan (2021-2025) for National Economic and Social Development (the 14th Five-Year Plan), together with a document titled Long-Range Objectives Through Year 2035. The 14th Five-Year Plan and subsequently issued sector-specific five-year plans, along with five-year plans issued by sub-central governments, make clear that China will continue to pursue its industrial policy objectives. While industrial plans like Made in China 2025 were not named in the 14th Five-Year Plan, there continues to be overlap between the industries identified in China's five-year plans with both Made in China 2025 industries and strategic emerging industries. In addition, other longer-ranging industrial plans, such as the New Energy Vehicle Industry Development Plan (2021-2035) and China Standards 2035, continue to demonstrate China's commitment to a state-led, non-market approach to the economy and trade.

### **Technology Transfer**

For years, longstanding and serious U.S. concerns regarding technology transfer remained unresolved, despite repeated, high-level bilateral commitments by China to remove or no longer pursue problematic policies and practices. In August 2017, USTR sought to address these concerns by initiating an investigation under Section 301 focused on policies and practices of the Government of China related to technology transfer, intellectual property, and innovation. Specifically, in its initiation notice, USTR identified four categories of reported Chinese government conduct that would be the subject of its inquiry, including but not limited to: (1) the use of a variety of tools to require or pressure the transfer of technologies and intellectual property to Chinese companies; (2) depriving U.S. companies of the ability to set market-based terms in technology licensing negotiations with Chinese companies; (3) intervention in markets by directing or unfairly facilitating the acquisition of U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property; and (4) conducting or supporting cyber-enabled theft and unauthorized intrusions into U.S. commercial computer networks for commercial gains. In March 2018, USTR issued a report supporting findings that the four categories of acts, policies and practices covered in the investigation are unreasonable or discriminatory and burden and/or restrict U.S. commerce. In November 2018, USTR issued an updated report that found that China had not taken any steps to change its problematic policies and practices. Based on the findings in USTR's Section 301 investigation, the United States took a range of responsive actions, including the pursuit of a successful WTO case challenging certain discriminatory technology licensing measures maintained by China in addition to the imposition of additional tariffs on Chinese imports.

The Phase One Agreement, signed in January 2020, addresses certain aspects of the unfair trade practices of China that were identified in USTR's Section 301 report. In the agreement, China committed to end its longstanding practice of forcing or pressuring foreign companies to transfer their technology to Chinese companies as a condition for obtaining market access, securing administrative approvals, or receiving advantages from the Chinese government. China also committed to provide transparency, fairness, and due process in administrative proceedings and to ensure that technology transfer and licensing take place on market terms. Separately, China committed to refrain from directing or supporting outbound investments aimed at acquiring foreign technology pursuant to its distortive industrial plans.

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

## IMPORT POLICIES

The United States continues to pursue vigorous engagement to increase the benefits that U.S. businesses, workers, farmers, ranchers, service providers, and consumers derive from trade and economic ties with China. At present, China's trade policies and practices in several specific areas cause particular concern for the United States and U.S. stakeholders. The key concerns in each of these areas are summarized below.

### Tariffs and Taxes

#### *Tariffs*

China's average Most-Favored-Nation (MFN) applied tariff rate was 7.6 percent in 2019 (latest data available). China's average MFN applied tariff rate was 13.9 percent for agricultural products and 6.5 percent for non-agricultural products in 2018 (latest data available). China has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 10.0 percent.

In April 2018, China imposed tariffs ranging from 15 percent to 25 percent on a range of agricultural, steel, and aluminum products imported from the United States in retaliation against the U.S. decision to adjust U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. The U.S. decision was based on a determination that the quantity and circumstances of U.S. imports of steel and aluminum products—including the circumstances of severe excess capacity and resulting overproduction emanating from China—threaten to impair U.S. national security. In July 2018, the United States launched a dispute settlement proceeding against China in the WTO pertaining to China's retaliatory tariffs. A WTO panel is expected to issue its decision in this proceeding no earlier than the first half of 2022. The United States will continue to take all necessary action to protect U.S. interests in the face of this type of retaliation.

In 2018 and 2019, China imposed a series of retaliatory tariffs on U.S. products following U.S. actions under Section 301 of the Trade Act of 1974 (Section 301) addressing unfair Chinese acts, policies, and practices relating to technology transfer, intellectual property, and innovation. These tariffs remain in place.

#### *Tariff-Rate Quota Administration for Agricultural Products*

Market access promised through the tariff-rate quota (TRQ) system set up pursuant to China's WTO accession agreement has yet to be fully realized as of March 2022. Due to China's poorly defined criteria for applicants, unclear procedures for distributing TRQ allocations and failure to announce quota allocation and reallocation results, traders are unsure of available import opportunities and producers worldwide have reduced market access opportunities. As a result, China's TRQs for wheat, corn and rice seldom fill even though they are often oversubscribed.

In December 2016, the United States launched a WTO case challenging China's administration of TRQs for wheat, corn and rice. Consultations took place in February 2017. A WTO panel was established to hear the case at the United States' request in September 2017, and 17 other WTO Members joined as third parties. Hearings before the panel took place in July and October 2018, and the panel issued its decision in April 2019, ruling that China's administration of tariff-rate quotas for wheat, corn and rice was WTO-inconsistent. The United States and China originally agreed that the reasonable period of time for China to come into compliance with WTO rules would end on December 31, 2019. The United States subsequently agreed to extend this deadline to June 29, 2021. In July 2021, the United States submitted a request for authorization to suspend concessions and other obligations pursuant to Article 22 of the DSU on the ground

that China had failed to bring its measures into compliance with its WTO obligations. After China objected to this request, the matter was referred to arbitration in accordance with Article 22 of the DSU. The arbitration is currently suspended, and the United States continues to closely monitor China's ongoing administration of the tariff-rate quotas for wheat, corn and rice.

As part of the Phase One Agreement, China agreed that, from December 31, 2019, its administration of TRQs for wheat, corn and rice would conform to its WTO obligations. In addition, China agreed to make specific improvements to its administration of the wheat, corn and rice TRQs, including with regard to the allocation methodology, and to the treatment of non-state trading quota applicants. China also committed to greater transparency.

### *Taxes*

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

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Food Safety Law**

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

Despite facing strong international opposition and agreeing to a two-year implementation delay of an official certification requirement for all food products, China's regulatory authorities issued draft measures for public comment in November 2019 that would require the registration of all foreign food manufacturers. The United States submitted comprehensive written comments on the draft measures to China's regulatory authorities. The United States also raised concerns about them before the WTO TBT Committee and the WTO SPS Committee. More than 15 WTO Members supported the concerns raised by the United States.

In April 2021, China's regulatory authorities issued final versions of these measures, now known as Decrees 248 and 249, with an implementation date of January 1, 2022. In correspondence delivered to foreign missions in Beijing in September 2021, China's regulatory authorities laid out a non-transparent, multi-tier system where producers of certain products are required to be registered by foreign regulatory authorities, while producers of other products are eligible to self-register. Decrees 248 and 249 also establish new labeling and conformity assessment requirements.

These Decrees and similar prior measures continue to place excessive strain on traders and exporting countries' regulatory authorities, with no apparent added benefit to food safety. They instead seemingly provide China with a tool to control the volume of food imports, as decided by China's state planners, and to retaliate against food producers in countries whose governments challenge Chinese government policies or practices in non-trade areas.

In the Phase One Agreement, China specifically committed that it would not implement food safety regulations that are not science or risk based and that it would only apply food safety regulations to the

extent necessary to protect human life or health. China also agreed to certain procedures for registering U.S. facilities that produce various food products. Despite repeated U.S. requests for clarification regarding the relationship between the facilities registration procedures set forth in the Phase One Agreement and the requirements of Decrees 248 and 249, China did not provide the requested information.

The United States and several other trading partners also requested an 18-month postponement in the January 1, 2022, implementation date for Decrees 248 and 249. They explained that much more time was needed to register facilities and to understand and comply with the new labeling and conformity assessment requirements if major trade disruptions were to be avoided. China rebuffed these requests.

## **Technical Barriers to Trade**

### *Standards*

The Chinese government continues to pursue improvements in its standards system, including by moving from a government-led system to one that incorporates both government guidance and “bottom up” input from the marketplace. At the same time, the Chinese government also continues to limit foreign participation in standards setting and, at times, pursue unique national standards for strategic reasons.

In January 2018, China’s revised Standardization Law entered into force. Since then, China has issued numerous implementing measures, some of which contain positive references to the ability of foreign-invested enterprises to participate in China’s standardization activities and to the value of international standards. Unfortunately, many of these implementing measures cause concern for U.S. industry as they appear to focus on the development of Chinese standards without sufficient consideration being given to existing, internationally developed standards. In addition, they do not explicitly provide that all foreign stakeholders may participate on equal terms with domestic competitors in all aspects of the standardization process, and they fall short of explicitly endorsing internationally accepted best practices.

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

Over the years, U.S. stakeholders have also reported that, in some cases, Chinese government officials have pressured foreign companies seeking to participate in the standards-setting process to license their technology or intellectual property on unfavorable terms. In addition, China has continued to pursue unique national standards in a number of high technology areas where international standards already exist. The United States continues to press China to address these specific concerns, but to date this bilateral engagement has yielded minimal progress.

Notably, U.S. concerns about China’s standards regime are not limited to the implications for U.S. companies’ access to China’s market. China’s ongoing efforts to develop unique national standards aims eventually to serve the interests of Chinese companies seeking to compete globally, as the Chinese government’s vision is to use the power of its large domestic market to influence the development of international standards. The United States remains very concerned about China’s policies with regard to

standards and has expressed, and will continue to express, concerns to China bilaterally and multilaterally as China continues to develop and issue implementing measures for its revised Standardization Law.

In October 2021, the Central Committee of the Chinese Communist Party and the State Council issued the Outline for the Development of National Standardization, which set targets for China's standardization system. It reiterates the desire for China's standardization system to be both guided by the government and driven by the market. It also calls for China's standardization system to refocus from quantity to quality and to shift from a domestic focus to an equal domestic and international focus. In addition, it calls for standards to support not just a particular industry, but also the economy and society as a whole.

The October 2021 Outline for the Development of National Standardization is partly based on an initiative that China announced in 2019, known as China Standards 2035. A lack of transparency with regard to the initiative's findings is troubling, particularly given longstanding global concerns about inadequate foreign participation in China's standards-setting processes, China's use of standards that differ from international standards and certain licensing practices in China's standards-setting processes.

### *Cosmetics*

Over the past several years, the United States and U.S. industry have engaged with CFDA and its successor, NMPA, to highlight serious concerns with China's regulation of cosmetics. Currently, the regulation of cosmetics in China is governed by the Cosmetics Supervision and Administration Regulation (CSAR), which was issued in June 2020 and entered into effect in January 2021. The United States has repeatedly raised serious concerns with the CSAR and its numerous implementing measures, both bilaterally and in meetings of the WTO TBT Committee, as have other WTO Members.

While the language in the CSAR suggests that China is seeking to modernize its regulation of cosmetics and reduce the time required for product and ingredient registration and approval, the implementing measures contain provisions that would require the disclosure of much more information than was previously needed to manage product safety and performance claims in China's cosmetics marketplace. The United States has expressed concern to China that Chinese regulators are applying the same approach to general and special cosmetics as is used with drugs and medical devices, despite the generally lower risk in cosmetics. China's new filing and registration requirements for cosmetics also significantly diverge from those in other major markets and do not align with international standards, making compliance very burdensome for importers.

The United States is particularly concerned that the CSAR implementing measures do not provide adequate assurances as to how undisclosed information, trade secrets, and confidential business information will be protected from unauthorized disclosure. China also has not addressed requests from the United States and cosmetics right holders that NMPA provide a legally enforceable mechanism to monitor and protect the trade secrets and confidential business information potentially identified by companies in their cosmetics filings.

In addition, China continues to require duplicative in-country testing to assess many product and ingredient safety and performance claims, without considering the applicability of international data or other means of establishing conformity. In response to U.S. concerns that this requirement is trade-restrictive, China indicated that it would allow foreign laboratories with facilities in China to conduct its required testing. However, this change does not address the burden of China's requirement, which does not consider the applicability of testing conducted via internationally recognized laboratories outside of China in addition to other means used by foreign regulators and industries to assess the conformity of product and ingredient safety and performance claims.

The United States also questions China's assertion that its cosmetics good manufacturing practices (GMP) requirements provide equal treatment for imported and domestic products. If the government of a cosmetics importer does not issue GMP or manufacturing export certificates, the only means that China provides to establish conformity with China's GMP is animal testing. The United States and other WTO Members have made repeated requests that China consider the many alternative means available to establish GMP conformity, including utilizing second party or third party certificates based upon the ISO 22716 Cosmetics GMP Guidelines.

In sum, after years of the United States engaging with China bilaterally and via the International Cooperation on Cosmetics Regulation, the WTO, and other fora to share views and expertise regarding the regulation of cosmetics, China has not yet addressed key U.S. concerns, including the use of international standards and good regulatory practices to facilitate cosmetics conformity assessment and avoid discriminatory treatment, nor has it provided confidence that U.S. intellectual property will be protected. Until China addresses these concerns, many U.S. companies will be impeded in accessing, or simply unable to access, the China market.

### **Sanitary and Phytosanitary Barriers**

China remains a difficult and unpredictable market for U.S. agricultural exporters, largely because of inconsistent enforcement of regulations and selective intervention in the market by China's regulatory authorities. The inability or unwillingness of China's regulators to routinely follow science-based, international standards and guidelines and to apply regulatory enforcement in a transparent and rules-based manner further complicates and impedes agricultural trade.

#### *Agricultural Biotechnology Approvals*

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

In the past, biotechnology product approvals by China's regulatory authorities mainly materialized only after high-level political intervention. For example, following a commitment made by China's President during an April 2017 summit meeting, the National Biosafety Committee (NBC) met in May and June 2017 and issued two product approvals after each meeting, while taking no action on several other products that were subject to NBC review. Following a subsequent meeting between the U.S. and Chinese Presidents in December 2018, the NBC issued five additional product approvals and 23 renewals. One year later, in December 2019, the NBC issued two additional product approvals and 10 renewals for foreign developers.

In 2020 and 2021, China held NBC meetings twice per year. In June 2020, the NBC issued one additional product approval and three renewals for foreign developers. In January 2021, China issued one product approval and two product renewals for foreign developers. In September 2021, China announced the outcomes of the July 2021 NBC meeting, which included no apparent progress on approvals for foreign developers. In January 2022, China issued two product approvals and 25 product renewals for foreign developers. Meanwhile, over the past two years, China has issued numerous approvals and renewals for Chinese developers.

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

China's approach to agricultural biotechnology remains among the most significant commitments under the Phase One Agreement for which China has not demonstrated full implementation. There remains a significant lack of transparency regarding the procedures for convening meetings of the NBC, including regarding dates and agenda items for these meetings and the process for notifying applicants of outcomes and for soliciting additional information to support product applications. While the NBC is required to meet at least two times each year, the meetings are not held pursuant to a regular schedule, and information about the meetings is not widely shared with the public in a transparent and predictable manner. In addition, in conducting its approval process, China continues to ask for information that is not relevant to a product's intended use or information that applicants have previously provided. For this and other reasons, China has not reduced the average time for its approval process for agricultural biotechnology products for feed or further processing to no more than 24 months, as it had committed to do. Indeed, the NBC still has not approved one canola event and two alfalfa events whose applications have been pending for approximately ten years, while at least one corn event and one cotton event have waited over five years for approval.

### *Poultry*

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

In the Phase One Agreement, China agreed to maintain measures consistent with OIE guidelines for future outbreaks of avian influenza. China also agreed to sign and implement a regionalization protocol within 30 days of entry into force of the agreement, which it did, to help avoid unwarranted nationwide animal disease restrictions in the future. Subsequently, during an avian influenza outbreak in South Carolina in April 2020, China did not restrict imports of poultry products from other U.S. regions.

### *Beef*

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

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

While China confirmed to the United States that it had adopted Codex-consistent MRLs for use of the three synthetic hormones in beef, China still has not published the MRLs. The lack of publication contributes to regulatory ambiguity for U.S. beef producers and traders, who remain uncertain regarding which products will be allowed for import into China. China's failure to publish the MRLs is another example of China's inadequate implementation of the Phase One Agreement.

### *Pork*

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

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

As part of the Phase One Agreement, China agreed to broaden the list of pork products that are eligible for importation, including processed products such as ham and certain types of offal that are inspected by the U.S. Department of Agriculture's Food Safety and Inspection Service for both domestic and international trade. China also agreed to conduct a risk assessment for ractopamine in swine and cattle as soon as possible and to establish a joint working group with the United States to discuss next steps based on the risk assessment. To date, China has not completed the risk assessment and therefore has not yet made any progress on next steps based on the risk assessment, which will need to include the establishment of MRLs or import tolerances.

## **GOVERNMENT PROCUREMENT**

In its WTO accession agreement, China made a commitment to accede to the WTO Agreement on Government Procurement (GPA) and to open up its vast government procurement market to the United States and other GPA parties. To date, however, the United States, the EU and other GPA parties have viewed China's offers as highly disappointing in scope and coverage. China submitted its sixth revised offer in October 2019. This offer showed progress in a number of areas, including thresholds, coverage at the sub-central level of government, entity coverage and services coverage. Nonetheless, it fell short of U.S. expectations and remains far from acceptable to the United States and other GPA parties as significant deficiencies remain in a number of critical areas, including thresholds, entity coverage, services coverage and exclusions. Although China has since stated that it will "speed up the process of joining" the GPA, it has not submitted a new offer since October 2019. China's most recent submission, made in June 2021, was only an update of its checklist of issues, which informs GPA parties of changes to China's existing government procurement regime since its last update.

China's current government procurement regime is governed by two important laws. The Government Procurement Law, administered by the Ministry of Finance, governs purchasing activities conducted with fiscal funds by state organs and other organizations at all levels of government in China, but does not apply

to procurements by state-owned enterprises. The Tendering and Bidding Law falls under the jurisdiction of NDRC and imposes uniform tendering and bidding procedures for certain classes of procurement projects in China, notably construction and works projects, without regard for the type of entity (e.g., a government agency or a state-owned enterprise) that conducts the procurement. Both laws cover important procurements that GPA parties would consider to be government procurement eligible for coverage under the GPA.

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

China's Foreign Investment Law, which entered into force in January 2020, and a related October 2021 Ministry of Finance measure state that China will provide equal treatment to foreign companies invested in China and to domestic Chinese companies with regard to government procurement opportunities. However, as of March 2022 it is not clear how these measures may be impacting government procurement in China.

## **INTELLECTUAL PROPERTY PROTECTION**

### **Overview**

After its accession to the WTO, China undertook a wide-ranging revision of its framework of laws and regulations aimed at protecting the intellectual property rights of domestic and foreign right holders, as required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). Currently, China is in the midst of establishing an intellectual property appellate court and revisions to certain laws and regulations. Despite various plans and directives issued by the State Council, inadequacies in China's intellectual property protection and enforcement regime continue to present serious barriers to U.S. exports and investment. As a result, China was again placed on the Priority Watch List in USTR's [2021 Special 301 Report](#). In addition, in January 2021, USTR announced the results of its [2021 Review of Notorious Markets](#), which identifies online and physical markets that exemplify key challenges in the global struggle against piracy and counterfeiting. Several markets in China were among those named as notorious markets.

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

As of March 2022, China has published a number of draft measures for comment and issued some final measures relating to implementation of the intellectual property chapter of the Phase One Agreement. Notably, China amended the Patent Law, the Copyright Law and the Criminal Law. China has also reported increased enforcement actions against counterfeit medicines and increased customs actions against pirated and counterfeit goods. At the same time, China has work to do to finalize the draft measures that it has

published and to publish other draft measures in accordance with the Intellectual Property Action Plan that it released in April 2020. China has yet to demonstrate that it has published data on enforcement actions online on a regular basis, increased enforcement actions against counterfeits with health and safety risks and at physical markets, increased training of customs personnel or ensured the use of only licensed software in government agencies and state-owned enterprises. The United States continues to monitor China's implementation of the intellectual property chapter of the Phase One Agreement, including the impact of the final measures that have been issued.

## **Trade Secrets**

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

In high-level bilateral dialogues with the United States over the years, China has committed to issue judicial guidance to strengthen its trade secrets regime. China has also committed not to condone state-sponsored misappropriation of trade secrets for commercial use. In addition, the United States has urged China to make certain key amendments to its trade secrets-related laws and regulations, particularly with regard to a draft revision of the Anti-unfair Competition Law. The United States has also urged China to take actions to address inadequacies across the range of state-sponsored actors and to promote public awareness of trade secrets disciplines.

At the November 2016 JCCT meeting, China claimed that it was strengthening its trade secrets regime and bolstering several areas of importance, including the availability of evidence preservation orders and damages based on market value, as well as the issuance of a judicial interpretation on preliminary injunctions and other matters. In 2016 and 2017, China circulated proposed revisions to the Anti-unfair Competition Law for public comment. China issued the corresponding final measure in November 2017, effective January 2018. Despite improvements in the protection of trade secrets relative to prior law, the final measure reflects a number of missed opportunities for the promotion of effective trade secrets protection. Although China subsequently amended the Anti-unfair Competition Law, the Foreign Investment Law and the Administrative Licensing Law, these amendments still do not fully address critical shortcomings in the scope of protections and obstacles to enforcement.

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

In 2020, China published draft measures relating to civil, criminal and administrative enforcement of trade secrets, such as SAMR's draft Provisions on the Protection of Trade Secrets. In September 2020, the Supreme People's Court issued the Provisions on Several Issues Concerning the Application of Law in

Civil Cases of Trade Secret Infringement and the Interpretation III on Several Issues Concerning the Application of Law in Handling Criminal Cases of Infringement of Intellectual Property Rights. In September 2020, the Supreme People's Procuratorate (SPP) and the Ministry of Public Security (MPS) also issued the Decision on Amendment of Docketing for Prosecution of Criminal Trade Secrets Infringement Cases Standards. These measures relate to issues such as the scope of liability for trade secret misappropriation, prohibited acts of trade secret theft, preliminary injunctions and thresholds for initiations of criminal investigations for trade secret theft. In December 2020, the National People's Congress passed amendments to the Criminal Law that included changes to the thresholds for criminal investigation and prosecution and the scope of criminal acts of trade secret theft. The Criminal Law amendments will require revisions to the judicial interpretations and prosecution standards issued earlier in the year. The United States will continue to monitor the effectiveness of these measures.

### **Bad Faith Trademark Registration**

The continuing registration of trademarks in bad faith in China remains a significant concern. At the November 2016 JCCT meeting, China publicly noted the harm that can be caused by bad faith trademarks and asserted that it was taking further steps to combat bad faith trademark filings. Amendments to the Trademark Law made in 2019 and subsequent implementing measures require the disallowance of bad faith trademark applications. However, implementation by China to date suggests that right holders remain insufficiently protected, as bad faith trademarks remain widespread and problems persist with the large number of inconsistent decisions and low rate of success for oppositions. As a result of these deficiencies, U.S. companies across industry sectors continue to face Chinese applicants registering their marks and "holding them for ransom" or seeking to establish a business building off of U.S. companies' global reputations. The Phase One Agreement requires China to address longstanding U.S. concerns regarding bad-faith trademark registration, such as by invalidating or refusing bad faith trademark applications. The United States will continue to monitor developments in this area of long-standing concern closely.

### **Online Infringement**

Online piracy continues on a large scale in China, affecting a wide range of industries, including those involved in distributing legitimate music, motion pictures, books and journals, software and video games. While increased enforcement activities have helped stem the flow of online sales of some pirated offerings, much more sustained action and attention is needed to make a meaningful difference for content creators and right holders, particularly small and medium-sized enterprises. In response to the COVID-19 pandemic, reports indicate that many infringers have moved online to distribute their pirated and counterfeit goods, which further increases the need for targeted and sustained enforcement measures in the online environment.

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

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

finalized, the law instead introduced provisions that weaken the ability of right holders to protect their rights online and that alleviate the liability of China-based electronic commerce platforms for selling counterfeit and other infringing goods. A draft tort liability chapter in the Civil Code, published in January 2019, contained similar problematic provisions that would weaken the existing notice-and-takedown system.

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

In May 2020, the National People's Congress issued the Civil Code, which included updated notice-and-takedown provisions. In September 2020, the SPC issued Guiding Opinions on Hearing Intellectual Property Disputes Involving E-Commerce Platform and the Official Reply on the Application of Law in Network-Related Intellectual Property Infringement Disputes. These measures relate to issues such as expeditious takedowns and the validity of notices and counter-notifications, but have only recently taken effect. In November 2020, the National People's Congress adopted long-pending amendments to the Copyright Law, including provisions relating to increasing civil remedies for copyright infringement, new rights of public performance and broadcasting for producers of sound recordings, and protections against circumvention of technological protection measures. Right holders have welcomed these developments but have noted the need for effective implementation as well as new measures to address online piracy. The United States will closely monitor the impact of these measures going forward.

More recently, in August 2021, SAMR issued draft amendments to the E-Commerce Law for public comment. These draft amendments further attempt to address concerns that have been raised about procedures and penalties under China's notice-and-takedown system.

## **Counterfeit Goods**

Counterfeiting in China remains widespread and affects a wide range of goods. In April 2019, China amended its Trademark Law, effective November 2019, to require civil courts to order the destruction of counterfeit goods, but these amendments still do not provide the full scope of civil remedies for right holders. One of many areas of particular U.S. concern involves medications. Despite years of sustained engagement by the United States, China still needs to improve its regulation of the manufacture of active pharmaceutical ingredients to prevent their use in counterfeit and substandard medications. At the July 2014 S&ED meeting, China committed to develop and seriously consider amendments to the Drug Administration Law that will require regulatory control of the manufacturers of bulk chemicals that can be used as active pharmaceutical ingredients. At the June 2015 S&ED meeting, China further committed to publish revisions to the Drug Administration Law in draft form for public comment and to consider the views of the United States and other relevant stakeholders. In October 2017, China published limited draft revisions to the Drug Administration Law and stated that future proposed revisions to the remainder of this law would be forthcoming. Although the final Drug Administration Law, issued in August 2019, requires pharmaceuticals products and active pharmaceutical ingredients to meet manufacturing standards, as of March of 2022, it is unclear how these requirements will be implemented or enforced.

The Phase One Agreement requires China to take effective enforcement action against counterfeit pharmaceuticals and related products, including active pharmaceutical ingredients, and to significantly increase actions to stop the manufacture and distribution of counterfeits with significant health or safety risks. The agreement also requires China to provide that its judicial authorities shall order the forfeiture and destruction of pirated and counterfeit goods, along with the materials and implements predominantly used in their manufacture. In addition, the agreement requires China to significantly increase the number of enforcement actions at physical markets in China and against goods that are exported or in transit. It

further requires China to ensure, through third party audits, that government agencies and state-owned enterprises only use licensed software.

In August 2020, SAMR issued the Opinions on Strengthening the Destruction of Infringing and Counterfeit Goods, and the State Council amended the Provisions on the Transfer of Suspected Criminal Cases by Administrative Organs for Law Enforcement, which relate to the transfer of intellectual property cases from administrative authorities to criminal authorities. China has reported increased enforcement actions against counterfeit medicines and increased customs actions against pirated and counterfeit goods, but it also needs to show that it has increased enforcement actions against counterfeits with health and safety risks and at physical markets, increased training of customs personnel and ensured the use of only licensed software in government agencies and state-owned enterprises.

### **Indigenous Innovation**

Policies aimed at promoting “indigenous innovation” continue to represent an important component of China’s industrialization efforts. Through intensive, high-level bilateral engagement with China since 2009, the United States has attempted to address these policies, which provide various preferences when intellectual property is owned or developed in China, both broadly across sectors of China’s economy and specifically in the government procurement context.

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

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

Over the years, the underlying thrust of China’s indigenous innovation policies has remained unchanged. Accordingly, USTR has been using mechanisms like Section 301 of the Trade Act of 1974 to seek to address, among other things, China’s use of indigenous innovation policies to force or pressure foreigners to own or develop their intellectual property in China.

## SERVICES BARRIERS

### Overview

The prospects for U.S. service suppliers in China should be promising, given the size of China's market. Nevertheless, the U.S. share of China's services market remains well below the U.S. share of the global services market, and the Organization for Economic Cooperation and Development continues to rate China's services regime as one of the most restrictive among the world's major economies.

In 2021, numerous challenges persisted in a number of services sectors. As in past years, Chinese regulators continued to use discriminatory regulatory processes, informal bans on entry and expansion, case-by-case approvals in some services sectors, overly burdensome licensing and operating requirements, and other means to frustrate the efforts of U.S. suppliers of services to achieve their full market potential in China. These policies and practices affect U.S. service suppliers across a wide range of sectors, including cloud computing, telecommunications, film production and distribution, online video and entertainment services, express delivery and legal services. In addition, China's Cybersecurity Law and related implementing measures include mandates to purchase domestic ICT products and services, while China's Cybersecurity Law, Data Security Law and Personal Information Protection Law include restrictions on cross-border data flows, and requirements to store and process data locally. These types of data measures undermine U.S. services suppliers' ability to take advantage of market access opportunities in China by prohibiting or severely restricting cross-border transfers of information that are routine in the ordinary course of business and are fundamental to any business activity. China also has failed to fully address U.S. concerns in areas that have been the subject of WTO dispute settlement, including electronic payment services and theatrical film importation and distribution.

The Phase One Agreement, signed in January 2020, addresses a number of longstanding trade and investment barriers to U.S. providers of a wide range of financial services, including banking, insurance, securities, asset management, credit rating and electronic payment services, among others. The barriers addressed in the agreement include joint venture requirements, foreign equity limitations and various discriminatory regulatory requirements. Removal of these barriers should allow U.S. financial service providers to compete on a more level playing field and expand their services export offerings in the China market. Nevertheless, China's aforementioned restrictions on cross-border data flows could continue to create significant challenges for U.S. financial service providers in China.

### Banking Services

Although China has opened its banking sector to foreign competition in the form of wholly foreign-owned banks, China has maintained restrictions on market access in other ways that have kept foreign banks from establishing, expanding and obtaining significant market share in China. Recently, however, China has taken some steps to ease or remove market access restrictions.

For example, China has removed a number of long-standing barriers for foreign banks, including the \$10 billion minimum asset requirement for establishing a foreign bank in China and the \$20 billion minimum asset requirement for setting up a Chinese branch of a foreign bank. China has also removed the cap on the equity interest that a single foreign investor can hold in a Chinese-owned bank.

In the Phase One Agreement, China committed to remove some of these barriers and to expand opportunities for U.S. financial institutions, including bank branches, to supply securities investment fund custody services by considering their global assets when they seek licenses. China also agreed to review and approve qualified applications by U.S. financial institutions for securities investment fund custody licenses on an expeditious basis. One U.S. bank was approved for this license in 2021. In addition, China

committed to consider the international qualifications of U.S. financial institutions when evaluating license applications for Type-A lead underwriting services for all types of non-financial debt instruments in China.

### **Securities, Asset Management and Futures Services**

In the Phase One Agreement, China committed to remove the foreign equity caps in the securities, asset management and futures sectors by no later than April 1, 2020. It also committed to ensure that U.S. suppliers of securities, asset management and futures services are able to access China's market on a non-discriminatory basis, including with regard to the review and approval of license applications.

Consistent with its commitments in the Phase One Agreement, China announced that it would allow wholly foreign-owned companies for the securities and asset (i.e., fund) management sectors as of April 1, 2020, and that it would allow wholly foreign-owned companies for the futures sector as of January 1, 2020. Prior to these announcements, China had maintained a foreign equity cap of 51 percent for these sectors. Over the past two years, some U.S. financial institutions have applied for and received licenses to operate as wholly foreign-owned enterprises in these sectors. The United States is monitoring these and other developments as U.S. companies continue to seek to obtain licenses and undertake operations in these sectors.

### **Insurance Services**

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

Consistent with China's commitments in the Phase One Agreement, the China Banking and Insurance Regulatory Commission (CBIRC) announced that China would allow wholly foreign-owned companies for the life, pension and health insurance sectors as of January 1, 2020. Prior to this announcement, China had maintained foreign equity caps and only permitted foreign companies to establish as Chinese-foreign joint ventures in these sectors. In December 2020, CBIRC issued a measure that provided further transparency regarding its intention to allow foreign-invested companies to take advantage of this opening.

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

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

Finally, some U.S. insurance companies established in China have encountered difficulties in getting the CBIRC to issue timely approvals of their requests to open up new internal branches to expand their operations. The United States continues to urge CBIRC to issue timely approvals when U.S. insurance companies seek to expand their branch networks in China.

### **Electronic Payment Services**

In a WTO case that it launched in 2010, the United States challenged China's restrictions on foreign companies, including major U.S. credit and debit card processing companies, which had been seeking to

supply electronic payment services to banks and other businesses that issue or accept credit and debit cards in China. The United States argued that China had committed in its WTO accession agreement to open up this sector in 2006, and a WTO panel agreed with the United States in a decision issued in 2012. China subsequently agreed to comply with the WTO panel's rulings in 2013, but China did not allow foreign suppliers to apply for licenses until June 2017, when China's regulator – PBOC – finalized the establishment of a two-step licensing process in which a supplier must first complete one year of preparatory work before being able to apply for a license.

As of January 2020, when the United States and China entered into the Phase One Agreement, no foreign supplier of electronic payment services had been able to secure the license needed to operate in China's market due largely to delays caused by PBOC. At times, PBOC refused even to accept applications to begin preparatory work from U.S. suppliers, the first of two required steps in the licensing process. Meanwhile, throughout the years that China actively delayed opening up its market to foreign suppliers, China's national champion, China Union Pay, has used its exclusive access to domestic currency transactions in the China market, and the revenues that come with it, to support its efforts to build out its electronic payment services network abroad, including in the United States. China has maintained market-distorting practices that benefit its own companies, even in the face of adverse rulings at the WTO.

In the Phase One Agreement, China committed to ensure that PBOC operates an improved and timely licensing process for U.S. suppliers of electronic payment services so as to facilitate their access to China's market. In June 2020, four months after entry into force of the Phase One Agreement, American Express became the first foreign supplier of electronic payment services to secure a license to operate in China's market. Meanwhile, in March 2022, the United States is closely monitoring developments as applications from two other U.S. suppliers, Visa and MasterCard, are progressing through PBOC's licensing process. The United States will continue to closely monitor PBOC's licensing process going forward to ensure China's compliance with its commitments in the Phase One Agreement.

### **Internet-Enabled Payment Services**

PBOC first issued regulations for non-bank suppliers of online payment services in 2010, and it subsequently began processing applications for licensees in a previously unregulated sector. Regulations were further strengthened in 2015, with additional provisions aimed at increasing security and traceability of transactions. According to a U.S. industry report, of more than 200 licenses issued as of June 2014, only two had been issued to foreign-invested suppliers, and those two were for very limited services. This report provided clear evidence supporting stakeholder concerns about the difficulties they faced entering the Chinese market and the slow process foreign firms face in getting licensed. In 2018, PBOC announced that it would allow foreign suppliers, on a nondiscriminatory basis, to supply Internet-enabled payment services. At the same time, as in many other sectors, PBOC requires suppliers to localize their data and facilities in China. In January 2021, PayPal became the first foreign company to obtain full ownership of a payment platform in China, along with a license to supply payment services. The United States will continue to closely monitor developments in this area.

### **Telecommunications Services**

China's restrictions on basic telecommunications services, such as informal bans on new entry, a 49 percent foreign equity cap, a requirement that foreign suppliers can only enter into joint ventures with state-owned enterprises and exceedingly high capital requirements, have blocked foreign suppliers from accessing China's basic telecommunications services market. Since China acceded to the WTO almost two decades ago, not a single foreign firm has succeeded in establishing a new joint venture to enter this sector.

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

### **Internet Regulatory Regime**

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

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

### **Voice-Over-Internet Protocol Services**

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

### **Cloud Computing Services**

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

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

### **Audio-Visual and Related Services**

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

China's restrictions on services associated with television and radio greatly limit participation by foreign suppliers. For example, China prohibits retransmission of foreign TV channels, prohibits foreign investment in TV production, prohibits foreign investment in TV stations and channels in China and imposes quotas on the amount of foreign programming that can be shown on a Chinese TV channel each day. In addition, in September 2018, the National Radio and Television Administration's (NRTA) issued a problematic draft measure that would impose new restrictions in China's already highly restricted market for foreign creative content. It would require that spending on foreign content account for no more than 30 percent of available total programs in each of several categories, including foreign movies, TV shows, cartoons, documentaries and other foreign TV programs, made available for display via broadcasting institutions and online audio-visual content platforms. It also would prohibit foreign TV shows in prime time. Although this measure has not yet been issued in final form, it continues to raise serious concerns, as it appears that, as a matter of practice, it is already being implemented in China, including by online audio-visual content platforms.

### **Theatrical Films**

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

In 2017, in accordance with the terms of the MOU, the two sides began discussions regarding the provision of further meaningful compensation to the United States in an updated MOU. These discussions continued until March 2018, before stalling when China embarked on a major government reorganization that involved significant changes for China's Film Bureau. Discussions resumed in 2019 as part of the broader U.S.-China trade negotiations that began following the summit meeting between the two countries' Presidents in Buenos Aires in December 2018. As of March 2022, no agreement has been reached on the further meaningful compensation that China owes to the United States. The United States will continue pressing China to fulfill its obligations.

### **Online Video and Entertainment Services**

China restricts the online supply of foreign video and entertainment services through measures affecting both content and distribution platforms. With respect to content, China requires foreign companies to

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

### **Legal Services**

China restricts the types of legal services that can be provided by foreign law firms, including through a prohibition on foreign law firms hiring lawyers qualified to practice Chinese law. It also restricts the ability of foreign law firms to represent their clients before Chinese government agencies and imposes lengthy delays on foreign law firms seeking to establish new offices. In addition, beginning with the version of China's Foreign Investment Negative List that entered into force in July 2020, China has added an explicit prohibition on the ability of a foreign lawyer to become a partner in a domestic law firm. Reportedly, China is also considering draft regulatory measures that would even further restrict the ability of foreign law firms to operate in China.

### **Express Delivery Services**

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

## **BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE**

### **Data Restrictions**

In 2021, China continued to build out its expansive regulation of data. A new Data Security Law entered into force in September 2021, and a new Personal Information Protection Law entered into force in November 2021. These new laws operate together with the Cybersecurity Law, which took effect in June 2017, the National Security Law, which has been in effect since 2015, and various implementing measures to prohibit or severely restrict cross-border transfers of information that are routine in the ordinary course of business and are fundamental to any business activity. These laws and measures also impose local data storage and processing requirements on companies that collect "important data," which is a broad and vaguely defined term. They also suggest that China intends to apply these restrictions and requirements not only to companies that are considered to operate in "critical information infrastructure sectors," another broad and vaguely defined term, but also to companies operating in other sectors. Given the wide range of business activities that are dependent on cross-border transfers of information and flexible access to global computing facilities, these developments have generated serious concerns among foreign governments as well as among stakeholders in the United States and other countries, including among services suppliers.

### **Secure and Controllable Information and Communications Technology Policies**

In 2021, implementing measures for China's Cybersecurity Law remained a continued source of serious concern for U.S. companies since the law's enactment in 2016. Of particular concern are the Measures for

Cybersecurity Review, first issued in 2016 and later updated in 2020 and 2021. This measure implements one element of the cybersecurity regime created by the Cybersecurity Law. Specifically, the measure puts in place a review process to regulate the purchase of information and communications technology (ICT) products and services by critical information infrastructure operators and online platform operators in China. The review process is to consider, among other things, potential national security risks related to interruption of service, data leakage, and reliability of supply chains.

As demonstrated in implementing measures for the Cybersecurity Law, China's approach is to impose severe restrictions on a wide range of U.S. and other foreign ICT products and services with an apparent goal of supporting China's technology localization policies by encouraging the replacement of foreign ICT products and services with domestic ones. U.S. and other stakeholders and governments around the world expressed serious concerns about requirements that ICT equipment and other ICT products and services in critical sectors be "secure and controllable," as these requirements are used by the Chinese government to disadvantage non-Chinese firms in multiple ways.

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

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

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

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

Again, however, China has not honored its promises. The numerous draft and final cybersecurity implementation measures issued by China from 2017 through March 2022 raise serious questions about China's approach to cybersecurity regulation. China's measures do not appear to be in line with the non-discriminatory, non-trade restrictive approach to which China has committed, and global stakeholders have

grown even more concerned about the implications of China's ICT security measures across the many economic sectors that employ digital technologies. Accordingly, throughout 2021, the United States conveyed its serious concerns about China's approach to cybersecurity regulation through written comments on draft measures, bilateral engagement and multilateral engagement, including at WTO committee and council meetings, in an effort to persuade China to revise its policies in this area in light of its WTO obligations and bilateral commitments. These efforts are ongoing as of March 2022.

## **Encryption**

Use of ICT products and services is increasingly dependent on robust encryption, an essential functionality for protecting privacy and safeguarding sensitive commercial information. Onerous requirements on the use of encryption, including intrusive approval processes and, in many cases, mandatory use of indigenous encryption algorithms (e.g., for WiFi and 4G cellular products), continue to be cited by stakeholders as a significant trade barrier.

In October 2019, China adopted a Cryptography Law that includes restrictive requirements for commercial encryption products that "involve national security, the national economy and people's lives, and public interest," which must undergo a security assessment. This broad definition of commercial encryption products that must undergo a security assessment raises concerns that the new Cryptography Law will lead to unnecessary restrictions on foreign ICT products and services. In August 2020, the State Cryptography Administration issued the draft Commercial Cryptography Administrative Regulations to implement the Cryptography Law. This draft measure did not address the concerns that the United States and numerous other stakeholders had raised regarding the Cryptography Law.

Going forward, the United States will continue to monitor implementation of the Cryptography Law and related measures. The United States will remain vigilant toward the introduction of any new requirements hindering technologically neutral use of robust, internationally standardized encryption.

## **INVESTMENT BARRIERS**

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

There has also been a lack of substantial liberalization of China's investment regime, evidenced by the continued application of prohibitions, foreign equity caps, and joint venture requirements and other restrictions in certain sectors. China's most recent version of its Foreign Investment Negative List, which entered into force in January 2022, leaves in place significant investment restrictions in a number of areas important to foreign investors, such as key services sectors, agriculture, certain extractive industries, and certain manufacturing industries. With regard to services sectors in particular, China maintains prohibitions or restrictions in key sectors such as cloud computing services, telecommunications services, film production and film distribution services, and video and entertainment software services.

China's Foreign Investment Law, implementing regulations and other related measures suggest that China is pursuing the objective of replacing its case-by-case administrative approval system for a broad range of investments with a system that would only be applied to "restricted" sectors. However, as of March 2022, it remains unclear whether China is fully achieving that objective in practice. Moreover, even for sectors that have been liberalized, the potential for discriminatory licensing requirements or the discriminatory application of licensing processes could make it difficult to achieve meaningful market access. In addition,

the potential for a new and overly broad national security review mechanism, and the increasingly adverse impact of China's Cybersecurity Law, Data Security Law and Personal Information Protection Law and related implementing measures, including ones that restrict cross-border data flows and impose data localization requirements, have serious negative implications for foreign investors and investments. Foreign companies also continue to report that Chinese government officials may condition investment approval on a requirement that a foreign company transfer technology, conduct research and development (R&D) in China, satisfy performance requirements relating to exportation or the use of local content, or make valuable, deal-specific commercial concessions.

Over the years, the United States has repeatedly raised concerns with China about its restrictive investment regime. Given that China's investment restrictions place pressure on U.S. companies to transfer technology to Chinese companies, they were a focus of USTR's Section 301 investigation. The responsive actions taken by the United States in that investigation are intended in part to address this concern.

## **SUBSIDIES**

### **Industrial Subsidies**

China continues to provide substantial subsidies to its domestic industries, which have caused injury to U.S. industries. Some of these subsidies also appear to be prohibited under WTO rules. To date, the United States has been able to address some of these subsidies through countervailing duty proceedings conducted by the Commerce Department and dispute settlement cases at the WTO.

The United States and other WTO Members also have continued to press China to notify all of its subsidies to the WTO in accordance with its WTO obligations while also submitting counter notifications listing hundreds of subsidy programs that China has failed to notify. China's WTO subsidy notifications have marginally improved over the years in terms of timeliness and completeness. Nevertheless, since joining the WTO 20 years ago, China has not yet submitted to the WTO a complete notification of subsidies maintained by the central government, and it did not notify a single sub-central government subsidy until July 2016, when it provided information largely only on subcentral government subsidies that the United States had challenged as prohibited subsidies in a WTO case.

The United States began working with the European Union (EU) and Japan in 2018 to identify further effective action and potential rules that could address problematic subsidies practices not currently covered by existing obligations. In January 2020, the trade ministers of the United States, the EU, and Japan issued a statement agreeing to strengthen the WTO subsidy rules by: (1) prohibiting certain egregious types of subsidies; (2) requiring the subsidizing country to demonstrate for other distortive subsidy types that the subsidy provided did not cause adverse effects; (3) building upon the existing "serious prejudice" rules; (4) putting some teeth into the notification rules; and (5) developing a new definition of what constitutes a "public body." In November 2021, the trade ministers of the United States, the EU, and Japan renewed their commitment to work together, including with regard to the identification of areas where further work is needed to develop new tools and other measures to address non-market policies and practices.

### **Agricultural Domestic Support**

For several years, China has been significantly increasing domestic subsidies and other support measures for its agricultural sector. China maintains direct payment programs, minimum support prices for basic commodities and input subsidies. China has implemented a cotton reserve system, based on minimum purchase prices, and cotton target price programs. In 2016, China established subsidies for starch and

ethanol producers to incentivize the purchase of domestic corn, resulting in higher volumes of exports of processed corn products from China in 2017 and 2018.

China submitted a notification concerning domestic support measures to the WTO in May 2015, but it only provided information up to 2010. In December 2018, China notified domestic support measures for the period 2011-2016. This notification showed that China had exceeded its *de minimis* level of domestic support for soybeans (in 2012, 2014 and 2015), cotton (from 2011 to 2016), corn (from 2013 to 2016), rapeseed (from 2011 to 2013) and sugar (2012). The situation was likely even worse, as the methodologies used by China to calculate domestic support levels result in underestimates. Moreover, the support programs notified by China seemingly failed to account for support given at the sub-national level by provincial and local governments and, possibly, support administered through state-owned enterprises.

In September 2016, the United States launched a WTO case challenging China's government support for the production of wheat, corn and rice as being in excess of China's commitments. Like other WTO Members, China committed to limit its support for producers of agricultural commodities. China's market price support programs for wheat, corn and rice appear to provide support far exceeding the agreed levels. This excessive support creates price distortions and skews the playing field against U.S. farmers. In October 2016, consultations took place. In January 2017, a WTO panel was established to hear the case. Hearings before the panel took place in January and April 2018, and the panel issued its decision in February 2019, ruling that China's domestic support for wheat and rice was WTO-inconsistent. China originally agreed to come into compliance with the panel's recommendations by March 31, 2020. The United States subsequently agreed to extend this deadline to June 30, 2020. In July 2020, the United States submitted a request for authorization to suspend concessions and other obligations pursuant to Article 22 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) on the ground that China had failed to bring its measures into compliance with its WTO obligations. After China objected to this request, the matter was referred to arbitration in accordance with Article 22 of the DSU. The arbitration is currently suspended, and the United States continues to closely monitor the operation of China's market price support programs for wheat and rice.

### **Fisheries Subsidies**

It is estimated that China is the world's largest provider of harmful fisheries subsidies, with support exceeding \$4 billion annually. These subsidies contribute to overfishing and overcapacity that threatens global fish stocks. Indeed, China is the world's largest producer of marine capture fisheries and, in the years since its WTO accession, has continued to support its fishing fleet through subsidies and other market-distorting means. China's annual fisheries harvest is nearly double that of other top producers in terms of marine capture. At the same time, reports continue to emerge about Chinese-flagged fishing vessels engaging in illegal, unreported, and unregulated (IUU) fishing in distant waters, including in areas under the jurisdiction of other WTO members. While China has made some progress in reducing subsidies to domestic fisheries, it continues to shift its overcapacity to international fisheries by providing a much higher rate of subsidy support to Chinese distant water fishery enterprises.

For several years, the United States has been raising its long-standing concerns over China's fisheries subsidies programs. In 2015, the United States submitted a written request for information pursuant to Article 25.8 of the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement). This submission addressed fisheries subsidies provided by China at central and sub-central levels of government. The subsidies at issue were set forth in nearly 40 measures and included a wide range of subsidies, including fishing vessel acquisition and renovation grants, grants for new fishing equipment, subsidies for insurance, subsidized loans for processing facilities, fuel subsidies, and the preferential provision of water, electricity, and land. When China did not respond to this request, the United States was

compelled to submit an Article 25.10 counter notification covering these same measures. More recent subsidy notifications by China have been more fulsome, but still incomplete.

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

### **Excess Capacity**

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

In manufacturing industries such as steel and aluminum, China's economic planners have contributed to massive excess capacity in China through various government support measures. For steel, the resulting over-production has distorted global markets, harming U.S. manufacturers and workers in both the U.S. market and third country markets, where U.S. exports compete with exports from China. While China has publicly acknowledged excess capacity in these industries, among others, it has yet to take meaningful steps to address the root causes of this problem in a sustainable way.

From 2000 to 2020, China accounted for 69 percent of global steelmaking capacity growth, an increase well in excess of the increase in global and Chinese demand over the same period. Currently, China's capacity represents about one-half of global capacity and more than twice the combined steelmaking capacity of the EU, Japan, the United States, and Brazil.

At the same time, China's steel production is continually reaching new highs, eclipsing demand. In 2020, China's steel production climbed above one billion metric tons for the first time, reaching 1,065 million metric tons, a seven percent increase from 2019, despite a significant contraction in global steel demand caused by the COVID-19 pandemic. This sustained ballooning of steel production, combined with weakening economic growth and a slowdown in the Chinese construction sector, threatens to flood the global market with excess steel supply at a time when the steel sector outside of China is still recovering from the severe demand shock brought on by the COVID-19 pandemic. Indeed, in 2020, China exported more steel than the world's second and third largest steel producers, India and Japan, combined. Today, China remains by far the world's largest exporter of steel.

Similarly, primary aluminum production capacity in China increased by more than 1,500 percent between 2000 and 2020, with China accounting for more than 80 percent of global capacity growth during that period. Much of this capacity addition has been built with government support, and many of the capacity additions have taken place during periods of decline in global aluminum prices. China's primary aluminum capacity now accounts for more than 57 percent of global capacity and is more than double the capacity of the next ten aluminum-producing countries combined. As in the steel sector, China's aluminum production has also ballooned in recent years, as China's aluminum production has continued to increase despite global demand shocks. China's capacity and production continue to contribute to major imbalances and price distortions in global markets, harming U.S. aluminum producers and workers.

Excess capacity in China hurts various U.S. industries and workers not only through direct exports from China to the United States, but also through its impact on global prices and supply, which makes it difficult

for competitive manufacturers throughout the world to remain viable. Indeed, domestic industries in many of China's trading partners continue to petition their governments to impose trade measures to respond to the trade-distortive effects of China's excess capacity. In addition, the United States has acted under Section 232 of the Trade Expansion Act of 1962 to increase duties or impose import quotas on steel and aluminum products after finding that excessive imports are a threat to U.S. national security.

## **ANTICOMPETITIVE PRACTICES**

In March 2018, as part of a major government reorganization, China announced the creation of the State Administration for Market Regulation (SAMR), a new agency that incorporated the former anti-monopoly enforcement authorities from the National Development and Reform Commission (NDRC), the Ministry of Commerce (MOFCOM) and the State Administration of Industry and Commerce (SAIC) into one of its bureaus. It had been hoped that centralized anti-monopoly enforcement would lead to policy adjustments that address the serious concerns raised by the United States and other WTO Members in this area, but to date it does not appear to have led to significant policy adjustments.

In October 2021, the National People's Congress Standing Committee issued draft revisions to the Anti-Monopoly Law for public comment. The United States will monitor developments relating to these draft revisions closely to determine whether the concerns that have persisted are being addressed.

In November 2021, China elevated the status of SAMR's anti-monopoly bureau, by designating a vice minister as its official-in-charge and re-naming it the National Anti-monopoly Bureau. It is not yet clear how this elevated status will impact anti-monopoly policy enforcement in China.

As previously reported, China's implementation of the Anti-monopoly Law has generated various concerns. A key concern is the extent to which the Anti-monopoly Law is applied to state-owned enterprises. While Chinese regulatory authorities have clarified that the Anti-monopoly Law does apply to state-owned enterprises, to date they have brought enforcement actions primarily against provincial government-level state-owned enterprises, rather than central government-level state-owned enterprises under the supervision of SASAC. In addition, provisions in the Anti-monopoly Law protect the lawful operations of state-owned enterprises and government monopolies in industries deemed nationally important. Many U.S. companies have cited selective enforcement of the Anti-monopoly Law against foreign companies seeking to do business in China as a major concern, and they have highlighted the limited enforcement of this law against state-owned enterprises.

Another concern expressed by U.S. industry is that remedies imposed on U.S. and other foreign-owned companies in merger cases do not always appear to be aimed at restoring competition. Instead, these remedies seem to be designed to further China's industrial policy goals.

Still another concern relates to the procedural fairness of Anti-monopoly Law investigations of foreign companies. U.S. industry has expressed concern about insufficient predictability, fairness, and transparency in Anti-monopoly Law investigative processes. For example, U.S. industry reports that, through the threat of steep fines and other punitive actions, China's regulatory authorities have pressured foreign companies to "cooperate" in the face of unspecified allegations and have discouraged or prevented foreign companies from bringing counsel to meetings. In addition, U.S. companies continue to report that the Chinese regulatory authorities sometimes make "informal" suggestions regarding appropriate company behavior, including how a company is to behave outside China, strongly suggesting that a failure to comply may result in investigations and possible punishment. More recently, high-level policy statements suggest a greater reliance on Anti-monopoly Law enforcement where technology owned or controlled by foreign

companies allegedly implicates national security concerns or implicates technology being prioritized for indigenous innovation in China.

In 2021, a local intermediate court in China issued a decision finding that certain intellectual property developed by a foreign company was an “essential facility” and that the foreign company’s failure to license this intellectual property to particular Chinese companies, the plaintiffs in a series of related cases, constituted an abuse of dominance exposing the foreign company to civil liability and mandatory licensing requirements – notwithstanding the foreign company’s existing licenses to other Chinese companies. This legal decision, currently on appeal to China’s Supreme People’s Court, raises concerns that China’s regulatory authorities may target foreign patent holders for Anti-monopoly Law enforcement, especially in areas of technology being prioritized for indigenous innovation in China.

State-directed mergers of state-owned enterprises are also a concern. SAMR does not provide sufficient information about decisions made regarding these “administrative mergers,” so it is not clear how SAMR addresses them. It is possible for these transactions to provide the merged company with excessive market power that can be used anti-competitively in China and in markets around the world.

Given the state-led nature of China’s economy, the need for careful scrutiny of anti-competitive government restraints and regulation is high. The Anti-monopoly Law’s provisions on the abuse of administrative (i.e., government) power are potentially important instruments for reducing the government’s interference in markets and for promoting the establishment and maintenance of increasingly competitive markets in China. The State Council’s adoption of the Opinions on Establishing a Fair Competition Review System in 2016 reflects a useful widening of oversight by China’s anti-monopoly enforcement agencies over undue government restraints on competition and anti-competitive regulation of competition. However, implementing measures contain a broad list of exemptions, including for national economic security, cultural security, national defense construction, poverty alleviation, disaster relief, and general “public interest” considerations. It also remains unclear whether the Fair Competition Review System established by the Opinions on Establishing a Fair Competition Review System is achieving its stated goals in view of the strength of the state in China’s economy.

## **STATE-OWNED ENTERPRISES**

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

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

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

of many important industrial sectors. The Chinese Communist Party also ensured itself a decisive role in state-owned and state-invested enterprises' major business decisions, personnel changes, project arrangements, and movement of funds. The fundamental premise of these measures is to enable the government and the Party to intervene in the business strategies, management, and investments of these enterprises in order to ensure that they play a dominant role in the national economy in line with the overall objective of developing China's "socialist market economy" and China's industrial plans. Over the past few years, Party leadership in state-owned enterprises has been strengthened through practices such as appointing a person as both the chairman of the board and the Party secretary for a state-owned enterprise.

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

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

However, later statements by China's President made clear that China continues to view the rule of law very differently from the United States and other democratic market economies. In February 2019, in an article in a Chinese Communist Party journal, he called for the strengthening of the Party's "leadership over the rule of law," and he vowed that China "must never copy the models or practices of other countries" and "we must never follow the path of Western 'constitutionalism,' 'separation of powers,' or 'judicial independence.'"

With regard to the reform of China's state-owned enterprises, one example of China's efforts included an announcement that China would classify these enterprises into commercial, strategic, or public interest categories and require commercial state-owned and state-invested enterprises to garner reasonable returns on capital. However, this plan also allowed for divergence from commercially driven results to meet broadly construed national security interests, including energy, resource, and cyber and information security interests. Similarly, in recent years, China has pursued reforms through efforts to realize "mixed ownership." These efforts included pressuring private companies to invest in, or merge with, state-owned and state-invested enterprises as a way to inject innovative practices into and create new opportunities for inefficient state-owned and state-invested enterprises.

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

Overall, while China's efforts at times have appeared to signal a high-level determination to accelerate needed economic reforms, those reforms have not materialized. Indeed, the Chinese state's role in the economy has increased rather than decreased. It also seems clear that China's past policy initiatives were not designed to reduce the presence of state-owned and state-invested enterprises in China's economy or to force them to compete on the same terms as private commercial operators. Rather, the reform objectives were to consolidate and to strengthen state-owned and state-invested enterprises and to place them on a

more competitive footing, both in China and globally, through the continued provision of preferential access to capital, goods, and services and the use of other policies and practices designed to give them artificial advantages over their private competitors.

This unfair situation is made worse for foreign companies, as China's state-owned and state-invested enterprises and China's private companies also benefit from a wide array of other state intervention and support designed to promote the development of domestic industries. These interventions and support are deployed in concert with other policies and practices that restrict, take advantage of, discriminate against, or otherwise create disadvantages for foreign companies and their technologies, products, and services.

## **LABOR**

The Chinese government does not adequately enforce existing prohibitions on forced labor. China has been the subject of international attention for its forced labor practices, especially in the Xinjiang Uyghur Autonomous Region (Xinjiang), where China has arbitrarily detained more than one million Uyghurs and other mostly Muslim minorities. Victims, news media, and think tanks report that factories, including factories producing cotton and tomato products, frequently engage in coercive recruitment, limit workers' freedom of movement and communication, and subject workers to constant surveillance, retribution for religious beliefs, exclusion from community and social life, and isolation. It is currently estimated that hundreds of thousands of Uyghurs, ethnic Kazakhs, and other Muslim minorities are being subjected to forced labor in China following detention. Based on the U.S. Government's independent analysis of these sources, the U.S. Government has taken several actions to address forced labor and other human rights abuses in Xinjiang.

U.S. Customs and Border Protection issued several withhold release orders (WROs) pursuant to section 307 of the Tariff Act of 1930 based on information that reasonably indicates the use of detainee or prison labor and situations of forced labor in Xinjiang, including a region-wide WRO on cotton and tomato products from Xinjiang, on January 13, 2021. The scope of this WRO includes cotton and tomatoes and downstream products that incorporate these commodities as inputs.

On July 13, 2021, the United States issued an updated Xinjiang Supply Chain Business Advisory for U.S. businesses whose supply chains run through Xinjiang, China. The advisory calls urgent attention to U.S. businesses' supply chain risks and identifies serious investing and sourcing considerations for businesses and individuals with exposure to entities engaged in forced labor and other human rights abuses linked to Xinjiang. The advisory also describes U.S. government actions taken to date to counter the use of forced labor in Xinjiang and to prohibit the importation of goods produced in whole or in part with forced labor or convict labor.

On December 23, 2021, President Biden signed into law the Uyghur Forced Labor Prevention Act, which, among other things, establishes a rebuttable presumption that the importation of goods from Xinjiang is prohibited under section 307 of the Tariff Act of 1930.

## **ENVIRONMENT**

### **Import Ban on Scrap Materials**

Currently, China restricts almost all imports of unprocessed scrap materials. China only allows imports of certain processed scrap materials, including "recycled raw materials" such as copper, aluminum and brass that meet purity standards, pelletized scrap plastic, and pulped scrap paper.

Since 2017, China has issued numerous measures that limit or ban imports of most scrap and recovered materials, such as certain types of plastic, paper, and metals. China has also employed import licensing and inspection measures to restrict imports of scrap materials, contrary to international standards and practices. Notably, China does not universally apply similar restrictions to domestic processors of domestically sourced scrap and recovered materials.

In 2020, China amended the Law on the Prevention and Control of Environmental Pollution by Solid Waste. This amended law is designed to “basically realize zero imports of solid waste.”

U.S. exports to China of the scrap and recovered materials covered by China’s restrictive measures totaled \$479 million in 2016, the year before China started to pursue its more restrictive policies. As of March 2022, U.S. exports of these materials to China are negligible.

In 2021, alongside other WTO Members, the United States continued to raise serious concerns with China. In WTO committee meetings throughout the year, the United States and other WTO Members urged China to halt the implementation of its regulatory regime for scrap and recovered materials and to consider the adoption of policies in line with international standards and practice.

In addition to impacting the global market for scrap and recovered materials, the tightened restrictions have raised the costs of recycling in the United States, leading some communities to end recycling programs. While markets for U.S. scrap and recovered materials have shifted, taking up some of the lost exports to China, significant amounts of U.S. scrap materials have not found new buyers, leading to increased landfilling and incineration and increased demand for virgin materials globally.

### **Import Ban on Remanufactured Products**

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

### **OTHER BARRIERS**

A number of other non-tariff measures can adversely affect the ability of U.S. industry to access or invest in China’s market. The process for issuing new regulatory measures can be opaque and unpredictable and implemented without adequate notice. Other key areas of concern include laws governing land use in China, commercial dispute resolution and the treatment of non-governmental organizations. Corruption among Chinese government officials, enabled in part by China’s incomplete adoption of the rule of law, is also a key area of concern.

### **Export Restraints**

China continues to deploy a combination of export restraints, including export quotas, export licensing, minimum export prices, export duties and other restrictions, on a number of raw material inputs where it holds the leverage of being among the world’s leading producers. Through these export restraints, it appears that China is able to provide substantial economic advantages to a wide range of downstream producers in

China at the expense of foreign downstream producers, while creating pressure on foreign downstream producers to move their operations, technologies and jobs to China.

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

The United States remains deeply concerned that it was forced to bring multiple cases to address the same obvious WTO compliance issues. A responsible WTO Member would have withdrawn its highly trade-distortive export restraint policies after the first definitive WTO litigation.

A new concern involves China's potential regulation of rare earth exports under its export controls regime. In this regard, the Ministry of Industry and Information Technology issued the draft Regulations on the Administration of Rare Earths for public comment in January 2021, and one of the provisions in the draft measure provides that rare earth exporters need to abide by laws and regulations in the area of export controls.

### **Value-Added Tax Rebates and Related Policies**

As in prior years, in 2021, the Chinese Government attempted to manage the export of many primary, intermediate and downstream products by raising or lowering the value-added tax (VAT) rebate available upon export. China sometimes reinforces its objectives by imposing or retracting export duties. These practices have caused tremendous disruption, uncertainty and unfairness in the global markets for some products, particularly downstream products where China is a leading world producer or exporter, such as products made by the steel, aluminum, and soda ash industries. These practices, together with other policies, such as excessive government subsidization, have also contributed to severe excess capacity in these same industries. An apparently positive development took place at the July 2014 S&ED meeting, when China committed to improve its VAT rebate system, including by actively studying international best practices, and to deepen communication with the United States on this matter, including regarding its impact on trade. Once more, however, this promise remains unfulfilled. As of March 2022, China has not made any movement toward the adoption of international best practices.

### **Trade Remedies**

As of December 2021, China had in place 126 antidumping (AD) measures, affecting imports from 17 countries or regions. China also had in place seven countervailing duty (CVD) measures, affecting imports from five countries or regions. In addition, China had two AD and two CVD investigations in progress. The greatest systemic shortcomings in China's AD and CVD practice continue to be in the areas of transparency and procedural fairness. Over the years, China has often utilized AD and CVD investigations as more of a retaliatory tool than as a mechanism to nullify the effects of dumping or unfair subsidization within its domestic market. In response, the United States has pressed China bilaterally, in WTO meetings

and through written comments submitted in connection with pending AD and CVD proceedings to adhere strictly to WTO rules in the conduct of its trade remedy investigations.

China's conduct of AD investigations continues to fall short of full commitment to the fundamental tenets of transparency and procedural fairness embodied in the WTO's Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, commonly known as the Antidumping Agreement. The United States and other WTO Members accordingly have expressed concerns about key lapses in transparency and procedural fairness in China's conduct of AD investigations. The principal areas of concern include: MOFCOM's inadequate disclosure of key documents placed on the record by domestic Chinese producers; insufficient disclosures of the essential facts underlying MOFCOM decisions, such as dumping margin calculations and evidence supporting injury and dumping conclusions; MOFCOM's failure to issue supplemental questionnaires in instances where MOFCOM identifies information deficiencies; the improper rejection of U.S. respondents' reported cost and sales data; the unjustified use of facts available, and MOFCOM's failure to adequately address critical arguments or evidence put forward by interested parties. These aspects of China's AD practice have been raised with MOFCOM in numerous proceedings.

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

Notably, over the years, the United States has expressed serious concerns about China's pursuit of AD and CVD remedies that appear to be retaliatory and intended to discourage the United States and other trading partners from the legitimate exercise of their rights under WTO AD and CVD rules and the trade remedy provisions of China's accession agreement. More recently, it appears that China has used arbitrary economic and trade measures, including AD and CVD investigations, as a form of economic coercion designed to achieve China's political goals. Obvious examples include MOFCOM's AD and CVD investigations of imports of Australian barley and Australian wine.

From 2019 through 2021, China initiated a total of 23 trade remedy investigations, including 18 AD investigations and five CVD investigations. Almost one-half of these investigations targeted products imported from the United States. In addition, in these most recent investigations of U.S. imports, China has determined — without legal or factual support — that costs and prices in certain U.S. markets are distorted, and therefore unusable, because of so-called "non-market situations." For example, in four final AD determinations on imports of n-propanol, polyphenylene sulfide, ethylene propylene diene monomer, and polyvinyl chloride from the United States in 2020 and 2021, China found a "non-market situation" in certain energy sectors in the United States. However, these findings were made without defining the term "non-market situation" or identifying any legal basis in China's law to make these findings. Separately, in the final CVD determination on imports of n-propanol from the United States, China also found that alleged subsidies to the U.S. oil and gas sector automatically passed through to petrochemical products without providing the analysis required under Article 10.1.6 of the Subsidies Agreement.

## **Pharmaceuticals**

For several years, the United States has pressed China on a range of pharmaceuticals issues. These issues have related to matters such as overly restrictive patent application examination practices, regulatory approvals that are delayed or linked to extraneous criteria, weak protections against the unfair commercial

use and unauthorized disclosure of regulatory data, and the need for an efficient mechanism to resolve patent infringement disputes.

Five years ago, at the December 2014 JCCT meeting, China committed to significantly reduce time-to-market for innovative pharmaceutical products through streamlined processes and additional funding and personnel. Nevertheless, time-to-market for innovative pharmaceutical products in China remains a significant concern.

In April 2017, in response to sustained U.S. engagement, China issued amended patent examination guidelines that required patent examiners to consider supplemental test data submitted during the patent examination process. However, as of March 2022, it appears that patent examiners in China have been either unduly restrictive or inconsistent in implementing the amended patent examination guidelines, resulting in rejections of supplemental data and denials of patents or invalidations of existing patents on medicines even when counterpart patents have been granted in other countries.

China's Food and Drug Administration (CFDA) also issued several draft notices in 2017 setting out a conceptual framework to protect against the unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. In addition, this proposed framework sought to promote the efficient resolution of patent disputes between right holders and the producers of generic pharmaceuticals. However, in 2018, CFDA's successor agency, the National Medical Products Administration (NMPA), issued draft Drug Registration Regulations and implementing measures on drug trial data that would preclude or condition the duration of regulatory data protection on whether clinical trials and first marketing approval occur in China. Subsequently, in August 2019, China issued a revised Drug Administration Law, followed by revised Drug Registration Regulations in January 2020. Neither measure contained an effective mechanism for early resolution of potential patent disputes or any form of regulatory data protection.

Since 2018, volume-based procurement has presented a new market access complication for foreign suppliers of pharmaceuticals. In November 2018, a National Drug Centralized Procurement Pilot Scheme was launched. Then, in January 2019, the State Council issued a Pilot Plan for National Centralized Drug Procurement and Use, which significantly reduced drug prices in provinces across China. According to U.S. industry, the resulting average price reduction reported in 2019 was more than 50 percent, and generic substitution has led to lost market share for foreign-branded drugs.

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

In October 2020, China amended the Patent Law to provide for patent term extensions for unreasonable patent and marketing approval delays, and it also added a mechanism for the early resolution of potential patent disputes, known as patent linkage. Implementing measures for the patent linkage mechanism were issued in July 2021, as NMPA and China's National Intellectual Property Administration (CNIPA) jointly issued the Trial Implementation Measures for the Mechanism for Early Resolution of Drug Patent Disputes and the Supreme People's Court issued the Regulations on Several Issues Concerning the Application of Law in the Trial of Civil Patent Disputes Related to Drug Registration Application. Since then, the United

States has been closely monitoring China's progress in implementing its commitments, with regard to both patent term extensions for unreasonable patent and marketing approval delays and the patent linkage mechanism.

## **Medical Devices**

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

In recent years, the United States has continued to press China's regulatory authorities to develop sound payment systems that adequately support research and development. The United States has also urged them not to require foreign companies to transfer their manufacturing activities to China in order to receive preferential benefits.

In 2019, China's State Council launched a volume-based procurement approach for medical devices in a few provinces and municipalities in an attempt to cut healthcare costs. China's volume-based procurement approach adopts the hospital procurement model that China initially imposed on the pharmaceuticals sector, and it has since also been deployed at the national level. Volume-based procurement has yielded price cuts of 55 to 65 percent at the provincial level for several categories of medical devices, and in more limited use at the national level it has yielded price cuts of over 80 percent. According to U.S. industry, if the provincial and local authorities continue to pursue volume-based procurement without significant changes, it will have the effect of creating a low-cost, low-quality commodity market of "one size" fits all medical devices that could lead to low-quality monopolies, to the disadvantage of innovative medical device companies, many of which are foreign companies. U.S. industry has also expressed concerns about China's new national tendering process for stents, which may serve as a potential pilot for broader adoption. It views the national tendering process being used for stents as reflecting a continued prioritization of cutting costs without sufficient consideration of quality or clinical efficacy.

Meanwhile, the Made in China 2025 industrial plan announced by the State Council in 2015 seeks to elevate the competitiveness of China's domestic medical device manufacturing capacity through a series of support policies, including targeted funds and procurement policies, with the goal of significantly increasing the market share of domestically owned and domestically manufactured medical devices by 2025. At the same time, certain provincial government industrial plans impose controls on imported medical devices or limit certain procurements to only domestically manufactured medical devices, and some provincial governments directly subsidize the purchase of domestically manufactured medical devices. In addition, some provincial governments have issued guidelines urging medical institutions to prioritize the procurement of local medical equipment over imported equipment. In at least one province, the guidelines suggest that only imported medical devices for which there is not a domestic replacement will be eligible for procurement.

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

## **Corporate Social Credit System**

Since 2014, China has been working to implement a national "social credit" system for both individuals and companies. The implementation of this system is at a more advanced stage for companies versus individuals, as "unified social credit codes" are assigned to every domestic and foreign company in China.

These 18-digit codes will provide a way for the Chinese government to track a company's record of administrative and regulatory compliance and generate public credit information. Under the corporate social credit system, government records and market-generated corporate compliance data are collected on every legal entity in China. The collected information contains regulatory and administrative records contributed by at least 44 state agencies and their branch offices across every province in China. Previously disparate information relating to a company's financial records, regulatory compliance, inspection results and other administrative enforcement activities is being consolidated under a company's unified social credit code. All of this data will be aggregated and shared between regulatory agencies via the National Credit Information Sharing Platform. Reportedly, approximately 75 percent of the records collected on companies is intended to be designated as "open to the public," while the remaining 25 percent that is intended to be withheld will include potentially sensitive information, such as approval records related to national development projects and details of any criminal cases.

In principle, nationwide data collection under the corporate social credit system provides mechanisms to penalize companies with poor corporate and legal compliance records by, among other things, subjecting them to public censure via what China calls "blacklists," while rewarding compliant companies with positive incentives via so-called "redlists." Negative ratings or placement on a government agency's censure list can lead to various restrictions on a company's business activities. A company could face increased inspections, reduced access to loans and tax incentives, restrictions on government procurement, reduced land-use rights, monetary fines or permit denials, among other possible penalties.

The corporate social credit system has been tied to larger policy objectives as well. For example, in May 2021, CNIPA released the Draft Several Measures on Improper Patent Applications, which purportedly seeks to strengthen China's intellectual property protection by linking penalties for improper patent applications with the social credit system.

Currently, there is no fully integrated national system for assigning comprehensive social credit scores for companies and the social credit system remains highly fragmented, as local governments experiment with their own pilot social credit schemes. Instead, certain central government agencies, such as CNIPA, the Cyberspace Administration of China (CAC) and the General Administration of Customs, and subnational government agencies maintain their own rating systems at the central and subnational levels of government, with each agency making its own decisions about the types of transgressions that warrant negative ratings or placing a company on a censure list.

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

In a further effort to provide a set of unified national standards, NDRC published draft guidelines in July 2021 defining data that is collectable data under China's corporate social credit system and potential punishments for companies and individuals with low credit scores. NDRC is also attempting to further

clarify the procedures necessary to restore credit, such as through the Draft (Trial) Measures for Administration of Credit Repair.

It appears that SAMR, which manages the National Credit Information Sharing Platform (NCISP), is closely involved with coordinating these disparate censuring systems for sectors in which SAMR has oversight, such as food and drug production, pharmaceuticals and medical devices, although NDRC remains the lead agency coordinating Chinese data standardization nationally. The goal is for the NCISP to serve as a single, national platform for sharing corporate social credit information throughout the Chinese government and to enable relevant agencies to pursue joint punishment for repeat or egregious offenders. In July 2019, SAMR issued the draft Measures for Administration of the List of Serious Violators of Trust and Law for public comment. In this draft measure, SAMR outlines a lengthy series of circumstances that would warrant a company being included in SAMR's centrally managed censure list, which the draft measure refers to as a list of companies that have committed "serious violations of law and trust." It appears that this censure list would include companies that have committed the types of violations that currently warrant inclusion on individual agencies' censure lists in addition to other types of violations of law or trust. The censure list would set forth the name of the company and the reasons for its inclusion and would be publicly available through the NCISP website. In the draft measure, SAMR also calls for agencies to share the underlying information that led to a company's being censured with each other and with industry associations in order to facilitate joint punishment of censured companies. In the final version of this measure, which SAMR issued in August 2021, it added specific violations related to illegal production or sale of drugs (including vaccines) and sale and production of unregistered medical devices, among other offenses. The updates in the final measure reflect how SAMR is evolving the corporate social credit system to adapt to present-day regulatory enforcement challenges.

Foreign companies are concerned that the corporate social credit system will be used by the Chinese government to pressure them to act in accordance with relevant Chinese industrial policies or otherwise to make investments or conduct their business operations in ways that run counter to market principles or their own business strategies. Foreign companies are also concerned that the Chinese government will use the corporate social credit system as another tool to ensure that they do not cross political redlines on sensitive matters like human rights. In addition, foreign companies are concerned about the opaque nature of the corporate social credit system. Currently, for example, a company sometimes only learns about its negative ratings when, for example, it requests a permit and receives a denial, even though the Measures for Administration of the List of Serious Violators of Trust and Law includes a requirement that companies be informed of their being censured in advance. Other times, a company learns for the first time that it has been censured when a Chinese government agency posts its name on the agency's website, even though the censuring of a company can cause severe harm to the company's reputation and adversely impact its efforts to attract customers, secure needed financing or make new investments. When Chinese government agencies begin to pursue joint punishment in the way that NDRC envisions, it will mean that an infraction in one regulatory context could have wider consequences across the company's entire business operations.

Another key concern regarding the corporate social credit system involves its links to individual social credit. For example, the executives of a company with poor corporate social credit standing may also find that their individual social credit ratings are impacted by their employer's corporate malfeasance. In addition, the Chinese government could also potentially use corporate social credit in the future to exert extraterritorial influence by threatening the social credit standing of foreign multinationals or citizens for behavior or speech outside of China.

To date, the corporate social credit system does not appear to explicitly disadvantage U.S. or other foreign companies or provide favorable treatment to domestic companies. Nevertheless, concerns remain regarding how this system will be applied in practice, and the need to comply with an increasingly complex and expansive social credit system may impose barriers to entry into China's market for foreign companies that

are unfamiliar with the legal and regulatory requirements associated with corporate social credit compliance and reporting.

### **Administrative Licensing**

U.S. companies continue to encounter significant problems with a variety of administrative licensing processes in China, including processes to secure product approvals, investment approvals, business expansion approvals, business license renewals, and even approvals for routine business activities. While there has been an overall reduction in license approval requirements and a focus on decentralizing licensing approval processes, U.S. companies continue to report that one of their top concerns involves China's problematic licensing approval processes.

### **Transparency**

One of the core principles reflected throughout China's WTO accession agreement is transparency. Unfortunately, after 20 years of WTO membership, China still has a poor record when it comes to adherence to its transparency obligations.

#### *Publication of Trade-Related Measures*

In its WTO accession agreement, China committed to adopt a single official journal for the publication of all trade-related laws, regulations and other measures. China adopted a single official journal, to be administered by MOFCOM, in 2006. However, it appears that China only publishes trade-related measures from some, but not all, central-government entities in this journal. It also appears that China does not publish any trade-related measures issued by sub-central governments.

At the central government level, moreover, China tends to take a narrow view of the types of trade-related measures that need to be published in the official journal. For those government entities whose trade-related measures are published in the official journal, China more commonly (but still not regularly) publishes trade-related administrative regulations and departmental rules in the journal, but it is less common for China to publish other measures such as opinions, circulars, orders, directives, and notices, which are known as "normative documents" in China's legal system. Normative documents are regulatory documents that do not fall into the category of administrative regulations or departmental rules, but still impose binding obligations on enterprises and individuals. In addition, China rarely publishes certain types of trade-related measures in the official journal, such as subsidy measures.

#### *Notice-and-Comment Procedures*

In its WTO accession agreement, China committed to provide a reasonable period for public comment before implementing new trade-related laws, regulations, and other measures. While little progress has been made in implementing this commitment at the sub-central government level, the National People's Congress instituted notice-and-comment procedures for draft laws in 2008, and shortly thereafter China indicated that it would also publish proposed trade- and economic-related administrative regulations and departmental rules for public comment. Subsequently, the National People's Congress began regularly publishing draft laws for public comment. China's State Council often (but not regularly) published draft administrative regulations for public comment, but many of China's ministries were not consistent in publishing draft departmental rules or normative documents for public comment.

At the May 2011 S&ED meeting, China committed to issue a measure implementing the requirement to publish all proposed trade- and economic-related administrative regulations and departmental rules on the

website of the State Council's Legislative Affairs Office (SCLAO) for a public comment period of not less than 30 days. In April 2012, the SCLAO issued two measures that appear to address this requirement.

Currently, China still needs to improve its practices relating to the publication of administrative regulations and departmental rules for public comment. China also needs to formalize its use of notice-and-comment procedures for normative documents.

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

### *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, such as departmental rules, normative documents and subcentral government measures. Even for trade-related laws and administrative regulations, 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.

Notably, however, even if China were to fully implement its existing measures requiring translations, they would not be sufficient to bring China into full WTO compliance in this area. China does not consistently publish translations of trade-related laws, administrative regulations and departmental rules in a timely manner (*i.e.*, before implementation), nor does it publish any translations of trade-related normative documents or trade-related measures issued by sub-central governments.

### *Inquiry Point*

In its WTO accession agreement, China committed to establish an inquiry point that would respond to requests for information relating to legal measures required to be published in its official journal. At times, however, China ignores this obligation.

In April 2020, for example, the United States submitted a request concerning five Chinese legal measures covering semiconductors and fisheries subsidy programs that did not appear to have been notified to the WTO and were not available online. Despite the obligation in its WTO accession agreement to respond in writing within 45 days, China did not meet this deadline. The United States made repeated follow-up requests, to no avail. Five months after the United States submitted its request to China's inquiry point, MOFCOM orally informed the U.S. Embassy in Beijing that it would not be providing any of the requested legal measures because two of the measures would soon be replaced and the other three measures, in China's view, were not relevant to China's WTO obligations. USTR promptly responded to MOFCOM in writing, countering its assertions and urging it to provide the requested documents. Since then, China has continued to refuse to provide a written response to the United States' request or to provide any of the requested legal measures.

# COLOMBIA

## TRADE AGREEMENTS

### The United States–Colombia Trade Promotion Agreement

The United States–Colombia Trade Promotion Agreement (the Agreement) entered into force on May 15, 2012. The United States and Colombia work closely to review the implementation and functioning of the Agreement and to address outstanding issues.

## IMPORT POLICIES

### Tariffs

U.S. consumer and industrial products are duty free under the Agreement as of January 1, 2021. Duties on some remaining U.S. agricultural goods will be phased out 12 years from entry into force (2023). Tariffs on the most sensitive products for Colombia will be phased out 15 years to 19 years from entry into force (2026 to 2030). U.S. agricultural exporters also currently benefit from duty-free access under tariff-rate quotas for some sensitive products. In accordance with its Agreement commitments, Colombia has ceased applying its price band system to U.S. agricultural products. Colombia applies benchmark or reference pricing to most apparel and footwear imports; although this does not affect customs duties for Agreement-qualifying imports from the United States, it could increase the customs value of these products and the corresponding duty costs for non-FTA goods.

### Non-Tariff Barriers

#### *Truck Scrappage*

Colombia continues to require buyers of new trucks to pay a registration fee equivalent to 15 percent of the value of the new truck. Buyers can avoid the fee by scrapping an old truck, which entitles them to a scrapping certificate that waives the fee. Colombia does not place a cap on the number of available certificates. U.S. industry has advocated that the program be temporary, capped at the current rate of 15 percent, or eliminated entirely. The United States will continue to monitor Colombia’s actions in this area.

#### *Biologic and Biosimilar Medicines Regulations*

In September 2014, Colombia issued a decree establishing a framework for marketing approval of biological and biosimilar medicines. It established three approval pathways. The abbreviated comparability pathway appears to be incompatible with international norms for biosimilars pathways. The United States will continue to monitor the implementation of the decree to assess its impact on fair competition in the Colombian market.

#### *Customs Barriers and Trade Facilitation*

On August 3, 2020, Colombia published Decree 1090 of 2020 implementing the United States–Colombia Trade Promotion Agreement *de minimis* value threshold provision. Article 5.7(g) of the Agreement generally exempts duties and taxes for express shipments valued at \$200 or less. However, on September 14, 2021, Colombia passed Law 2155, which restricts *de minimis* treatment to goods from countries with which Colombia has a free trade agreement that addresses a duty and tax *de minimis* and only if the goods are not for commercial purposes. Colombia defines “commercial purposes” as more than six units of the

same class. U.S. industry has raised concerns with the immediate implementation of these provisions and sought clarity on how Colombia will track the numerical unit limits. On September 23, 2021, Colombia's Director of Customs clarified that the National Directorate of Tax and Customs (DIAN) will identify shipments selectively for inspection at Colombia's ports of entry, and that Colombia will not require certificates of origin for shipments originating in the United States.

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

Colombia has significantly delayed implementation of customs reforms that would allow traders to submit electronic copies of invoices instead of physical copies. As of March 2022, these changes have yet to be implemented, though Colombia reported it is in the process of developing an integrated electronic customs system and expects to complete implementation within a few years. Slow customs clearance in Colombia hampers both imports and exports, and the ability to submit electronic copies of documents would help accelerate customs clearances. The TFA includes provisions on accepting customs documents in electronic format before shipments arrive at port.

### *Ethanol-related Measures*

Since the entry into force of the Agreement, U.S. ethanol exports to Colombia grew from zero to approximately \$121.0 million in 2020, but were approximately \$88.5 million in 2021. Since late 2020, ethanol exports to Colombia fell due to increases in U.S. ethanol prices, the devaluation of the Colombian peso against the U.S. dollar, and a countervailing duty imposed on U.S. ethanol exports in May 2020. Additionally, since March 2021, Colombia's Ministries of Mines and Energy, Agriculture and Rural Development, and Environment and Sustainable Development have imposed a series of emergency measures that decreased the mandated rate of blending ethanol into gasoline, from ten percent to four percent, with the stated aim of compensating for local ethanol supply shortages and higher prices. The United States raised concerns with Colombia's ethanol policies during the Agreement's Standing Committee on Agriculture in October 2021, and will continue to encourage Colombia to lift restrictions on imports, particularly as Colombia implements measures to address ethanol supply shortfalls and price inflation.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

#### *Maximum Sodium Limits*

Following multiple bilateral and multilateral engagements with trading partners, in November 2020, the Colombian Ministry of Health issued Resolution 2013, which established mandatory maximum sodium content limits for 59 processed food categories and an implementation timeline beginning November 2022. This measure also introduced a conformity certificate requirement and mandatory sodium content targets to support Colombia's public health objectives. U.S. stakeholders continue to express concerns about the measure, including mandatory reformulation of products in order to comply with certificate of conformity requirements, with much of the same information being provided through the sanitary registration process. The United States has raised concerns with the measure in meetings of the WTO Committee on Technical Barriers to Trade (WTO TBT Committee), and, in October 2021, in a meeting of the United States–Colombia Trade Promotion Agreement TBT Committee, with a view toward exploring best practices and ensuring that the measure achieves its intended goals in the least trade restrictive manner. Remaining concerns include uncertainty regarding enforcement mechanisms for imported products, how sanctions will

be applied for processed foods that do not comply with the mandatory sodium reduction levels, and outstanding questions on the use of certificates of conformity to prove compliance with Resolution 2013.

### *Front-of-Package Labeling*

Following a WTO notification and changes to an initial draft, on June 16, 2021, the Colombian Ministry of Health issued Decree 810, a nutrition labeling regulation that requires Front-of Package Labeling (FOPL) circular warning signs for products that exceed Colombia's specified thresholds for salt/sodium, added sugar, and saturated fats. A product conformity certificate is required under the regulation. The measure also includes provisions related to fortification, nutrient content claims, nutrient comparative claims, and nutrition facts label requirements. In April 2021, the United States and industry stakeholders commented on the WTO-notified measure. There was significant technical exchange on this proposed technical regulation between the United States and Colombia which resulted in acceptance of suppliers' declaration to meet certificate of conformity requirements. Notably, on June 18, 2021, Colombia published Law 2021, which references Colombia's new FOPL requirements. The United States raised implementation questions in the October 2021 U.S.-Colombia TPA TBT Committee. Stakeholders are currently evaluating this law to understand any new labeling requirements and Colombia's next steps for implementation.

### *Good Manufacturing Practices Certificates*

On February 16, 2021, the Colombian Ministry of Health issued Decree 162 to modify Decree 1686 of 2012, the regulatory framework for the production, labeling, import, and commercialization of alcoholic beverages in Colombia. This measure establishes Good Manufacturing Practices (GMP) certificates as a requirement for the registration of alcoholic beverages with Colombia's food and drug regulatory authority (INVIMA), beginning in February 2023. The United States has encouraged Colombia to continue to accept the U.S. Department of Treasury Alcohol and Tobacco Tax and Trade Bureau (TTB) certificate of free sale as an alternative. In August 2021, the Colombian Ministry of Health confirmed that a GMP certificate will not be required for U.S. alcoholic beverages, and that Colombia will accept TTB certificates of free sale with only minor edits to the language used currently.

Article 11 of Decree 3249 of 2006 requires submission of GMP certificates for the registration of both domestic and imported dietary supplements in Colombia. Decree 3249 establishes that GMP certificates for imported products must come from government authorities in the country of origin. Many U.S. dietary supplement registrations are on hold, however, after the Departments of Agriculture in several U.S. states stopped issuing GMP certificates at various times in late 2019 and 2020. INVIMA has stated that in the absence of an authority that could issue GMP certificates, it could audit the foreign manufacturing plant directly if the U.S. company pays for related travel costs. INVIMA has also indicated that it is planning to modify the regulation and establish a set of minimum content requirements for the certificates rather than require a certificate from a specific issuing authority. The United States will continue to monitor this issue.

### *Mobile Device Labeling Regulations*

On November 7, 2019, Colombia's Superintendency for Industry and Commerce (SIC) released External Circular 002, which established labeling requirements that producers, suppliers, or retailers of mobile devices must follow to indicate the cellular network (2G, 3G, 4G, *etc.*) that the mobile device supports. Online retailers were required to implement this measure by December 20, 2019, and physical retailers by May 20, 2020. Colombia did not notify the circular to the WTO under the WTO TBT Agreement and only provided a 12-calendar-day domestic comment period. The U.S. Government expressed concerns that the unusually large font size labeling requirements of the circular may be overly burdensome, does not take into account the size of cell phone packaging, and encouraged several less trade restrictive alternatives, including the cellular network capability to be publicized at point of sale, on the internet, via an e-label, or

on the regulatory requirements information in the “settings” of the cell phone. All of these alternatives have more exposure to the consumer than the packaging, which is often not seen until the product is already sold. The United States sent a request to Colombia’s WTO TBT inquiry point in February 2020, followed by a letter from the U.S. Department of State to Colombia’s SIC in March 2020, and the United States raised concerns at the May 2020 WTO TBT Committee and the October 2021 United States–Colombia Trade Promotion Agreement TBT Committee. The United States will continue to engage Colombia on this issue.

#### *Automobile Seat Belts and Safety Glass Regulations*

In March 2021, Colombia notified to the WTO two draft automobile safety regulations, one for seat belts and the other for window safety glass. U.S. industry commented on these measures to Colombia and is concerned that the draft measures would require U.S. manufacturers of automobile seat belts and window glass, which are manufactured to meet U.S. Federal Motor Vehicle Safety Standards (FMVSS), to also provide a third-party compliance report issued by either a Colombian National Organization for Accreditation recognized agency or an accredited certification body. According to industry, U.S. manufacturers already test their products for compliance with FMVSS, making third-party certification duplicative and adding unnecessary costs for U.S. automakers and suppliers. The draft measures also include unique labeling requirements for both safety glass and seat belts that differ from the labeling requirements under the United Nations Economic Commission for Europe (UNECE) 1958 Agreement and FMVSS. According to U.S. industry, such requirements would entail difficult and expensive design changes for both safety glass and seat belts without any evidence of additional safety benefits.

The U.S. Government has pressed the seat belts and window safety glass concerns with the Government of Colombia during the June 2021 WTO TBT Committee meeting and the October 2021 United States–Colombia Trade Promotion Agreement TBT Committee meeting.

#### *Automobile Tire Requirements*

In October 2021, Colombia notified its draft automobile tire safety regulations to the WTO. U.S. industry is concerned that the draft measure requires FMVSS-compliant tires to also comply with the Economic Commission for Europe (UNECE) 1958 Agreement regulations in relation to tires (UNECE 117). While some tires are manufactured to meet both regulations, many do not, and the draft regulation would restrict the import of many FMVSS-compliant tires. For tires, FMVSS provides the same level of protection as UNECE, and thus requiring compliance with both does not appear to further a legitimate regulatory objective. Further, according to U.S. industry, there are currently no accredited bodies or laboratories in Colombia capable of carrying out the technical tests on tires for the Colombian certificates of conformity. Finally, U.S. industry is also concerned the new regulation requires that FMVSS-compliant tires be produced in the United States for acceptance in Colombia, however, U.S. origin is not a determining factor in FMVSS compliance for tires.

#### *Glassware Testing Requirements*

In September 2021, Colombia’s Ministry of Health and Social Welfare published Resolution 1440 and notified the regulation to the WTO. The regulation is intended to reduce or eliminate the migration of lead and cadmium from ceramic and glass food contact materials into food by requiring that ceramic and glass products meet certain standards and use an annual third-party certification system to verify testing of such products. The U.S. Government expressed concern that the frequency of re-verification of testing and factory audits go beyond the international standard for product certification and are unnecessarily burdensome. The U.S. Government submitted comments responding to the WTO notification in June 2021

and raised concerns bilaterally at the October 2021 United States–Colombia Trade Promotion Agreement TBT Committee meeting.

## **Sanitary and Phytosanitary Barriers**

### *Lactic Acid Limits Requirement*

In August 2020, INVIMA informed the United States that all U.S. shipments of milk powder to Colombia must meet the physical and chemical properties requirements in Decree 616 of 2006, including minimum lactic content requirements. Decree 616 was notified to the WTO Committee on Sanitary and Phytosanitary (SPS) Measures in 2005 and again in 2012. The decree includes a lactic acid minimum, and non-compliance could result in shipments of U.S. milk powder being detained or rejected at the port. The basis and rationale for the measure is unclear. Codex standards for food additives only establish a maximum limit for lactic acid, and do not have a minimum limit. The United States has expressed concerns regarding the requirement and its potential trade impact, including at the 2020 and 2021 meetings of the United States–Colombia Trade Promotion Agreement Standing Committee on SPS Matters. In 2021, the United States exported \$82 million in total U.S. milk powder to Colombia, with average exports for 2019 to 2021 at \$82.4 million. As of March 2022, Colombia is conducting the Regulatory Impact Analysis required prior to drafting changes to Decree 616. The United States will continue to encourage Colombia to remove Decree 616’s minimum lactic acid content requirement and harmonize the decree’s requirements with international standards, or provide an assessment of risk to justify the proposed minimum standard.

## **GOVERNMENT PROCUREMENT**

The current interpretation of Colombia’s framework law for infrastructure projects (Law 80) permits unlimited liability judgments against companies and individual company officials, which is viewed as an unacceptable risk and deterrent for many potential investors.

Colombia is not a Party to the WTO Agreement on Government Procurement, but it has been an observer to the WTO Committee on Government Procurement since February 1996. However, the United States–Colombia Trade Promotion Agreement contains disciplines on government procurement.

## **INTELLECTUAL PROPERTY PROTECTION**

Colombia remained on the Watch List in the [2021 Special 301 Report](#). Colombia has not yet implemented Internet service provider (ISP) liability limitations and notice and takedown procedures, and has not yet acceded to the 1991 Act of the International Convention for the Protection of New Varieties of Plants. During 2021, Colombia engaged with the United States on these outstanding United States–Colombia Trade Promotion Agreement commitments, particularly with regard to the implementation of ISP liability limitations as well as notice and takedown procedures.

With respect to Article 72 of Colombia’s National Development Plan, Colombia issued Decree 433 in March 2018, as amended by Decree 710 of April 2018, to clarify that Colombia would not condition regulatory approvals on factors other than the safety and efficacy of the underlying compound. Due to an action challenging these decrees, the Council of State provisionally suspended them in September 2019. Colombia is still considering how it will resolve this issue. Colombia continues to face a large number of pirated and counterfeit goods crossing the border or sold at markets, on the street, and at other distribution hubs around the country. High levels of digital piracy persist year after year, and Colombia has not curtailed the number of free-to-air devices, community antennas, and unlicensed Internet Protocol Television (IPTV) services that permit the retransmission of otherwise-licensed content to a large number of non-subscribers.

## **SERVICES BARRIERS**

### **Audiovisual Services**

Under the Agreement, Colombia committed to reduce its domestic content requirement from 50 percent to 30 percent for free-to-air national television programming broadcast during the hours of 10:00 to 24:00 on Saturdays, Sundays, and holidays. In 2013, Colombia enacted legislation to implement this obligation. However, in 2013, Colombia's Constitutional Court invalidated the legislation on procedural grounds. As of March 2021, Colombia has not yet complied with its commitment to implement this obligation in Colombian domestic law and regulation.

### **Distribution Services**

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

## **LABOR**

The United States and Colombia continue to engage in consultations through their contact points, under Article 17.5.5 of the United States–Colombia Trade Promotion Agreement. This engagement includes discussing Colombia's progress on implementing specific recommendations contained in a U.S. Department of Labor (DOL) report. DOL's report, published in 2017, raised significant concerns regarding labor law enforcement throughout Colombia, especially with respect to the right to freedom of association, the right to organize and bargain collectively, violence against unionists, and impunity for the perpetrators of the violence.

# COSTA RICA

## TRADE AGREEMENTS

### **Dominican Republic–Central America–United States Free Trade Agreement**

The Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006; for the Dominican Republic in 2007; and for Costa Rica in 2009. The United States and the other CAFTA–DR countries meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

## IMPORT POLICIES

### **Tariffs and Taxes**

#### *Tariffs*

As a member of the Central American Common Market, Costa Rica applies a harmonized external tariff on most items at a maximum of 15 percent, with some exceptions. However, under the CAFTA–DR, as of January 1, 2015, 100 percent of U.S. originating consumer and industrial goods enter Costa Rica duty free.

In addition, Costa Rica has eliminated its tariffs on substantially all U.S. agricultural products under the CAFTA–DR. Costa Rica eliminated remaining tariffs on chicken leg quarters on January 1, 2022, and is scheduled to eliminate remaining tariffs on certain rice and dairy products by 2025. For certain agricultural products (rice and dairy), tariff-rate quotas (TRQs) permit duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Costa Rica’s CAFTA–DR commitments provide for liberalizing trade in fresh potatoes and onions through continual expansion of a TRQ, rather than by the reduction of the out-of-quota tariff. Costa Rica is required under the CAFTA–DR to make TRQs available on January 1 of each year. Costa Rica monitors its TRQs through an import licensing system, which the United States is carefully tracking to ensure the timely issuance of these permits.

#### *Taxes*

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

### **Non-Tariff Barriers**

#### *Customs Barriers and Trade Facilitation*

Costa Rica’s Border Integration Program seeks to enhance competitiveness by modernizing Costa Rica’s land border crossings’ infrastructure, equipment, and systems to coordinate efficiently the control activities

performed by border agencies. Construction on the Paso Canoas and Sabalito border crossings is expected to start in 2022. The Foreign Trade Single Window, and the Single Investment Window, are included in the Border Integration Program, facilitating trade and digitalizing customs procedures. The United States continues to encourage Costa Rica to expand its use of electronic processing to further facilitate trade.

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

### *Cosmetics and Dietary Supplements*

Between January 22, 2016 and January 8, 2020, the Costa Rican Ministry of Health (MOH) issued three decrees (Executive Decree No. 39471-S, Executive Decree No. 40629-S, and Executive Decree No. 42263-S) simplifying procedures for registration of cosmetic products and low-risk foods for their commercialization in Costa Rica. As of March 2021, the simplified procedure applies to 58 products in 31 categories. The Chamber of Cosmetics and Cleaning for Central America and the Caribbean noted that the new simplified procedure has reduced the wait for market approval for most products from 60 days to 5 days. On November 17, 2021, the Costa Rican President signed Executive Decree 43291-S, which reduces the registration procedures for processed foods and low-risk cosmetics from 25 days to one day.

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

### *Product Registration*

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

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

#### *Telecommunications*

Costa Rica's telecommunications regulator (SUTEL) imposes a requirement that can result in the frequent retesting and recertification of telecommunications hardware or software following some categories of updates. Some stakeholders have raised concerns that Costa Rica does not follow international procedures for testing and certification of mobile handsets and other information and communications technology (ICT) products. Stakeholders have expressed concern that these country-specific requirements can lead to redundant testing, particularly when products are required to undergo testing in both exporting and importing countries.

## **Sanitary and Phytosanitary Barriers**

The Costa Rican Ministry of Agriculture occasionally delays the issuance of phytosanitary import permits for sensitive products, such as rice and onions, during specific periods, such as harvest time (usually in November to December for rice, and from April to June for onions). In addition, persistent issues remain regarding at-border processes and market access for U.S. fresh potatoes, both table stock and chipping potatoes. The table stock market is currently closed pending completion of a pest risk assessment. In 2021, the United States exported approximately \$1.3 million of chipping potatoes to Costa Rica; however, industry estimates that exports could increase to over \$5 million if phytosanitary issues are addressed and the table stock market is reopened. The U.S. Department of Agriculture's Animal and Plant Health Inspection Service and the Costa Rican Ministry of Agriculture conduct frequent bilateral meetings to discuss regulatory procedures for the import and export of new products, promoting market access for new U.S. products.

U.S. exporters continue to complain about the high cost of quarantine fumigations at Costa Rican ports of entry. Quarantine fumigations are a remediation measure that may be needed when quarantine pests are intercepted in shipments. On November 25, 2019, the United States reached an agreement with Costa Rica to eliminate re-inspection of cargo after it is fumigated. The new protocol was given final approval on June 6, 2020 and has reduced the time to one or two days that exporters incur costs for cargo fumigated at port. The U.S. Government continues to meet with the Plant Health and Customs Department to identify ways in which the cost of fumigation may be reduced.

Costa Rica has a 2016 regulation requiring extensive questionnaires for animal product facilities that export products to Costa Rica. Most U.S. exporting facilities find this process overly burdensome and have complained that the questionnaire requests irrelevant and business proprietary information. While U.S. beef, pork, and poultry facilities are exempt from the questionnaire requirement, dairy, seafood, lamb, and egg product facilities that began exporting to Costa Rica after 2016 are subject to the regulation, and they face delays of several months or longer when introducing new products to the market.

## **GOVERNMENT PROCUREMENT**

U.S. companies have indicated that the private sector is sometimes disadvantaged in public bids when competing against Costa Rican state-owned enterprises in both the ICT and insurance sectors. Article 2 of the Public Contracting Law allows for the non-competitive awarding of contracts to public entities if officials of the awarding entity certify the award to be an efficient use of public funds. As part of the Organization for Economic Cooperation and Development (OECD) accession process, Costa Rica has greatly reduced the total value of contracts awarded under Article 2 exceptions, even as the number of contracts awarded with exceptions continues to increase. The Costa Rican software association, CAMTIC, reported that in 2017 there were 56 separate instances of Article 2 ICT purchases, valued at \$226 million, while in 2020 ICT purchases totaled \$7 million in 83 instances.

Private sector insurance companies and brokers have complained that Costa Rica preferentially contracts with the state-owned insurance company, Instituto Nacional de Seguros (INS). In 2017, however, the Social Security Administration contracted with a private insurance company. In 2021, that company still retains the contract. This may signal an eventual trend towards more competitive insurance contracting by government entities.

The United States will continue to monitor Costa Rica's government procurement practices for consistency with the CAFTA-DR disciplines on government procurement.

Costa Rica is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since June 2015. However, the CAFTA–DR contains disciplines on government procurement.

## **INTELLECTUAL PROPERTY PROTECTION**

Costa Rica was removed from the Watch List in the [2020 Special 301 Report](#) due to the concrete steps it took to improve its intellectual property (IP) regime, including to address unlicensed software use in the central government and to implement an online recordation system to improve border enforcement. While the United States recognizes this progress, the effectiveness of these positive developments remains to be demonstrated through enforcement and results on the ground. The IP Registry was supposed to issue its first report on government usage of unlicensed software in early 2021, but the report has still not been issued. The United States also continues to urge Costa Rica to bolster IP enforcement to curb online piracy, address cumbersome border measure processes to deter counterfeit and pirated goods, and effectively utilize *ex officio* authority for border enforcement against counterfeit and pirated goods. The United States continues to encourage Costa Rica to build on initial positive steps to protect and enforce IP, and to continue bilateral discussions of these issues.

## **SERVICES BARRIERS**

### **Insurance Services**

Private insurance companies continue to face challenges in light of the market power that the National Insurance Institute (INS) derives from its former monopoly position. Nevertheless, the competitive environment for those companies has gradually improved: the INS's percentage of the insurance market decreased from 85 percent in 2014 to 68.4 percent in July 2021. The number of companies providing insurance in the market has remained steady at 13 since 2015.

## **INVESTMENT BARRIERS**

Costa Rica's regulatory environment can pose significant barriers to investment in some sectors. One common problem, according to industry, is inconsistent action between institutions within the central government or between institutions in the central and municipal levels of government. The resulting inefficiency in regulatory decision-making is especially noticeable in infrastructure projects, which can languish for years between the award of a tender and the start of construction. However, advances undertaken as part of the OECD accession process in areas such as air transport, domestic passenger transport, and the financial sector, will provide better conditions for investment. Costa Rica became the 38th member of the OECD on May 25, 2021.

## **OTHER BARRIERS**

### **Bribery and Corruption**

The CAFTA–DR contains strong public sector anti-bribery commitments and anticorruption measures in government contracting, and U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of government entities.

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

“Cochinilla” bribery case arose in mid-2021, with allegations of a wide-ranging bribery scandal related to public infrastructure projects in Costa Rica.

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

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

# COTE D'IVOIRE

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

Cote d'Ivoire's average Most-Favored-Nation (MFN) applied tariff rate was 12.1 percent in 2020 (latest data available). Cote d'Ivoire's average MFN applied tariff rate was 15.8 percent for agricultural products and 11.5 percent for non-agricultural products in 2020 (latest data available). Cote d'Ivoire has bound 34 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 11.2 percent.

Consistent with the Economic Community of West African States (ECOWAS) common external tariff (CET), Cote d'Ivoire applies: (1) zero percent duty on essential social goods (*e.g.*, medicine); (2) 5 percent duty on essential commodities, raw materials, and capital goods; (3) 10 percent duty on intermediate goods; (4) 20 percent duty on consumer goods; and, (5) 35 percent duty on certain goods that the Ivorian Government elected to afford greater protection. The CET was slated to be fully harmonized by 2020, but in practice some ECOWAS Member States have maintained deviations from the CET beyond the January 1, 2020 deadline.

In 2021, the Ivorian Government applied tariffs of 9 percent on milk, infant milk, and baby food, down from 18 percent in the previous year. The Ivorian Government applies a tariff of CFA 1,000 (approximately \$1.75) per kilogram to imports of frozen meats.

#### *Taxes*

Imports from countries that are not members of the West African Economic and Monetary Union (WAEMU) are subject to an additional 2.5 percent tax on the cost, insurance, and freight (CIF) value of imports, which consists of the solidarity tax (1.0 percent), community levy (0.5 percent), and statistical charge (1.0 percent), all of which monies are used for financing WAEMU commissions and assisting landlocked WAEMU members Niger, Burkina Faso, and Mali. Cote d'Ivoire levies an additional 1.0 percent charge on the CIF value of imports, except those destined for re-export, transit, or donations for humanitarian purposes under international agreements.

The Ivorian Customs sets a fixed minimum CIF price for cement of \$98 per metric ton, on which a tax also is levied.

### Non-Tariff Barriers

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

### *Import Bans*

Cote d'Ivoire has prohibited wheat flour imports since 2008. In January 2020, Cote d'Ivoire banned the importation of sugar for five years.

### *Import Licensing*

Imports of cotton and products consisting of 100 percent cotton, such as the "Wax and Resin" textile cloth most often used in traditional African clothing, require an import license from the External Trade Promotion Office. Imports of petroleum products and their derivatives require an import license, without any quota limits. Imports of alcoholic beverages are also subject to import license requirements from the External Trade Promotion Office, with special labeling that states: "For Sale in Cote d'Ivoire." The importer must provide yearly statistics to the External Trade Promotion Office.

### *Import Restrictions*

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

### *Customs Procedures and Trade Facilitation*

All goods imported into Cote d'Ivoire must first be examined by a pre-shipment inspection company for compliance with relevant requirements. U.S. exporters find the process often increases the time and cost to export without providing assurance of a more streamlined clearance process at the border. Four European companies, BIVAC (affiliated with the French group Bureau Veritas), Swiss-based firms COTECNA and SGS, and British company INTERTEK, are contracted to carry out pre-shipment inspections of goods exported to Cote d'Ivoire with a value exceeding CFA 1 million (approximately \$1,750). A certificate of compliance from one of these firms is required to clear customs.

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

### *Minimum Import Prices*

The Ivorian Government imposes minimum import prices on cooking oil, cigarettes, sugar, used clothing, concentrated tomato paste, broken rice, matches, notebooks, tissues, polypropylene sacks, alcohol, and milk; it does so for some tariff lines under a WTO waiver that expired in 2001.

## **TECHNICAL BARRIERS TO TRADE**

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

## **GOVERNMENT PROCUREMENT**

The government publishes tender notices in the local press and sometimes publishes tenders in international magazines and newspapers. On occasion, there is a charge for the bidding documents. Cote d'Ivoire has a generally decentralized government procurement system, with most ministries undertaking their own procurements. The National Bureau of Technical and Development Studies, the government's technical

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

The Public Procurement Department is a centralized office of public tenders in the Ministry of Finance, to help ensure compliance with international bidding practices. Cote d'Ivoire's update to its public procurement code in 2019 introduced electronic procurement bidding, provisions on sustainable public procurement, and promotion of socially responsible vendors as a bidding qualification. While the public procurement process is open by law, in practice it is often opaque and government contracts are occasionally awarded outside of public tenders. Some foreign companies appear to secure contracts as a result of longstanding relationships with government officials or aided by partnerships with Ivoirian commercial entities that have close connections to the government. During negotiations on a tender, the Ivorian Government at times imposes local content requirements on foreign companies. In other instances, although there are specific regulations governing the use of sole source procurements, the government has awarded sole source bids without tenders, citing the high technical capacity of a firm or a declared emergency. Many firms continue to cite corruption as an obstacle to a transparent understanding of procurement decisions.

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

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

Cote d'Ivoire is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since July 2020.

## **INTELLECTUAL PROPERTY PROTECTION**

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

## **SERVICES BARRIERS**

Cote d'Ivoire distinguishes between providing legal advice and practicing law in court. In order to practice law in a courtroom, one must be accredited by the Ivoirian bar association. However, membership in that association requires Ivoirian nationality. Those solely providing legal advice are not subject to this restriction.

Cote d'Ivoire has restrictions on the registration of foreign nationals by the chartered accountants' association (which also requires Ivoirian nationality). The restrictions do not apply to foreign nationals

who have already been practicing in Cote d'Ivoire for several years under the license of an Ivoirian practitioner.

## **INVESTMENT BARRIERS**

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

The Ivoirian investment code provides tax incentives for investments larger than \$1 million, as well as land concessions for projects. Concessionary agreements that exempt investors from tax payments require the additional approval of the Ministry of Finance and Economy and the Ministry of Commerce and Industry. The clearance procedure for planned investments, if the investor seeks tax breaks, is time consuming and confusing. Even when companies have complied fully with the requirements, the Tax Office sometimes denies tax exemptions with little explanation, giving rise to accusations of favoritism. In August 2018, the government adopted a new investment code that prioritizes agriculture, agro-industry, health, and hospitality, and that links some incentives to productive and sustainable investments, and the promotion of local content – namely local job creation, subcontracting with local companies (especially small- and medium-sized enterprises), and the opening of share capital to local investors. However, the new code cancelled the provision of assistance to investors that suffer losses due to popular unrest.

Although the investment code provides import tariff exemptions for large investors and for imports of industrial equipment and machinery, relief from the tariffs is often delayed due to the large number of port and customs clearance procedures and delays in completing those procedures.

## **OTHER BARRIERS**

### **Bribery and Corruption**

Bribery and corruption remain a significant concern. Stakeholders report that bribes are sometimes solicited to speed up the slow bureaucratic process or to secure public tenders. The government established the High Authority of Good Governance (HABG) in 2013. The HABG is an independent administrative authority that is nominally under the Office of the President. It is responsible for executing the national plan to fight corruption and investigating allegations of corruption. In 2021, the HABG undertook an audit of Ivoirian parastatal companies in key sectors. Several parastatals' managers have been suspended from their positions while the HABG's investigations continue. Corruption, opaque business practices, and capacity constraints on the judiciary and law enforcement have resulted in poor enforcement of the law. This situation has been particularly acute with regard to the protection of private property rights, particularly when the subject of the judicial proceeding or law enforcement action is a foreigner, and the plaintiff is Ivoirian or a long-established foreign resident. These situations are further complicated by conflicting modern and traditional concepts of land tenure, the latter including communal ownership.

### **Export Policies**

Cote d'Ivoire's 2021-2025 National Development Plan prioritizes agro-industrial development. As a result, the government provides incentives and support funds to investors expanding agro-industrial processing of locally grown cashew, cocoa, and other commodities for export. The government also incentivizes domestic processing of agricultural commodities such as cocoa, rubber, palm oil, and coffee, by imposing a higher export tax on unprocessed commodities. The government prohibits the export of raw ivory, certain

tropical hardwood logs, and iron products. Exports of metallic ores, gems, and precious metals require prior authorization from both the Ministry of Mining and Geology and the Ministry of Economy and Finance.

# DOMINICAN REPUBLIC

## TRADE AGREEMENTS

### Dominican Republic–Central America–United States Free Trade Agreement

The Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006; for the Dominican Republic in 2007; and for Costa Rica in 2009. The United States and the other CAFTA–DR countries meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

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

Also, under the CAFTA–DR, the Dominican Republic has eliminated tariffs on nearly all agricultural goods and will eliminate tariffs on chicken leg quarters, 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 different agricultural products.

The Dominican Republic is required under the CAFTA–DR to make TRQs available on January 1 of each year. The Dominican Republic Ministry of Agriculture has made substantial improvements to its administration of TRQs, and in recent years has issued them in a timely manner.

#### *Taxes*

U.S. ethanol imported into the Dominican Republic is subject to an internal 10 percent *ad valorem* tax and an excise tax of approximately \$11 per liter, and these taxes disincentivize importation of U.S. ethanol. Imported ethanol is also subject to the internal Tax on Transfer of Industrial Goods and Services (ITBIS) at a rate of 18 percent. Locally produced ethanol is not subject to these internal taxes.

Cheese importers raised concerns about unequal treatment with regard to taxation; imported cheese is subject to the ITBIS of 18 percent, while locally produced cheese is not. This puts importers at a competitive disadvantage. The U.S. Government has raised this issue with the Dominican Republic, but no resolution has been achieved. In a meeting in August 2021, the Dominican Republic Government advised that the General Directorate of Internal Taxes (DGII) had discussed implementing the ITBIS on local cheese producers through a schedule that would gradually bring local producers up to full payment, but no implementation date was given. The U.S. Government will work with the DGII to seek a resolution of this issue.

## **Non-Tariff Barriers**

### *Import Licensing*

The Dominican Republic Ministry of Agriculture continues to administer import licenses as a means to manage trade in sensitive commodities such as rice, beans, dairy, sugar, poultry, beef, pork, onions, and garlic, and intermittently with respect to other products. In August 2004, a side letter was signed under the CAFTA–DR by the United States and the Dominican Republic affirming that the Dominican Republic would not grant or deny import licenses based on unjustified sanitary or phytosanitary concerns, domestic purchasing requirements, or discretionary criteria. However, industry experts reported in 2021 that the most pressing challenge to importing those products is the need to obtain an import license from the Ministry of Agriculture, and that the way in which the licensing process is handled can lead to inconsistent application of the law and uneven treatment. The United States has repeatedly raised this issue, and the Dominican Republic is working on a new system to issue import licenses for agricultural products, led by the Ministry of Agriculture. The United States will work with the Ministry of Agriculture to ensure that this new system responds to U.S. concerns.

The Dominican Republic maintains a ban on imports of all used vehicles more than five years old and took an exception under the CAFTA–DR to maintain that import ban. Used vehicles less than five years old are not subject to the same restrictions. However, since late 2011, importers of U.S.-made used vehicles less than five years old have reported that the Dominican customs authority frequently has challenged the eligibility of those vehicles for preferential tariff treatment under the Agreement, citing technical difficulties in demonstrating compliance with the rules of origin. The United States continues to engage with the Dominican Republic to address complaints received from importers of used cars of U.S. manufacture.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

#### *Regulation of Steel Rebar*

Multiple U.S. exporters of steel rebar used for construction have complained that a Dominican technical regulation (RTD 458) constitutes a barrier to trade. Although certified mills produce U.S. steel rebar, Dominican authorities have required imported U.S. rebar to be sampled and tested by third-party laboratories, while not required of domestic production. Because no suitable third-party laboratories are present in the Dominican Republic, samples have been sent back to the United States for testing. These conformity assessment procedures appear to present unnecessary obstacles to international trade, deviate from international standards, lack transparency in their application, and have unduly increased the cost and time required for commercialization of rebar in the Dominican Republic.

The United States has repeatedly engaged the Dominican Republic on this issue, raising it on the margins of the World Trade Organization (WTO) Committee on Technical Barriers to Trade. Extensive bilateral discussion during 2017 and 2018 yielded some progress, with the Dominican Republic reducing customs clearance time for U.S. steel rebar. While the Dominican Republic has yet to reform the regulations and practices to ensure that imported rebar is treated no less favorably than domestically manufactured rebar, Dominican authorities have worked with the U.S. steel industry to accept test results and certify rebar before export so that products may clear customs and enter commerce in the Dominican Republic without delay.

### *Traceability System for Alcoholic Beverages and Cigars*

On September 29, 2021, the DGII issued Regulation 07-21, in which the Dominican Government established the Fiscal Control and Traceability System for Alcoholic Beverages and Cigars (TRAFICO). The Dominican Republic notified the regulation to the WTO in May 2021. The traceability system aims to individually identify each product (local or imported) through a tax stamp, from its point of origin to its final destination. The United States continues to express concern for national treatment and requested a two-year delay of the measure. Industry's comments to Dominican Republic's WTO notification noted the following less trade restrictive alternatives, including control of bonded warehouses, stricter licensing controls, enhanced penalties in the production and sale of illicit alcohol, and increased consumer education about the negative impact illicit products have on health. The implementation of TRAFICO is a potential barrier to U.S. exports of alcoholic beverages to the Dominican Republic market. Given the production and packaging processes of the alcohol industry in the United States and the size of the Dominican Republic market, U.S. exporters report that it is not feasible to incorporate stamps into production lines exclusively for products destined for the Dominican Republic, and it would introduce significant additional costs and complexities in the logistics process. Such difficulties would include the need to unpack full containers, pallets, and boxes of products in order to directly stamp the products, which requires the use of bonded warehouses or logistics centers for these operations.

The United States communicated some questions and concerns about the draft regulation in comments submitted to the Dominican Republic's TBT Enquiry Point in July 2021. The Dominican Republic responded to the U.S. submission in October 2021, and the regulation was adopted without changes. The regulation gives importers until December 2022 to implement the traceability system.

### **Sanitary and Phytosanitary Barriers**

Since March 2018, delays in the process for obtaining sanitary registrations from the Dominican Republic for foods, medicines, and health products have resulted in higher operating costs and delays moving products to market, according to industry representatives. Since April 2018, the General Directorate of Medicines, Food, and Health Products (DIGEMAPS), which oversees the registration process, has been requesting declarations of product additives, which are not required under Dominican Republic health law. Improvements have been made in expediting new registrations and renewals through the implementation of a simplified procedure, including accepting a sworn statement on why confidential additives are not provided. However, the practice of requiring business confidential information, such as exact product formulas, continues to make registration difficult for many products. Importers reported in 2021 that the functioning of the sanitary registration process remains inconsistent. Importers explained that certain products have taken up to a year to be registered by DIGEMAPS, which often results in importers choosing not to import the product.

### **GOVERNMENT PROCUREMENT**

U.S. suppliers have complained that Dominican Republic Government procurement is not conducted in a transparent manner and that corruption is a problem. The United States has engaged with the Dominican Republic on this issue and transparency has increased over the last few years. In a memorandum of understanding signed by the United States and the Dominican Republic in October 2020, the Dominican Republic Government expressed its intent to prioritize passage of new legislation on public procurement and implement it in a manner that is timely, transparent, and consistent with international best practices. The President's office is currently reviewing this draft legislation on public procurement, which will subsequently be submitted to the National Congress. Separately, the Directorate of Public Procurement and U.S. technical experts have trained more than 350 government officials in preventing corruption in

public procurement. The United States will continue to monitor the Dominican Republic's procurement practices for consistency with the CAFTA–DR's disciplines on government procurement.

The Dominican Republic is neither a party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement. However, the CAFTA–DR contains provisions on government procurement.

## **INTELLECTUAL PROPERTY PROTECTION**

The Dominican Republic remained on the Watch List in the [2021 Special 301 Report](#). The Dominican Republic made some progress on intellectual property (IP) protection and enforcement, including on customs enforcement and enforcement against counterfeit goods by the Special Office of the Attorney General for Matters of Health, but concerns remain. The United States continues to urge the Dominican Republic to address long-standing IP issues, particularly against online and signal piracy, including the continued deprioritization of IP prosecutions and investigations by the Special Office of the Attorney General for High-Tech Crimes and the National Copyright Office. The United States also continues to urge the Dominican Republic to improve coordination among enforcement agencies and to ensure that such agencies are adequately funded and staffed.

## **LABOR**

A review of the Dominican Republic's progress on implementing specific recommendations from the United States to improve worker rights practices in the Dominican sugar sector has been ongoing since the issuance of a U.S. Department of Labor (DOL) report in 2013. The DOL report, published in response to a submission from the public under the CAFTA–DR, raised concerns regarding labor law enforcement in the sugar sector related to acceptable conditions of work, the minimum age for work and the worst forms of child labor, and forced labor. The report also noted concerns related to the right to freedom of association and the right to organize and bargain collectively for sugar-sector workers.

## **OTHER BARRIERS**

### **Bribery and Corruption**

The CAFTA–DR contains strong public sector anti-bribery commitments and anticorruption measures in government contracting.

Despite commitments by the Dominican Republic to strengthen transparency and combat government corruption and the improvements brought by the CAFTA-DR, corruption and poor implementation of existing laws are widely discussed as key investor grievances. Complaints include a lack of clear, standardized rules by which to compete; a lack of enforcement of existing rules; allegations of widespread corruption; requests for bribes, especially at the municipal level; delays in government payments; weak intellectual property rights enforcement; bureaucratic hurdles; slow and sometimes locally biased judicial and administrative processes; and, non-standard procedures in customs valuation and classification of imports. There are also reports of weak land tenure laws and government expropriations without due compensation. The public perceives administrative and judicial decision-making to be inconsistent, opaque, and overly time-consuming.

# ECUADOR

## TRADE AGREEMENTS

### The United States–Ecuador Trade and Investment Council Agreement

The United States and Ecuador signed a Trade and Investment Council Agreement (TIC) in 1990. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Ecuador.

On December 8, 2020, the United States and Ecuador signed a Protocol on Trade Rules and Transparency (the Protocol) in Quito, Ecuador. The new Protocol is an update to the TIC, and is an integral part of that Agreement. The Protocol contains provisions that establish high standards for increased trade facilitation, transparency in regulatory development, anticorruption policies, and cooperation and information sharing to benefit small and medium-sized enterprises. The Protocol establishes high-level trade rules that will improve opportunities for bilateral trade and investment in all sectors. The Protocol entered into force August 15, 2021. The United States will continue to work with Ecuador to monitor the full implementation of the Protocol.

## IMPORT POLICIES

Since May 2017, Ecuador has sought to roll back tariff and non-tariff barriers to improve its economic competitiveness. Ecuador has lowered tariffs on many products, particularly on intermediate goods and electronics.

### Tariffs and Taxes

#### Tariffs

Foreign Trade Committee (Comex) Resolution 009-2021, which took effect in October 2021, provides for permanent tariff reductions on 667 items; 590 products became duty free, while the rest are subject to reduced rates of between 5 percent and 25 percent. This new tariff reduction complements tariff reductions on 387 other items, which have occurred at different rates since October 2019. Sectors that benefit from the new reduction in tariffs include agriculture, industry, technology, plastics, manufacturing, and automotive. Ecuador still imposes a mixed tariff (composed of an *ad valorem* tariff and a specific tariff) on approximately 350 products, including textiles and shoes. In some cases, the mixed tariff appears to result in a 40 percent tariff rate, although Ecuador generally bound its tariffs at the World Trade Organization (WTO) at 30 percent.

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

When Ecuador joined the WTO in January 1996, it bound most of its tariff rates at or below 30 percent *ad valorem*; most products bound at higher rates are agricultural products covered by the Andean Price Band System (APBS). Ecuador agreed to phase out its participation in the APBS when it joined the WTO; however, to date, Ecuador has taken no steps to phase out use of the APBS. As a member of the Andean

Community of Nations (CAN), Ecuador grants and receives exemptions from tariffs (*i.e.*, reduced *ad valorem* tariffs and no application of the APBS) for products from the other CAN countries.

### *Agricultural Products*

Ecuador's continued use of the APBS affects many U.S. agricultural exports. U.S. exports such as wheat, barley, malt barley, and soybeans faced significantly higher total duties in 2019 than in previous years because of a variable levy or surcharge (on top of an *ad valorem* tariff) that increases as world prices decrease. As part of Comex Resolution 009-2021, 43 agricultural products received tariff reductions. Of those, tariffs on 17 products have been reduced to zero percent, while tariffs on the other products were reduced by 2 percentage points to 15 percentage points. The two principal U.S. exports benefitting from this tariff reduction are soybean meal and wheat. Previously, these products benefitted from a tariff exemption of zero percent and suspension of application of the APBS through December 31, 2024. With the new resolution, the zero percent tariffs will remain permanent, and the APBS will be abolished for these two products. The United States had urged this reform under the framework of the TIC since 2019.

### *Information and Communications Technology Products*

In October 2019, Ecuador eliminated tariffs that had ranged from 10 percent to 15 percent on imports of cellphones, computers, tablets, and laptops. Comex Resolution 009-2021 subsequently eliminated tariffs for computers, switching devices for automatic telephony or telegraphy, satellite dishes, fiber optic cables, cordless headset phones with microphone, keyboards, memory units, and automatic machine units for data treatment or processing. Comex Resolution 009-2021 also reduced tariffs to five percent for television cameras, digital cameras, camcorders, routers, modems, and wireless equipment. Mixed tariffs continue to affect certain information and communication technology products. For instance, monitors measuring more than 21 inches are subject to a mixed tariff of five percent and a fixed rate of \$73.11 per Comex Resolution 070-2012.

Comex Resolution 021-2020 changed the tariff rate that applies to imported televisions that are over 41 inches and up to 75 inches from 20 percent *ad valorem* to a compound tariff of 5 percent plus \$158.14. Televisions over 75 inches are still subject to a 20 percent tariff.

### *Raw Materials and Industrial Capital Goods*

Comex Resolution 023-2019 reduced import tariffs for intermediate goods such as machinery, raw materials, and industrial equipment for the agriculture, fishing, construction, textile, plastics, and footwear industries. The tariffs on these products now range from zero percent to 18.75 percent.

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

Comex Resolution 007-2021 eliminated tariffs on 128 subheadings that include raw materials and inputs and capital goods for the agricultural, fishing, and aquaculture sectors. This measure came into effect in June 2021. With respect to the agriculture sector, the previous tariffs were between 15 percent and 19 percent on such items as tractor parts and laboratory equipment. In the fishing and aquaculture sectors, tariffs on inputs such as air compressors and radio navigation devices for fishing vessels were 20 percent and 25 percent. Additionally, Comex Resolution 009-2021 provided tariff reductions on 328 items that correspond to machinery and equipment used in the agricultural industry.

## *Sports Equipment*

Comex Resolution 019-2019 decreased tariff rates for certain sporting goods and shoes, subject to authorization of the Secretariat of Sports. For sports shoes, including soccer, athletic, basketball, gym, tennis, and training shoes, the new tariff is 15 percent, a change from the previous compound tariff of 10 percent plus \$6 per pair. Specialized sporting equipment, including bicycles, helmets, tennis rackets, saddles, tennis balls, and softball and baseball equipment (excluding balls), are subject to a zero percent tariff, down from previous tariffs ranging from 15 percent to 30 percent. To avail of these lower tariff rates, importers must file a request with the Secretariat of Sports for each individual import entry. In addition, Comex Resolution 009-2021 reduced the tariff from 30 percent to 10 percent for bicycles; authorization from the Secretariat of Sports is not required to benefit from this reduced rate.

## Taxes

### *Consumer Goods*

Comex Resolutions 005-2021 and 006-2021 instituted three changes to international postal traffic and expedited messaging or courier services, classifying shipments into six categories. The first change is the elimination of the \$42 fee in imports of “category B” packages (or “4 × 4 system”). This applies to packages with a weight less than or equal to four kilograms and with a Free On Board (FOB) value less than or equal to \$400. This category of shipments can be used only for personal and not commercial purposes. Another reform with respect to category B packages is that there will no longer be a limit on the number of imports in this category per year. Previously, individuals could only import up to \$1,200 in merchandise or up to five packages a year through the 4 × 4 system.

In addition, Comex Resolution 006-2021 made changes with respect to “category C” imports. Prior to this change, category C covered packages that did not meet the conditions of other categories and whose weight was equal to or less than 50 kilograms or had an FOB value equal to or less to \$2,000. Category C also included spare parts for industry or transport that were urgently required. Following Resolution 006-2021, category C now includes packages that do not meet the conditions of other categories and whose weight is equal to or less than 100 kilograms or its FOB value is equal to or less than \$5,000. Additionally, the resolution instituted a weight limit of 200 kilograms for category C packages in the case of spare parts for industry, medical equipment, or transport, urgently required, provided that their value does not exceed \$5,000.

## **Non-Tariff Barriers**

### *Customs Barriers and Trade Facilitation*

Importers must register with the National Customs Service of Ecuador (SENAE) to obtain a registration number for all products regulated by the Ecuadorian Institute of Standards (INEN). Comex Resolution 010-2021 eliminated 1,862 tariff sub-headings from the list of products subject to pre-shipment import control documents (DCP), yet imposed new requirements that include either INEN conformity assessment certificates, import licenses, or National Agency for Health Regulation, Control, and Surveillance (ARCSA) permissions, depending on the product. In addition, Comex Resolution 10-2021 delineates the List of Products Subject to Controls Prior to Import, the List of Import Prohibited Tariff Subheadings, and the List of Import Prohibited Products.

### *Import Bans and Restrictions*

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

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

### *Import Licensing*

Since 2013, Comex and MAG have imposed a mandatory, cumbersome process for allocating import licenses for 55 agricultural tariff lines, including dairy, potatoes (including french fries), beef, pork, chicken, turkey, soybean meal, beans, sorghum, and corn. Since 2015, MAG has imposed a more burdensome framework whereby MAG's Undersecretary of Commercialization is vested with full authority to decide on and administer the granting of non-automatic import licenses. After consulting with the consultative committees, MAG allocates single import licenses on a per shipment basis.

Due to the difficulty of obtaining import permits, the licensing policy incentivizes domestic sourcing of products at the expense of imported products. While many food and agricultural products are subject to this policy, meat and dairy products are particularly targeted. For these products, an importer's total annual import allowance cannot surpass an amount determined by MAG. For most products subject to the licensing system, MAG also requires that interested parties provide sales and consumption forecasts as well as an affidavit that the product is not produced locally before it will authorize imports. In the case of wheat, corn, soybean meal, and pork, MAG requires proof of local pork purchases to assign amounts for import licenses. The United States has engaged extensively with Ecuador on these concerns, and continues to urge Ecuador to reform the system in light of its WTO obligations.

### *Lubricants*

Comex Resolution 020-2020 amended Annex 1 of Comex Resolution 450-2008 by incorporating a pre-shipment control document—the Automatic Import License for Greases and Lubricants—for Harmonized System (HS) subheadings 2710.19 and 2710.20. The Energy and Non-Renewable Natural Resources Regulation and Control Agency (ARCERNR) will establish the requirements and procedures for obtaining the import licenses and will issue the licenses. The licensing requirement stems from the Regulation for Authorization of Activities for the Production and Marketing of Greases and Lubricants issued pursuant to Ecuador's hydrocarbons law on May 2017.

### *Tires*

Comex Resolution 003-2021 amended Comex Resolution 020-2017 to now provide zero tariffs (*ad valorem* and specific tax) to importers approved by the Ministry of Transportation and Public Works for automobile or bus tires. The global quota volume of imports that may benefit from duty-free treatment corresponds to 60,000 commercial units for tires, which are distributed in 5,000 commercial units for automobile tires, and 55,000 commercial units for bus tires. This approved global quota may be used for one calendar year from the effective date of the resolution. Access to quota volumes requires application to and approval by the

Ministry of Transportation and Public Works. Imports that exceed the assigned quota are subject to the current ordinary tariff rate of 1 percent plus \$0.63 per kilogram for automobile tires, and 1 percent plus \$0.83 per kilogram for bus tires.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

#### *Medical Devices*

In June 2021, Ecuador implemented a technical regulation, which establishes a Unique Traceability Code (CUT) for medical devices. The CUT differs from the globally harmonized Unique Device Identification (UDI) guidance documents developed by the International Medical Device Regulators Forum. Ecuador made several notifications to the WTO regarding this measure beginning in January 2021. U.S. industry provided technical comments through the domestic consultation process, and to Ecuador through the U.S. Enquiry Point in September 2021. The U.S. Government held bilateral meetings with Ecuador in the last quarter of 2021 to encourage the use of the international standard. The regulation provides for a 42-month grace period for implementation, until November 2024.

#### *Processed Foods Facility GMP Registration Requirements*

In September 2020, Ecuador's National Agency for Sanitary Regulation, Control, and Observation (ARCSA), under the authority of Ecuador's animal and plant health authority, AGROCALIDAD, notified to the WTO Committee on Technical Barriers to Trade a technical regulation that would establish new registration requirements on processing plants for food products intended for retail sale. Concerns relating to this technical regulation include the requirement for duplicative certificates, the validation of certificate documents by Ecuadorian consulates, and the approval of Good Manufacturing Practices certifiers by Ecuadorian authorities. The United States submitted comments regarding this measure to Ecuador in December 2020. These concerns were raised on the margins of the February 2021 meeting of the WTO Committee on Technical Barriers to Trade and formally in the June 2021 meeting of the Committee. Ecuador has not notified the final regulation to the WTO.

### **Sanitary and Phytosanitary Barriers**

#### *Processed Foods—Quality Compliance and Prior Authorization Requirements*

Processed food products of animal origin require prior authorization from three government agencies within MAG, including AGROCALIDAD, the Undersecretary of Commercialization, and the Undersecretary of Agriculture Development. For meats and dairy products, a market assessment is conducted by both the Undersecretary of Commercialization and the Undersecretary of Livestock Development, resulting in unnecessary redundancy and delay. The United States will continue to work with Ecuadorian authorities to explore alternatives.

#### *Agricultural Products Quality Compliance and Prior Authorization Requirements*

Ecuador maintains a lengthy and burdensome sanitary certification process, which may require several different approvals for a single product. For over 50 food and agricultural products, Ecuador also requires prior import authorization from MAG or the Ministry of Public Health, or both, depending on the product. The MAG authorization requires several internal approvals including from consultative committees of domestic producers that often block or impede import competition.

In addition to prior authorization, Comex Resolution 019-2014 mandates that imported agricultural products, including products of animal origin, must be accompanied by a phytosanitary or sanitary certificate or be shipped from a plant that AGROCALIDAD has previously registered and authorized.

### *Establishment of Registration Requirements*

AGROCALIDAD Resolution 115-2019 and Resolution 003-2016 require registration of foreign establishments that export animals or animal products and of products to be fed or applied to animals. After a two-year extension, this requirement came into effect for U.S. establishments on January 14, 2021. Although Ecuador granted the United States some flexibilities on the requirements, the United States will continue discussions with AGROCALIDAD and MAG to facilitate registration of U.S. facilities and seek flexibilities under the current requirements.

## **GOVERNMENT PROCUREMENT**

Government procurement in Ecuador can be cumbersome and nontransparent. Payments can often be delayed without explanation despite provision of goods and services and proper work orders and receipts. The lack of transparency poses a risk that procuring entities will administer a procurement to the advantage of a preferred supplier. Ecuador's Public Procurement Law establishes exceptions for procurements made according to special rules established by presidential decrees, for exploration and exploitation of hydrocarbons, for emergency situations, and for national security contracts. Article 34 of the Public Procurement Law allows public enterprises to follow special procurement rules, provided the National Public Procurement Service issues an open-ended authorization for purchases considered within "the nature of the enterprise."

In May 2020, Executive Decree 1033 was issued, which reformed the Public Procurement Regulations and assigned the National Public Procurement Service (SERCOP) a leadership role in the implementation of a new Unified System for the Purchase of Medicines and Strategic Goods for the Health Sector (the Unified System). This decree provides for unifying and reorganizing the medical supply and distribution system nationwide. The technology-based system aims to provide full traceability, transparency, and accountability from prescription through consumption, while optimizing the distribution and storage of medicines using a privately contracted, specialized logistics operator. Although a positive step, the Ecuadorian pharmaceutical industry continues to report that the proposed system needs further adjustments, including changes to ensure qualified bidders, product traceability, and realistic timelines for implementation. While Ecuador has signaled an interest in reforming Executive Decree 1033, it has taken no concrete action to do so. It has issued a resolution extending the implementation deadline 24 months for the traceability component of medicines and biological products, once the technological requirements for the public sector are operational.

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

Foreign bidders are required to register and submit bids for government procurement through an online system. Foreign bidders must have a local legal representative to participate in government procurement. To sell goods or services to Petroecuador, foreign bidders must register to become official suppliers.

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

## **INTELLECTUAL PROPERTY PROTECTION**

Ecuador remained on the Watch List in the [2021 Special 301 Report](#). Enforcement of intellectual property (IP) rights against widespread counterfeiting and piracy remains weak.

The 2016 Code of the Social Economy of Knowledge, Creativity, and Innovation (COESC), also known as the Ingenuity Code, contains legislation covering multiple IP matters. In December 2020, Ecuador published the final regulations implementing the COESC. U.S. stakeholders continue to note that the 2016 COESC legislation could negatively affect IP protections and foreign investment in Ecuador. Ecuador's National Intellectual Property Service (SENADI) continues to consider amendments to the COESC and to review feedback from stakeholders.

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

## **SERVICES BARRIERS**

### **Telecommunications Services**

In July 2021, the Ecuadorian President signed Executive Decree 126, which reforms Ecuador's Organic Telecommunications Law. The Decree changes the law to cap the total regulatory obligations paid by telecommunications services suppliers at 2.5 percent of their total revenues. The Decree does not change Article 34 of the law, which requires telecommunications service suppliers with a market share of at least 30 percent to pay 0.5 percent of their gross revenue to the government and an additional 1 percent of their gross revenue for each additional 5 percent market share they hold above 30 percent. National Telecommunications Corporation (CNT), which is owned by the Ecuador Government and is the dominant provider of fixed telecommunications services, is not included in the calculation of market share for Article 34 and is exempt from the fees.

### **Advertising**

With limited exceptions, the 2013 Organic Law of Communication prohibits advertisements produced abroad. There are exceptions for instances when the advertising is produced by Ecuadorians residing abroad or by foreign legal entities with majority Ecuadorian shareholders.

## **BARRIERS TO DIGITAL TRADE**

### **Data Localization**

The Organic Law on the Protection of Personal Data went into effect in May 2021. The law allows cross-border transfers of personal data only to countries or organizations that Ecuador has determined provide an adequate level of protection. The law creates an autonomous Data Protection Superintendence, which will have the authority to determine which countries have adequate levels of protection, and to implement and enforce the law. Restrictions on the flow of data can have a significant effect on the cross-border supply of numerous services and on the functionality embedded in intelligent goods (*i.e.*, smart devices). The United States encourages Ecuador to work closely with companies and organizations, both in and outside Ecuador, that are affected by the law to resolve implementation and enforcement issues in a reasonable and consistent manner.

## **INVESTMENT BARRIERS**

Ecuador's investment climate remains marked by uncertainty, owing to unpredictable and frequently restrictive economic policies. The Ecuadorian Administration has said it intends to address these concerns.

### **Limits on Foreign Equity Participation**

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

### **Withdrawal from Bilateral Investment Treaties**

On May 3, 2017, Ecuador's National Assembly voted to terminate 12 of the country's Bilateral Investment Treaties (BITs), including its BIT with the United States. The move was attributed to a conflict with Ecuador's 2008 Constitution, which prohibits Ecuador from entering into treaties that cede sovereign jurisdiction to international arbitration entities outside of Latin America in contractual or commercial disputes between the Ecuadorian Government and foreign individuals or private companies. The United States–Ecuador BIT terminated on May 18, 2018, but the sunset provisions of the Agreement protect U.S. investors with investments predating May 18, 2018 for 10 years following the date of termination.

In July 2021, Ecuador ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), despite its denunciation of the Convention and withdrawal from the International Centre for Settlement of Investment Disputes in 2009. As a result, the ICSID Convention entered into force for Ecuador in September 2021.

### **Capital Exit Tax**

The Ecuadorian Administration has committed to the gradual phaseout of Ecuador's five percent capital exit tax (ISD) over the next four years. The Reform Law for Tax Equity in Ecuador established the ISD tax in 2007, and it was raised from 0.5 percent to 5 percent in 2012. The Ecuadorian Government levies the tax on any form of currency outflow in cash, debit, and credit cards, checks, and internet payment methods. Although the ISD was designed to penalize rapid capital outflow (speculative capital), the tax acts as an obstacle to foreign investment. The President issued Executive Decree 182 in August 2021 that eliminated the ISD for the aviation industry as a first step to the gradual phaseout of the capital exit tax.

### **Other Investment Barriers**

In February 2022, the Ecuadorian President introduced investment legislation to the National Assembly that seeks to incentivize the private sector to establish economic development zone projects through tax, tariff, and capital exit exemptions. Economic development zone investments from \$250,000 to \$1 million made within the industrial, service, or logistics sectors would receive a 10-year revenue tax exemption, up to a 10-point tax reduction after the first 10 years, and exemptions on capital exit and value-added taxes on capital flows and imported raw materials. The legislation also would make key reforms to Ecuador's public-private partnership (PPP) structure by clarifying approval processes and regulations. The bill was introduced as urgent economic reform legislation, meaning the National Assembly has 30 days to approve, reject, or modify the bill; after 30 days, the President may pass the bill into law.

After the fall in global oil prices in mid-2014, the Ecuadorian Government began relaxing its extractive industries regulatory framework to attract foreign investment in the petroleum and mining sectors. Presidential Decree 449 of July 2018 allowed the Energy Ministry to issue production sharing contracts,

with certain limitations. The government signed contracts for seven blocks under this model (Ronda Intracampos I) in May 2019, and plans to auction additional blocks in successive rounds (Ronda Intracampos II, Surorientado, Subandino, and one offshore). While this reform attracted exploration and production investment, Decree 546 still prohibits the use of production-sharing contracts for fields currently operated by Petroecuador, thereby limiting private sector participation in the bidding processes for relevant areas of production. Through Executive Decree 95, issued in July 2021, the President called for renegotiating oil contracts to convert them into production sharing contracts, turning state-owned Petroecuador into a joint stock company listed on the stock market and promoting private investment through the upcoming Intracampos II and Southeast rounds.

According to U.S. stakeholders, prohibitions on commingling (mixing of petroleum from multiple companies in a pipeline for transport) in Ecuador's petroleum sector limit the productive capacity of oil companies by roughly 10 percent, inhibiting investment. In 2019, the Environment Ministry reformed permitting regulations, but challenges remain given insufficient and untrained ministry staff tasked with processing the permits. In September 2021, the Constitutional Court found Article 463 of the Regulation to the Organic Code of the Environment unconstitutional because this provision on Citizen Participation and Prior Consultation in the environmental permitting process did not provide sufficient constitutional environmental consultation. The Ministry of the Environment, Water and Ecological Transition has stopped issuing environmental permits for projects that have not yet reached the Citizen Participation and Prior Consultation phase until a new regulation is established.

The 2015 Mining Law allows the state to grant mining exploitation rights to private and foreign entities, depending on national interests. Between 2015 and 2017, the government established non-discriminatory incentives for mining sector investments, including fiscal stability agreements, limited VAT reimbursements, and remittance tax exceptions. However, investment in the mining sector faces legal uncertainty because of the Ecuadorian Constitutional Court's September 2020 ruling that allows local referendums that seek to ban mining in areas over which the national government has regulatory authority. The ruling, which upholds the local community's right to self-determination, does not resolve whether that local right to self-determination supersedes the national government's constitutional authority to regulate mining on a national level. As a result of the ruling, 43 mining concessions could be subject to local referendums. After Ecuador's National Electoral Council approved a local mining referendum on the February 2021 ballot in Azuay province, approximately 80 percent of the province's population voted in favor of banning mining in the water recharge areas of the Tomebamba, Tarqui, Yanuncay, Machángara, and Norcay rivers.

The public-private partnership (PPP) law of 2015 aims to attract investment. The law allows increased private participation in some sectors and offers incentives, including the reduction of income tax, VAT, and capital exit tax for investors in certain types of projects. Despite these benefits, no U.S. firms have signed a PPP agreement with the Ecuadorian Government since passage of the law. In November 2021, the Ecuadorian President issued an executive decree establishing an PPP Secretariat and an Interinstitutional PPP Committee empowered to prioritize, approve, and deny PPP projects. The government also developed draft standardized contracting agreements to be used across all ministries.

## **OTHER BARRIERS**

Many U.S. firms and citizens have expressed concerns that corruption among government officials and the judiciary can be a hindrance to successful investment in Ecuador. In addition, companies involved in electronic commerce have noted that laws and regulations governing the industry are at times not clear or do not give legal certainty to host operations in Ecuador. The Ecuadorian Administration has made anticorruption efforts a priority. The United States–Ecuador TIC Protocol on Trade Rules and

Transparency, which entered into force on August 15, 2021, includes an annex containing commitments on anticorruption.

# EGYPT

## TRADE AGREEMENTS

### The United States–Egypt Trade and Investment Framework Agreement

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

## IMPORT POLICIES

### Tariffs

Egypt's average Most-Favored-Nation (MFN) applied tariff rate was 19.0 percent in 2021. Egypt's average MFN applied tariff rate was 65.0 percent for agricultural products and 11.6 percent for non-agricultural products in 2021. Egypt has bound 99 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 36.6 percent.

On September 11, 2018, Egypt raised tariffs on 5,791 products through Presidential Decree No. 419/2018. While these tariffs are within Egypt's WTO bound rates, they exacerbate the disadvantage many U.S. products face in Egypt vis-à-vis European Union (EU) goods. Such EU products benefit from preferential rates granted under the EU–Egypt Association Agreement.

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

### Non-Tariff Barriers

#### *Import Licensing*

Egypt's Prime Minister issued Decree No. 412/2019 in February 2019, establishing the executive regulations for the National Food Safety Authority (NFSA), created under Law No. 1/2017 in January 2017. The NFSA must register and approve all nutritional supplements, specialty foods, and dietary foods according to NFSA Decision No. 1/2018 on the Rules Governing the Registration and Handling of Foods for Special Dietary Uses. Importers must apply for a license to import specialty food products and renew the license every five years. License renewals can cost up to \$1,000 per renewal, depending on the product.

#### *Import Bans/Restrictions*

As of 2003, Egypt has only permitted imports of whole, frozen poultry. The executive regulations to Egypt's Import and Export Law (Ministry of Trade and Industry Decree 770/2005) suspended the importation of chicken limbs and offal, which acts as a *de facto* ban on U.S. chicken leg quarter exports to

Egypt. The United States raised this issue at TIFA meetings in addition to during the WTO Committee on Technical Barriers to Trade meeting. In September 2019, Egypt's General Office of Veterinary Services suspended all imports of poultry and poultry products.

On August 25, 2019, Egypt's Parliament passed Law No. 151/2019 establishing the Egyptian Drug Authority (EDA) as an independent agency under the Prime Minister's Office responsible for the registration, licensing, and import procedures for pharmaceutical products, medical devices, and cosmetics. The approval process for the importation of new, used, and refurbished medical equipment and supplies consists of a number of steps, which some importers have found burdensome. Importers must submit a form requesting the EDA's approval to import, provide a safety certificate issued by health authorities in the country of origin, such as the U.S. Food and Drug Administration (FDA), and submit a certificate of approval from the U.S. FDA or the European Bureau of Standards. The importer also must present an original certificate from the manufacturer indicating the production year of the equipment and, if applicable, certifying that the equipment is new. The importer must prove it has a service center to provide after-sales support for the imported medical equipment, including spare parts and technical maintenance.

### *Customs Barriers and Trade Facilitation*

On November 14, 2020, the Egyptian President signed Egypt's new Customs Act (Law 207/2020), which replaced the former Customs Act (Law 66/1963) and Customs Exemption Act (Law 186/1986). The Ministry of Finance issued the new Customs Act's executive regulations on September 1, 2021. Egypt's National Single Window for Foreign Trade Facilitation (Nafeza) launched at all Egyptian ports on October 1, 2021. The Nafeza uses an advanced cargo information (ACI) platform to coordinate all shipping information between foreign exporters and Egyptian importers. The Nafeza requires foreign exporters to register and submit all necessary shipping documentation and transaction data via the online portal CargoX, which is a blockchain provider, to facilitate the release of goods from ports in Egypt. Egyptian importers must register on the Nafeza. U.S. businesses raised concerns about the lack of transparency and implementation guidance on CargoX procedures. Industry also raised concerns about the Advanced Cargo Information filing fee increase from \$50 to \$150 between October 1, 2021 and October 14, 2021. In July 2021, Egypt's Ministry of Trade and Industry issued an advisory canceling consularization requirements for certificates of origin and other documents for goods exported to Egypt. This consularization system had required exporters to secure a stamp from Egyptian consulates on all documentation for goods exported to Egypt at a cost of \$100 to \$150 per document.

Egypt's Customs Authority continues to employ reference pricing when assessing duties. Egypt's Customs Valuation Committee engages in lengthy deliberations without coming to a final decision on customs valuation appeals filed by U.S. businesses. The U.S. Government has raised and will continue to raise U.S. business concerns through the TIFA dialogue and in other bilateral fora.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

#### *Vehicles*

U.S. vehicle and automotive parts exports face significant barriers in Egypt, and U.S. exports of these goods have declined by 52 percent since 2015. In 2012 Egypt became a Contracting Party to the 1958 U.N. Economic Commission for Europe (UNECE) Agreement Concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts. As of June 2014, Egypt has applied EU regional emissions and UNECE safety standards for vehicles and automotive parts. This has made it difficult to export U.S. vehicles and parts built to comply with U.S. regulations to the Egyptian market. Egyptian law

also prohibits the importation of used vehicles for commercial purposes, pursuant to Ministerial Decree No. 580/1998 and Annex 2 to Ministerial Decree No. 770/2005.

The United States is seeking to address the decline in U.S. vehicle and automotive parts exports by encouraging Egypt to accept U.S. emissions and safety standards for vehicles. The United States has raised Egypt's non-recognition of U.S. federal motor vehicle safety standards (FMVSS) in TIFA meetings. . At the most recent TIFA meeting in 2019, Egypt indicated its willingness to consider recognition of U.S. FMVSS. Since then, the United States and Egypt have held a number of technical consultations and discussions, the latest in November 2021, to assist Egypt in working through its standards concerns.

#### *Foreign Manufacturers Registration*

Egyptian Ministerial Decree No. 43/2016 requires foreign entities that export finished consumer products to Egypt (e.g., dairy products, furniture, fruits, textiles, confectioneries, and home appliances) to register their brand names and their manufacturing facilities with Egypt's General Organization for Exports and Imports Control. Egypt does not allow imports of goods from nonregistered entities. Registration can take several months, adding costs and uncertainty to the export process and, over time, may discourage exports to Egypt. The United States has raised these concerns with Egypt multiple times, including at the most recent TIFA meeting in April 2019.

#### *Halal Import Requirements*

In August 2021, the NFSA announced in a press release that it would extend to dairy and other agricultural products a requirement that imports must be halal certified. This requirement already exists for imports of meat products. This new requirement was scheduled to take effect on February 28, 2022, but the extent of its implementation remains to be seen as of March 2022. The announcement also indicated that an Egyptian entity, IS EG Halal, would be the sole entity authorized to provide the certification. According to industry, the announcement of the new measures and the lack of clarity and transparency regarding their application have resulted in a disruption of U.S. dairy exports to Egypt. U.S. dairy exports to Egypt were approximately \$106.5 million in 2021. Despite repeated requests from the United States and other trading partners in the fall of 2021, Egypt initially failed to notify these measures to the WTO. Following sustained U.S. Government engagement, including multiple WTO TBT Inquiry Point requests for notification, and after raising this issue at the November 2021 WTO TBT Committee meeting alongside other concerned trading partners, Egypt notified the certification requirement for dairy products to the WTO on December 1, 2021, and provided a 60-day comment period ending on January 29, 2022, that was subsequently extended to February 28, 2022. Despite requests by the United States, Egypt has not yet provided substantive information regarding the details of the measure. Significant questions remain regarding the measure's implementation and the scope of agricultural products covered. In addition, as of March 2022 Egypt had not provided a notification to the WTO regarding the sole entity that is authorized to provide the certifications. The United States is continuing to actively engage with Egypt regarding these matters.

#### **Sanitary and Phytosanitary Barriers**

In recent years, the Egyptian Government has made limited progress in taking a more scientific approach to sanitary and phytosanitary (SPS) measures, including the NFSA's relaxation in November 2020 of a zero-tolerance policy for minimum residue levels of the feed additive ractopamine in beef liver products. However, importers of U.S. agricultural commodities continue to face unwarranted barriers. Animal products, including dairy products, face the greatest risks of rejection at port, given that Egypt does not adopt or adhere to international standards for numerous animal-based products. Egypt also blocks the

import of certain U.S. agricultural products based on Egypt's claims regarding health and food safety, while maintaining other non-tariff barriers such as halal certification.

### *Agricultural Biotechnology*

As of March 2012, an Egyptian Ministry of Agriculture and Land Reclamation decree has suspended the commercial cultivation of all crops developed through agricultural biotechnology. The initial suspension followed media reports critical of agricultural biotechnology products. The absence of a biosafety legal framework for agricultural biotechnology inhibits field trials and the commercial use of genetically engineered crops.

### *Seed Potatoes*

The United States remains unable to export seed potatoes to Egypt because the Ministry of Agriculture's Central Administration for Plant Quarantine (CAPQ) and the U.S. Department of Agriculture (USDA) have not been able to come to agreement on the results and mitigation measures of a pest risk assessment completed by CAPQ. According to USDA's Animal and Plant Health Inspection Service, several of the proposed measures are not scientifically justified. Despite several rounds of bilateral technical meetings in 2019 and 2020, after which CAPQ indicated that it would consider providing market access for U.S. seed potatoes in the 2021 season, U.S. seed potatoes remain barred from Egypt.

### *Garden Strawberry Plants for Planting and Date Palm Offshoots*

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

## **GOVERNMENT PROCUREMENT**

In July 2018, the Egyptian Parliament passed Law No. 182/ 2018 on government procurement, which requires procurement decisions be made in a competitive and transparent manner and consider not only technical requirements and price, but also sustainable development goals. As with the prior procurement law, Egyptian small and medium-sized enterprises are given the right to obtain at least 20 percent of available government contracts annually.

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

## **INTELLECTUAL PROPERTY PROTECTION**

Egypt remained on the Watch List in the [2021 Special 301 Report](#). While Egypt has taken steps to improve intellectual property (IP) protection and enforcement, including shutting down several illegal streaming websites and increasing raids against outlets offering counterfeit goods, concerns remain, including the lack of *ex officio* authority for customs officials to seize counterfeit and pirated goods at the border, unlicensed broadcasts, unlawful decryption of encrypted signals, and unauthorized camcording. Deterrent-level penalties for IP violations and additional training for enforcement officials would enhance the IP enforcement regime in Egypt. Also, the lack of transparent and reliable systems for processing trademark and patent applications remains an obstacle for the growth of U.S. IP exports to Egypt. The United States has urged Egypt to address transparency concerns and to clarify its protection against the unfair commercial

use, in addition to unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

## **SERVICES BARRIERS**

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

### **Express Delivery Services**

The Egyptian National Post Organization (ENPO) must grant special authorization to foreign-owned private courier and express delivery service suppliers seeking to operate in Egypt. In addition, although express delivery services constitute a separate, for-profit, premium delivery market, ENPO requires private express delivery operators to pay a postal agency fee of 10 percent of annual revenue on shipments of less than 20 kilograms (approximately 44 lbs.). The ENPO imposes an additional fee of 5 Egyptian Pounds (approximately \$0.32) on private couriers and express delivery services for all shipments under 5 kilograms (approximately 11 lbs.)

### **Financial Services**

Foreign banks can buy shares in existing banks but are not able to secure a license to establish a new bank in Egypt. New commercial banking licenses have not been issued to foreign banks as of 1979. Three state-owned banks (Banque Misr, Banque du Caire, and the National Bank of Egypt) control approximately 50 percent of the banking sector's total assets. Egypt's Central Bank and Banking Act (Law 194/2020) prohibits mining, issuing, trading, or promoting cryptocurrencies, or operating platforms for those purposes.

### **Telecommunications Services**

The majority state-owned telephone company, Telecom Egypt (TE), is Egypt's largest provider of fixed line telecommunications services (voice and broadband), despite losing its monopoly over these services after launching a mobile subsidiary in 2017. Private sector companies Vodaphone Egypt (40 percent owned by TE), Orange Egypt, and Etisalat Misr comprised 92 percent of the mobile telecommunications market in March, 2021. Egypt's telecommunications regulator, the National Telecommunications Regulatory Authority, enforces minimum quality of service standards and levies fines for poor service.

## **BARRIERS TO DIGITAL TRADE**

Egypt's Law No. 180/2018 Regulating the Press, Media, and the Supreme Council for Media Regulation (SCMR) requires media outlets to pay a fee of 50,000 Egyptian pounds (approximately \$3,200) to obtain a license from the SCMR and gain legal status. The law defines "media outlet" very broadly, to include any social media account with at least 5,000 subscribers. The Egyptian Government has used this and other laws as grounds to expand website blocking. Website blocking undermines the value of Internet-based services to the companies, including U.S. firms, that provide them and to their customers and imposes costs on local firms that depend on these services for their business.

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

## **INVESTMENT BARRIERS**

Egypt implemented investment Law No. 72/2017 in 2017 to address longstanding complaints of foreign investors. While the law allows foreign investors to operate sole proprietorships and partnerships, it continues to limit the number of non-nationals working at any business to 20 percent of the workforce. Foreigners may act as importers for their own businesses, albeit with certain limitations on the items that may be imported by the business.

# EL SALVADOR

## TRADE AGREEMENTS

### Dominican Republic–Central America–United States Free Trade Agreement

The Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006; for the Dominican Republic in 2007; and for Costa Rica in 2009. The United States and the other CAFTA–DR countries meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

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

In addition, 97 percent of U.S. agricultural product exports by product line are eligible for duty-free treatment in El Salvador under the CAFTA–DR. El Salvador eliminated its remaining tariffs on nearly all agricultural products on January 1, 2020, and will eliminate remaining tariffs on rice, yellow corn, and chicken leg quarters by 2023, and on dairy products by 2025. For certain agricultural products, tariff-rate quotas (TRQs) will permit duty-free access for specified quantities as the tariffs are eliminated, with the in-quota amount expanding during this time. El Salvador is required under the CAFTA–DR to make TRQs available on January 1 of each year. El Salvador monitors its TRQs through an import licensing system, which the United States is carefully tracking to ensure the timely issuance of these permits.

#### *Taxes*

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

### Non-Tariff Barriers

#### *Customs Barriers and Trade Facilitation*

In 2013, the Salvadoran customs authority implemented nonintrusive inspections with x-rays at border crossings. While designed to facilitate cross-border movements, the procedures have resulted in higher fees for exporters and importers. Salvadoran reforms enacted in 2018 reduced the timeframe to conduct

non-intrusive inspections from 48 hours to 24 hours. The amendments also reduced the time limit for administrative procedures to determine duties and taxes from 20 days to 12 days, with no more than 8 days to issue a final resolution and 4 days to notify parties.

In 2018, the Legislative Assembly approved reforms to the Special Law on Customs Infractions to introduce a five percent margin of tolerance for quality, weight, volume, or value discrepancies of imports. The amendment also eliminates fines if the importer accepts and corrects any tax omissions.

In 2019, El Salvador relaunched the National Trade Facilitation Committee (NTFC), which produced the first jointly-developed public-private action plan to facilitate trade. The plan contained 60 strategic measures focused on simplifying procedures, reducing trade costs, improving road connectivity and border infrastructure, as well as strengthening institutions. The measures were not fully implemented in 2020 due to the COVID-19 pandemic. The NTFC subsequently revised the action plan in 2021, which now has 44 measures under implementation.

In 2018, El Salvador's Legislative Assembly approved the country's incorporation into the Customs Union established by Guatemala and Honduras in 2017. On October 14, 2021, El Salvador communicated to the NTFC its decision to proceed with Customs Union implementation. El Salvador rejoined technical level working group discussions and resumed testing of systems interconnectivity. Industry representatives continue urging increased coordination and integration among regional customs agencies to avoid duplicative inspections and delays in customs clearances.

Private companies frequently express concerns regarding the inconsistent and discretionary application of customs regulations and procedures, resulting in unpredictable delays and administrative fines. For example, exporting from the duty-free zone is unduly cumbersome, with a requirement that a representative of the receiving company and the shipping company be physically present for the exchange of documents and release of materials.

In 2015, El Salvador's Legislative Assembly approved amendments to the Customs Simplification Law, which included imposing an \$18 per-shipment processing fee for incoming packages and cargo. In response to industry concerns, in 2018, the Legislative Assembly approved an amendment to allow an "accumulated merchandise declaration" to allow imports and exports of up to 25 samples in a single declaration and pay \$18 for a single non-intrusive inspection. Despite the modifications, during 2021, the private sector has continued to express concerns about Salvadoran Customs' implementation of procedures related to the import of samples. The United States continues to monitor implementation and offer technical assistance.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

El Salvador requires a Certificate of Free Sale to register food products. The Ministry of Health agreed in 2019 to accept the U.S. Food Safety Inspection Service (FSIS) 9060-5 health 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. Obtaining the original health certificate for the purpose of food product registration is problematic as this document only accompanies actual shipments of meat or processed meat products. These shipments cannot occur until the food product is registered. Additionally, under the CAFTA-DR, El Salvador granted equivalence to the U.S. sanitary inspection system for beef, pork, and poultry and poultry products, which may make the health certificate requirement unnecessary or duplicative for U.S. exports.

In 2015, El Salvador issued the implementing regulation for the Act for the Promotion, Protection and Support of Breast Feeding, which defines requirements for sanitary registration, restricts marketing and advertising, and sets out labeling requirements for breast milk substitutes. This regulation entered into force in 2015, without notification to the World Trade Organization (WTO), and lacks clarity as to what information must appear on the label. In 2021, El Salvador issued a resolution that will allow companies to continue using their trademarks for breast milk substitutes. The United States continues to monitor the implementation of the regulation and has requested that El Salvador notify this regulation and all new regulations to the WTO, and provide WTO Members comment periods and reasonable intervals for implementation.

In 2020, the National Medicines Directorate (DNM) changed the procedure to register cosmetics and added a fee for the post-registration of cosmetics and hygiene products, prompting U.S. industry to express concerns about additional costs and burdensome procedures. In 2021, DNM simplified its internal processes to expedite registrations. As a result, the time to register new cosmetics and hygiene products was reduced from 17 days to 1 day, and from 14 days to 2 days to process renewals. Post-registrations were reduced from 9 days to 1.8 days. In addition, the time to register new pharmaceuticals was reduced from 28 days to 4 days.

### **Sanitary and Phytosanitary Barriers**

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

Extensive laboratory tests are mandatory for all new food products, even for those low-risk products that would be permitted into other markets without testing. These testing requirements also apply to samples. To register product samples, the Ministry of Health requires large quantities of the product for testing, including samples of each different flavor of the same product. In 2017, the Ministry of Health notified companies that laboratory testing must be conducted at the Ministry’s laboratory, creating a backlog in processing new product registrations and renewals. In 2019, in response to the backlog and requests from the private sector, the Ministry of Health issued a decree to allow testing at certified private laboratories during vacation periods in El Salvador. The Ministry of Health has also improved its procedures to reduce the times for testing products. The Ministry of Health, in consultation with U.S. officials, is reviewing laboratory testing requirements to determine to what extent additional flexibility would be permissible under the existing Health Code.

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

Since 2019, U.S. food and beverage exporters have periodically faced requirements for Certificates of Free Sale, arising from Article 4.1(d) of the Central American Technical Regulation (RTCA) 67.01.31.07 on the

sanitary registration of processed foods, which was implemented by Article 88 of the Salvadoran Health Code. Article 88 requires that imported food and beverage products be authorized by the corresponding health authority of the origin country. Salvadoran authorities have continued to refuse recognition of similar documents issued by U.S. State Government agencies, such as Export Certificates and Good Manufacturing Practice Certificates, which would also show that products are authorized to be consumed and sold in the United States.

## **GOVERNMENT PROCUREMENT**

U.S. companies have expressed concerns about Salvadoran Government agencies not providing sufficient advance notice, as required under the CAFTA–DR, to foster wide participation in bidding procedures, particularly complex infrastructure works or public-private partnership projects.

In August 2020, the Salvadoran Government passed an executive order allowing the submission of bids for contractual services via email and eliminating bidders’ obligation to register online with the public procurement system (Comprasal), in addition to lifting the responsibility of procurement officers to keep a record of companies and individuals who receive tender documents. Transparency advocates and legal experts contend that the order would decrease potential bidders’ ability to assess and compete fairly for government tenders. The order is pending review in the Salvadoran Supreme Court of Justice but without injunctive effect.

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

## **INTELLECTUAL PROPERTY PROTECTION**

To implement its CAFTA–DR obligations, El Salvador undertook legislative reforms providing for stronger intellectual property (IP) protection and enforcement. However, several concerns remain, including trafficking in counterfeit products, music and video piracy, and the unlicensed use of software. The United States remains concerned about the adequacy of implementing regulations to protect against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. The effectiveness of the IP system to address patent issues expeditiously in connection with applications to market pharmaceutical products is unclear. The United States continues to engage El Salvador to ensure protections for geographic indications do not negatively impact the existing rights and market access of U.S. stakeholders. The United States will continue to monitor El Salvador’s implementation of its IP obligations under the CAFTA–DR.

## **FINANCIAL SERVICES**

On August 17, 2021, the Legislative Assembly passed amendments to the Credit History Law. The amendments introduce data localization requirements mandating credit bureaus and economic agents that report on credit history to store data and its backup exclusively in El Salvador and grant unrestricted access to the Central Bank (BCR) and the Superintendence of the Financial System. The amendments took effect September 9, 2021 with a grace period of six months for companies to comply as the BCR develops technical norms for implementation. U.S. stakeholders have expressed concerns that these new requirements could compromise consumer data privacy and protection. The United States continues to engage El Salvador on the negative impact of forced data localization.

## **OTHER BARRIERS**

### **Energy**

On October 26, 2021, El Salvador's legislature enacted the Creation Law of the Power, Hydrocarbons, and Mines General Directorate, which will enter into force on November 8, 2022. The new General Directorate will be responsible for dictating the national energy policy and proposing amendments to energy legislation and by-laws, as well as implementing energy policy. In addition, the law allows the President of the state-owned power company (CEL) to serve as the Director General of the new entity. Industry stakeholders are concerned about the potential conflict of interest that would result from CEL making energy policy and participating in the sector. The United States will continue to engage El Salvador on international best practices to regulate the energy sector.

### **Bribery and Corruption**

The CAFTA–DR contains strong public sector anti-bribery commitments and anticorruption measures in government contracting, and U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of government entities.

However, U.S. stakeholders have expressed concern that corruption in the Salvadoran Government, including in the judiciary, continues to constrain successful investment in El Salvador. Administrative and judicial decision-making is widely believed to be inconsistent, nontransparent, and time-consuming. Bureaucratic requirements reportedly have at times been excessive and unnecessarily complex with significant variation in their application and interpretation.

# ETHIOPIA

## IMPORT POLICIES

### Tariffs and Taxes

In September 2021, the Government of Ethiopia lifted taxes and tariffs on the importation of wheat, rice, sugar, and edible oil to address rising inflation.

#### *Tariffs*

Ethiopia's average Most-Favored-Nation (MFN) applied tariff rate was revised downward to 15.17 percent in August 2021, from the previous level of 17.4 percent, as a result of tariff reductions for certain raw materials, intermediate goods, and capital goods to promote the growth of the manufacturing sector. High tariffs continue to insulate certain sectors of the economy, such as textiles and leather, from outside competition and limit U.S. participation in the market. Ethiopia is not a member of the World Trade Organization (WTO) and so has no bound tariff rates.

#### *Taxes*

Imports into Ethiopia are subject to an excise tax, surtaxes, and a 15 percent value-added tax (VAT). Excise taxes are levied on selected domestically produced and imported goods and range from 10 percent for textiles and most other goods to as much as 100 percent for alcoholic beverages. A VAT is imposed on most imported items, but some products and services are exempted from VAT. These exempted sectors include financial services, educational services, healthcare, and transportation services. All goods imported into the country are subject to a 10 percent surtax, with exceptions for fertilizer, petroleum, investment goods, raw materials, and some medicines.

### Non-Tariff Barriers

#### *Import Bans and Restrictions*

Ethiopia prohibits imports of used clothing, arms and ammunitions (except by the Ministry of Defense), and used/refurbished medical equipment intended for resale. Imports of goods intended for resale/commercial purposes are permitted, provided payment transactions are carried out through Ethiopian banks.

#### *Import Licensing*

Ethiopia maintains a complex import licensing regime that is administered by eight different ministries and administrative units of the Government of Ethiopia. In addition to obtaining a license, importers must also obtain an import registration number, an import business license, and a commercial bank permit for currency exchange before bringing products into the country. Obtaining a commercial bank permit for currency exchange is a burdensome process, which includes obtaining a letter of credit for the total value of an import transaction and applying for an import permit before an order can be placed. Moreover, even with a letter of credit, import permits are not always granted, and there are often delays of several months or even over a year before an importer is allocated foreign exchange.

## *Customs Barriers and Trade Facilitation*

Logistics backlogs occur regularly, in part because the customs process remains paper-based and inefficient. Further, monopolistic market conditions in multimodal transport operations and inadequate infrastructure inhibit private sector logistics companies. Logistics costs comprise approximately 22 to 27 percent of final costs for many products. Shipping and freight costs are approximately 60 percent higher than in neighboring countries. Customs and administrative challenges are exacerbated by the fact that Ethiopia is land-locked and upwards of 90 percent of its foreign trade passes through a single port in neighboring Djibouti, which has inadequate infrastructure and its own inefficient customs procedures. Under the framework of a comprehensive logistics strategy, the Government of Ethiopia has slated the logistics sector for liberalization. Ethiopia is actively seeking to develop alternative transport corridors to additional ports in Eritrea and Somaliland, and several inland dry ports have been slated for privatization.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

Imports of processed food products, including soybean and corn oils, and breakfast cereals made from genetically engineered (GE) ingredients are subject to mandatory labeling requirements. Ethiopian regulations require that GE foods carry a label with the following phrases: “genetically modified,” “genetically modified organism,” or other comparable descriptions. Food aid shipments that may contain GE ingredients are exempted from this labeling requirement.

### **Sanitary and Phytosanitary Barriers**

The Government of Ethiopia has taken steps to enhance its sanitary and phytosanitary (SPS) regulatory environment. Ethiopia has implemented a national SPS strategy aimed at ensuring public health and enhancing access to international markets. With the support of development partners, the government is building national capacities to improve food safety and animal and plant health regulatory systems. The government is also exerting considerable effort to harmonize its national SPS standards with the African Continental Free Trade Area and Regional Economic Communities, such as the Common Market for Eastern and Southern Africa and the Intergovernmental Authority on Development. Furthermore, Ethiopia is investing in its SPS infrastructure by expanding national and regional labs, quarantine stations, and standards for quality assurance. When a national standard is not available for a specific product, Ethiopia defers to the Codex Alimentarius standards. SPS-related barriers that impede international trade in Ethiopia are associated with cumbersome requirements for registration and approval of imported products, such as processed foods, planting seeds, and plant protection products.

In 2015, the Government of Ethiopia amended its Biosafety Proclamation (Number 896-2015) and eased the stringent regulatory requirements for the development and commercialization of GE products. In May 2018, the Ethiopian regulatory authorities approved Bt cotton, the country’s first GE crop, for commercial cultivation. In August 2021, Ethiopia finalized confined field trials of Bt maize and requested dossier approval by the environmental release committee. However, industry contacts report that the approval process for commercial imports of GE grains and oilseeds for food and feed remains overly burdensome.

## **GOVERNMENT PROCUREMENT**

Tender announcements are usually public, but many major procurements do not go through a transparent tendering process. Obstacles to foreign participation in government procurement tenders include complicated and inadequately established procedures, capacity gaps on the part of procurement agencies, delays in decision-making, lack of public information, and the need for personal connections to effectively

compete. At least one large U.S. company, for instance, has seen a multi-million-dollar contract with the government abruptly modified with little explanation and no apparent due process. Another obstacle is the frequent requirement for potential suppliers to appear in-person to collect solicitation packages, which business associations complain creates an advantage for state-owned enterprises (SOEs). U.S. firms have expressed concerns about the failure of procurement agencies to respect tender terms. However, at least one U.S. firm has successfully utilized the government appeals process to reverse an unfair tendering decision. Further, since 2018, several dozen government procurement officials across a variety of government agencies have been arrested for corruption as part of a broader reform effort.

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

## **INTELLECTUAL PROPERTY PROTECTION**

Inadequate intellectual property (IP) protection and enforcement remain a serious concern in Ethiopia. Ethiopia is a member of the World Intellectual Property Organization (WIPO) and has demonstrated an interest in strengthening its IP regime. As Ethiopia is not a WTO Member, it has no obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Ethiopia has not joined other significant IP treaties. Trademark infringement, especially in the hospitality and retail sectors, continues to be an issue. Given the lack of enforcement capacity and coordination among Ethiopian Government agencies, IP enforcement is inconsistent. The Ethiopian Intellectual Property Office is responsible for the administration and arbitration of IP cases, but actions to combat the sale of pirated goods remain inadequate. Ethiopia does not publicly track seizures of counterfeit goods, so no statistics are available.

## **SERVICES BARRIERS**

### **Financial Services**

Ethiopia's investment code prohibits foreign investment in the financial service industry, including banking and insurance, with an exception for foreign nationals of Ethiopian origin, who are allowed to invest in the banking and insurance sectors. Few international banks maintain representative offices, and all trade financing is required by law to go through an Ethiopian bank. This creates significant challenges for foreign investors with offshore accounts. Following the 15 percent devaluation of the Ethiopian birr in 2017, the Ethiopian Central Bank (National Bank of Ethiopia (NBE)) increased the minimum saving interest rate banks must offer (there is no ceiling) from 5 to 7 percent and limited the outstanding loan growth rate in commercial banks to 16.5 percent above the previous year. This has had the effect of limiting lending to businesses; while demand for credit growth in Ethiopia remains strong, the limits on credit supply growth hinders the private sector. Moreover, as of November 2021, banks are instructed to immediately transfer 50 percent of their foreign exchange inflow to an NBE account for local currency conversion. This hard currency is then used by the government to meet the strategic needs of the country, such as payments made to service external debt and to procure petroleum, fertilizers, or pharmaceuticals.

Although reinsurance may be offered on a cross-border basis, Ethiopia requires that a proportion of each reinsurance policy and of treaty reinsurance contracts be ceded to local reinsurance companies.

### **Telecommunications Services**

The 2019 Communication Service Law established an independent telecommunications regulator, the Ethiopian Communications Authority, and opened the sector to private investment. In May 2021, the Government of Ethiopia awarded a 15-year full-service telecommunications spectrum license to Safaricom

Telecommunication Ethiopia, which plans to start service in March 2022. The government had intended to issue a second telecommunications license at the same time to a second private operator, but rescinded the offer after it judged the only bid it received as too low. In September 2021, the government reopened bidding for the second license and issued a request for proposals for a 40 percent stake in state-owned operator Ethio Telecom. As of March 2022, Ethio Telecom maintains a monopoly on wired and wireless telecommunications services and owns and operates all cell phone towers in the country. Poor telecommunications service in Ethiopia impedes business operations across a range of other sectors.

For companies and organizations whose operations are internet-dependent or located in remote areas of the country, the government allows the use of Very Small Aperture Terminals (VSATs), which can facilitate satellite-based Internet access in rural or remote regions. Ethiopia does not allow the general public to use VSATs.

## **INVESTMENT BARRIERS**

Many formal and informal barriers impede foreign investment in Ethiopia. The 2020 Investment Law reserves banking, insurance, microfinance, electricity transmission and distribution, and retail and wholesale trade to domestic investors. This law allows up to 49 percent ownership of logistics companies by foreign firms. Foreign investors can jointly invest as minority stake holders with domestic investors in areas such as freight forwarding and shipping, domestic air transportation services, cross country public transport services, advertisement and promotion, and accounting and auditing services. Investment in the defense industry, electricity imports and exports, international air transportation services, and postal services is permitted only in partnership with the Government of Ethiopia and foreign investors are required to invest a minimum of \$200,000 per project. For joint investments with a domestic partner, the investment capital minimum was lowered in 2020 to \$150,000. Despite the remaining restrictions, the 2020 Investment Law represents progress in terms of sectors open to foreign investment. Some government tenders are open to foreign participation, but the process is not always transparent. For joint ventures with SOEs, some investors report informal requirements of up to 30 percent domestic content in goods or technology, or both.

All land in Ethiopia belongs to the state; there is no private land ownership and land cannot be collateralized. Land may be leased from local and regional authorities for up to 99 years. However, current land-lease regulations place limits on the duration of construction projects, allow for revaluation of leases at a government-set benchmark rate, place previously owned land (“old possessions”) under leasehold, and restrict the transfer of leasehold rights.

## **STATE-OWNED ENTERPRISES**

While the Government of Ethiopia has launched processes to fully or partially privatize some SOEs, most notably under the “Homegrown Economic Reform Plan,” SOEs continue to dominate major sectors of the economy. These include the telecommunications, power, banking, insurance, air transport, certain agricultural processing, and shipping industries. SOEs have considerable advantages over private firms, such as expedited customs clearance processing. U.S. investors also complain of the lack of a level playing field when it comes to SOEs. There are indications that SOEs receive other benefits, such as priority foreign exchange allocation, preferences in government tenders, and marketing assistance.

## **OTHER BARRIERS**

### **Bribery and Corruption**

Ethiopian and foreign businesses routinely encounter corruption in tax collection, customs clearance, and land administration. Some U.S. businesses operating in Ethiopia reported that they were frequently

solicited for bribes to secure business contracts. Both U.S. and other foreign companies complained that they were unfairly targeted for tax collection compared with local companies and presented with spurious tax bills.

### **Foreign Exchange Controls**

The unreliability of foreign currency supply in Ethiopia's banks hampers the ability of all manufacturers – including those in prioritized sectors – to import raw materials and semi-finished goods and restricts repatriation of profits, despite laws allowing foreign company earnings repatriations. The Ethiopian Central Bank (National Bank of Ethiopia (NBE)) administers a strict foreign currency control regime, and the local currency (the Ethiopian birr) is not freely convertible. All imports, exports, and outgoing foreign payments require a foreign exchange permit. Ethiopian commercial banks are licensed to issue these permits, except for purchases of coffee. Private banks are required to manage their foreign exchange transactions and to surrender 50 percent of their foreign exchange earnings to the NBE at the official exchange rate. The NBE carefully monitors the foreign exchange holdings of these banks and closely manages the exchange rate. Ethiopia signed a three-year, \$2.9 billion credit agreement with the International Monetary Fund (IMF) in December 2019 under the Extended Credit Facility (ECF) and Extended Fund Facility (EFF) programs. The central tenet of these agreements is the harmonization of the official and black-market exchange rates. The IMF made an initial disbursement of \$308 million in 2019, but has since not disbursed any funds under the programs. While the EFF remains in place, the ECF expired in September 2021.

Prior to 2019, the NBE implemented a five-to-six percent depreciation of the domestic currency per year, with plans to allow depreciation of the currency once every five or six years. However, with the introduction of the IMF program in December 2019, the NBE increased the pace of depreciation of the official exchange rate to more than 25 percent per year. The official exchange rate depreciated by 60 percent from December 2019 to October 2021. Larger private firms, SOEs, businesses that import goods prioritized by the government's development plan, manufacturers in prioritized export sectors (*e.g.*, textiles, leather, and agro-processing), and importers of emergency food generally have priority access to foreign exchange. In comparison, investors in non-priority sectors and politically less well-connected importers – particularly smaller, new-to-market firms – can face long delays in arranging trade-related payments. On occasion, they may be denied foreign currency.

### **Judiciary**

Companies that operate businesses in Ethiopia assert that the judicial system remains underdeveloped and inadequately staffed, particularly with respect to commercial disputes. While property and contractual rights are recognized, and there are commercial and bankruptcy laws, judges often lack an understanding of commercial matters and cases often face extended delays. Contract enforcement remains weak, though Ethiopian courts will at times reject spurious litigation aimed at contesting legitimate tenders. Ethiopia ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) in 2020.

In 2021, Ethiopia reformed its Commercial Code for the first time in 60 years. The reforms were intended to bring Ethiopia's commercial law in line with international best practices and address concerns among the business community. The revised law includes provisions for the establishment of a commercial court to improve the resolution of commercial disputes. Members of the business community expressed concern about possible delays in consistent enforcement of the new code.

# EUROPEAN UNION

## OVERVIEW

The United States and the Member States of the European Union (EU) share the largest economic relationship in the world. Trade and investment flows between the United States and the EU are a key pillar of prosperity on both sides of the Atlantic.

U.S. exporters and investors nonetheless face persistent barriers to entering, maintaining, or expanding their presence in certain sectors of the EU market. This report highlights some of the most significant barriers that have endured despite repeated efforts at resolution through bilateral consultations, World Trade Organization (WTO) committee meetings, or WTO dispute settlement. Certain barriers have been highlighted in this report for many years.

## IMPORT POLICIES

### Tariffs

The EU's average Most-Favored-Nation (MFN) applied tariff rate was 5.1 percent in 2020 (latest data available). The EU's average MFN applied tariff rate was 11.2 percent for agricultural products and 4.1 percent for non-agricultural products in 2020 (latest data available). The EU has bound 100 percent of its tariff lines in the WTO, with an average WTO bound tariff rate of 4.9 percent.

Although the EU's tariffs are generally low for non-agricultural goods, some EU tariffs are high, such as rates of up to 26 percent for fish and seafood, 22 percent for trucks, 14 percent for bicycles, 10 percent for passenger vehicles, 10 percent for processed wood products, and 6.5 percent for fertilizers and plastics.

In June 2018, the EU adopted additional tariffs ranging from 10 percent to 25 percent on a range of agricultural products, consumer products, and industrial products and materials imported from the United States in retaliation against the U.S. decision to adjust imports of steel and aluminum articles into the United States under Section 232 of the Trade Expansion Act of 1962, as amended. On October 31, 2021, the United States and EU announced joint steps to re-establish historical transatlantic trade flows in steel and aluminum and to strengthen their cooperation to address shared challenges in the steel and aluminum sectors. As part of that partnership, the United States and the EU agreed to take a number of steps, including the removal by the EU of the additional tariffs that it placed on certain U.S. goods in June 2018. In addition, the United States and the EU announced their commitment to negotiate a global arrangement to address carbon intensity and global overcapacity in the steel and aluminum industries. Finally, the United States and the EU agreed to suspend the WTO disputes they had initiated against each other regarding the U.S. Section 232 measures and the EU's additional duties.

### Non-Tariff Barriers

#### *Pharmaceutical Products*

The United States is monitoring potential developments related to the EU Commission public consultation on the EU general pharmaceutical legislation, which was open from September 29, 2021 to December 21, 2021. As part of the EU Pharmaceutical Strategy for Europe, the consultation called on stakeholders and members of the public to share their views on matters such as unmet medical needs, incentives for innovation, affordability of medicines, and other issues. The Commission is evaluating two pieces of EU general pharmaceutical legislation: Directive 2001/83/EC on the Community code, relating to medicinal

products for human use; and Regulation (EC) No. 726/2004, laying down Community procedures for the authorization and supervision of medicinal products for human and veterinary use. The Commission's adoption of a proposal for a regulation is planned for the fourth quarter of 2022.

#### *Member State Measures: Pharmaceutical Products*

U.S. pharmaceutical stakeholders have expressed concerns regarding several EU Member State policies affecting market access for pharmaceutical products, including non-transparent procedures and a lack of meaningful stakeholder input into policies related to pricing and reimbursement, such as therapeutic reference pricing and price controls. Such lack of transparency and due process creates uncertainty and unpredictability for investment in these markets. These policies have been identified in several Member States as described below. One example is the “clawback system,” which requires pharmaceutical companies to pay back a certain percentage of the amount spent by Member States over budgetary limits. Stakeholders have also expressed concerns over inconsistent and lengthy time limits for pricing and reimbursement decisions. Industry has grown increasingly concerned about policies that are being made with little opportunity for engagement. Moreover, changes to European Medicines Agency (EMA) policy regarding disclosures of clinical trial data, including potential disclosure of confidential commercial information submitted to EMA by pharmaceutical firms seeking marketing authorization, are also of concern to stakeholders. The United States continues to engage with the EU and individual Member States on these matters.

*Austria:* U.S. pharmaceutical exports to Austria accounted for over 35 percent of U.S. goods exports to the country in 2021. Nonetheless, U.S. pharmaceutical companies continue to express concern regarding reimbursement pricing decisions by the statutory insurance providers association that are not transparent. The streamlining of the statutory social insurance carrier structure from nine provincial units to one federal entity has not yet led to changes in reimbursement policies sought by U.S. pharmaceutical companies.

*Belgium:* U.S. companies identified several policies affecting market access, including a turnover tax, a crisis tax, a marketing tax, and a clawback tax. In addition, industry reports that domestically manufactured medicines are permitted a price premium of up to 10 percent on the manufacturing cost component when calculating their manufacturer's selling price. Imported products, however, are only eligible for up to a five percent price premium. Meanwhile, initiatives intended to lead to faster market access for new innovative drugs have been implemented incompletely and at a slow pace. The United States continues to highlight the need for a continued dialogue with the Belgian Government to address the above as well as meaningful opportunities for stakeholder input into pricing decisions with the aim of safeguarding the access to the best treatment, including new innovative medicines.

*Bulgaria:* U.S. firms have expressed concern with Bulgaria's Deficit Compensation Mechanism (DCM), under which companies must refund a portion of their profits when demand for specified pharmaceutical products exceeds the Bulgarian Government's quarterly budget allocation for that medicine. Industry predicts that approximately 80 percent of 2021 associated profits will return to the government under the DCM.

*Czech Republic:* U.S. firms have expressed concerns about the Czech Republic's non-transparent system for determining pricing and reimbursement levels for pharmaceutical products, as well as lengthy approval delays. Stakeholders have reported on improvements in the government's meeting deadlines under the pharmaceutical approvals process. The United States will continue to engage with companies and the Czech Government on this issue and urge that pricing decisions be made transparently and include meaningful stakeholder input. U.S. companies have also voiced concerns over their inability to offer innovative medicines for rare diseases on the Czech market. A new law allowing for easier access for orphan drugs entered into effect on January 1, 2022.

*France:* Pharmaceutical industry stakeholders continue to raise concerns about the French pharmaceutical market, including with respect to the significant tax burden on the industry and the constraints facing sales of reimbursable medicines. U.S. stakeholders have expressed concern that the process of gaining market access for drugs in France is slower than elsewhere in Europe, resulting from delays in reimbursement approvals of as much as 566 days after marketing authorization, compared to the 180 days required by EU law. According to industry, the French pharmaceutical federation Les Entreprises du Medicament, which includes U.S. firms, and the French Government signed an agreement in March 2021 to shorten the reimbursement process. In addition, the French Government announced that it would reduce the length of the delays and meet the 180-day timeline by 2022. In June 2021, the French Government also announced a new fast-track procedure, which would simultaneously carry out both market access authorizations and price negotiations with the pharmaceutical industry. Implementing legislation for this fast-track procedure was adopted at the end of December 2021.

*Greece:* Pharmaceutical industry stakeholders face policies such as clawbacks, which create an uncertain business environment. The Greek Government passed reform measures, including legislating an increase in the budget for vaccines with an exemption from clawbacks and abolishing a mandatory 25 percent fee for new pharmaceutical products entering the market. However, clawbacks continue to present an uncertain environment. U.S. pharmaceutical companies are in contact with the Greek Government and hope to establish a memorandum of understanding to collaborate on further structural reforms. The government has committed to implementing reforms, including a reduction in clawbacks by 2025.

*Hungary:* Pharmaceutical industry stakeholders express concern that the Hungarian Government's pricing and reimbursement policies, which include a clawback system, delays in decision-making and reimbursement, and lengthy processes for making changes to the list of drugs approved for reimbursement, cause considerable unpredictability in the Hungarian market. It can take several years before patients have access to innovative products. Pharmaceutical industry stakeholders note the lack of opportunity to provide input into the decision-making process. Pharmaceutical companies are allowed to deduct part of their research and development costs in Hungary from their clawback payment obligations under an incentive system, but only if these costs exceed certain thresholds.

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

In addition, U.S. companies have expressed concerns as to the clawback system as it relates to public hospital pharmaceutical purchases. Specifically, if the Italian Government overspends its allotted budget for hospital pharmaceuticals, this system requires pharmaceutical companies to refund to the government 50 percent of the budget overrun through AIFA. According to industry, some improvements were introduced in the 2021 Budget Law that shifted additional budget to the hospital and direct purchase channel, but industry has noted a number of additional steps that could be taken to improve the functioning of the system.

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

In making price and reimbursement determinations, AIFA utilizes a system of therapeutic tenders that requires patented medicines to compete against other patented medicines and generics. U.S. industry has expressed concern that price appears to be the only selection criteria utilized by AIFA, rather than taking into account such factors as quality and therapeutic efficacy. In September 2020, AIFA published draft

guidelines on their pricing process. These draft guidelines include potentially useful elements on how AIFA chooses medicines used in its competitive comparisons. The United States will continue to monitor this situation.

U.S. stakeholders have also raised concerns regarding reimbursement delays for pharmaceutical products and delayed payments for medical devices. For example, it can take 12 months for products to be included in the Regional Registries even after the products have received marketing approval and been accepted for reimbursement. Moreover, the average time Italian public hospitals take to pay medical device suppliers continues to exceed the EU average as well as the maximum period permitted by EU law. Industry continues to press the Italian Government to address these issues.

*Ireland:* Pharmaceutical industry stakeholders expressed concerns over the Irish Government's cost containment measures and delays in reimbursement decisions. Access to new drugs and medicines, some of which are produced in Ireland, may be subject to a lengthy decision process as well as unpredictable funding levels. Industry also notes concerns over Ireland's price freezes on reimbursed medicines since 2016 and highlights that the Irish Pharmaceutical Healthcare Association and the Irish Government, which allocated additional funding in its 2021 and 2022 annual budgets, are looking to put into place a new multi-annual agreement featuring the principle of joint funding for new treatments.

*Lithuania:* The United States continues to engage with the Lithuanian Government regarding pharmaceutical market access issues. Discussions between the Lithuanian Health Ministry and U.S. stakeholders have made little progress to add innovative drugs to the Lithuanian Government's reimbursement list. Stakeholders remain concerned about the lack of transparency in the pricing and reimbursement process for innovative drugs.

*Poland:* U.S. stakeholders have expressed concern over the lack of an opportunity for meaningful stakeholder input into Poland's rulemaking and tendering processes, as well as the transparency of reimbursement rules for pharmaceutical products. Addressing these concerns would enhance business predictability. U.S. industry reports that Poland's pricing and reimbursement system is backlogged, taking more than 820 days (based on the WAIT study by the European Federation of Pharmaceutical Industries and Associations) on average from regulatory approval to patient access. Private hospital owners have complained that the hospital network law enacted in 2017 makes it difficult to get reimbursed by the National Health Fund for lifesaving procedures, forcing the closure of some private hospitals, particularly in cardiology. In November 2020, a Medical Fund Act entered into force, which has the potential to bring about major changes to Poland's reimbursement system, including by providing financing for highly innovative drugs and drugs of proven clinical value. In 2021, the Polish Government proposed amendments to its Reimbursement Act. While some potential improvements appear to exist in the draft amendments, the draft amendments also increase clawbacks above certain caps, decreasing the predictability of the pricing and reimbursement system. The United States will continue to urge Poland to engage meaningfully with stakeholders with respect to their concerns.

*Portugal:* Multiple U.S. pharmaceutical companies have expressed concern about delays in payments for medicine from public hospitals that at times far exceed the legal 90-day payment period. In addition, the companies face delays in approvals for the introduction of innovative products, with the average approval taking two years. The companies linked the payment and approval delays to budgetary constraints on the national health care system and noted they affected domestic firms as well. The United States has been working with U.S. pharmaceutical representatives to raise these issues with the Portuguese Government.

*Romania:* Innovative pharmaceutical producers have identified several significant challenges in Romania resulting from the Romanian Government's failure to update, despite repeated requests, the lists of innovative pharmaceuticals that are eligible for reimbursement under the national health system. Numerous

applications remain pending, severely undermining the incentives for U.S. pharmaceutical companies to introduce newer drugs in Romania because the National Health Insurance House does not reimburse patients for drugs that are not included on the reimbursement list. In addition, both innovative and generic pharmaceutical companies have withdrawn drugs from the Romanian market, as the low official prices set in Romania can fall below production costs. Other barriers include a government policy of not considering reimbursement applications until a new innovative medicine has been granted reimbursement in at least 14 Member States.

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

*Spain:* Pharmaceutical industry stakeholders continue to note concerns as to cost containment measures affecting the industry, including lack of clarity around criteria for reimbursement, substantial delays in reimbursement processes, and uneven patient access across autonomous regions.

*Slovakia:* U.S. stakeholders report that processes for marketing and reimbursement approvals of new pharmaceutical products in Slovakia lack transparency, and deadlines are sometimes missed. The Slovakian Government created a new Health Technology Assessment Agency at the Ministry of Healthcare in July 2021. The government has also proposed legislation to accelerate the approval and reimbursement of innovative medicines. The United States will monitor the impact of this proposal.

Slovakia was a frequent source of pharmaceuticals that were re-exported by third parties in the private sector to other EU markets, where they were sold at a profit, leading to shortages of certain drugs in Slovakia. In 2017, Slovakia amended its law, allowing the Slovak State Institute for Drug Control to monitor and ban the re-export of certain pharmaceutical products. Under the amended law, only the rights holder or distributor can legally export categorized medicines (*i.e.*, medications that are fully or partially covered by health insurance) outside Slovakia.

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

## Agriculture

### *Bananas*

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

the jurisdictional issues cited by the Italian Supreme Court, have begun re-issuing some of the previous duty assessments against the stakeholder.

### *Meursing Table Tariff Codes*

Many processed food products, such as confectionary products, baked goods, and miscellaneous food preparations, are subject to a special tariff code system in the EU. Under this system, often referred to as the Meursing table, the EU charges a tariff on each imported product based on the product's content of milk protein, milk fat, starch, and sugar. As a result, products that the United States and other countries might consider equivalent for tariff classification purposes sometimes receive different rates of duty in the EU depending on the particular mix of ingredients in each product. The difficulty of calculating Meursing duties imposes an unnecessary administrative burden on, and creates uncertainty for, exporters, especially those seeking to ship new products to the EU.

### *Subsidies for Fruit and Vegetables*

The EU Common Market Organization (CMO) provides a framework for market measures under the EU's Common Agricultural Policy (CAP), including for measures related to the promotion of fruit and vegetables. Implementing rules covering fresh and processed products are designed to encourage the development of producer organizations (POs) as the main vehicle for crisis management and market promotion. The CMO makes payments to POs for dozens of products, including peaches, citrus fruits, and olives. In 2015, a new basic payment scheme and greening payments were introduced, replacing the single payment scheme. Direct payments also are paid to support certain processing sectors, including, for example, peaches for juicing in Greece. The general lack of transparency around the distribution of EU subsidies at the Member State level in the fruit and vegetable industry raises questions about whether the payments are decoupled from production, and U.S. producers remain concerned about potential hidden subsidies. The United States continues to monitor and review EU assistance in this sector, evaluating potential trade-distorting effects.

### *Tax on Sugar-Sweetened Beverages*

*Poland:* On January 1, 2021, a sugar tax entered into force in Poland. The tax ranges from \$0.14 to \$0.31 per liter and applies to sweetened beverages (drinks containing added sugar, sweeteners, caffeine, or taurine) and alcohol in small bottles. While both foreign-owned and domestic companies are subject to the tax, U.S. companies operating in Poland pay the majority of these taxes. This is because certain sugar-containing beverages, such as fruit juices and dairy-based drinks, which are produced primarily by Polish companies, have been exempted. Dietary supplements and infant formula are also exempted.

### Customs Barriers and Trade Facilitation

Notwithstanding the existence of customs legislation that governs all Member States, the EU does not administer its laws through a single customs administration. Rather, there are separate agencies responsible for the administration of EU customs law in each Member State. It is thus difficult for the EU to ensure that its rules and decisions on classification, valuation, origin, and customs procedures are applied uniformly throughout the Member States.

The Binding Tariff Information program provided for by EU-level law, but administered at the Member State level, does provide for advance rulings on tariff classification and country of origin. However, EU rules do not require the customs agency in one Member State to follow the decisions of the customs agency in another Member State with respect to materially identical issues. In some cases where the customs agency of a Member State administers EU law differently from, or disagrees with the Binding Tariff

Information issued by, another Member State, the matter may be referred to the Customs Code Committee (CCC). The CCC consists of Member State representatives and is chaired by a Commission representative. Although a stated goal for the CCC is to help reconcile differences among Member States and thereby help to achieve uniformity of administration, in practice its success in this regard has been limited. The CCC and other EU-level institutions do not provide transparency in decision-making or opportunities for participation by traders, which might make them more effective tools for achieving the uniform administration and application of EU customs law.

In addition, the EU lacks tribunals or procedures for the prompt review and EU-wide correction of administrative actions relating to customs matters. Instead, review is provided in the tribunals of each Member State, and the rules regarding these reviews vary from Member State to Member State. A trader encountering differing treatment in multiple Member States must bring a separate appeal in each Member State whose agency rendered an adverse decision.

Ultimately, a question of interpretation of EU law may be referred to the Court of Justice of the European Union (CJEU). Although the judgments of the CJEU apply throughout the EU, referral of a question to the CJEU is generally discretionary, may take many years, and may not afford sufficient redress. Thus, obtaining corrections with EU-wide effect for administrative actions relating to customs matters is frequently cumbersome and time-consuming. The United States has raised concerns regarding the uniform administration of EU customs law with the EU in various forums, including in the WTO Dispute Settlement Body (DSB).

The Commission has sought to modernize and simplify customs rules and processes. The Union Customs Code (UCC), adopted by the Commission in 2013, entered into force in 2016. While the UCC contains a number of procedural changes, the key element of a harmonized information technology infrastructure has yet to be completed. Member States continue to use different data templates. In 2019, the expected completion date for full implementation of harmonized customs data systems was extended from the end of 2020 to the end of 2025.

The United States will continue to monitor the UCC implementation process, focusing on its impact on the consistency of customs treatment under EU customs law.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

#### *Transparency and Notification*

U.S. exporters face a proliferation of technical barriers to trade (TBT) in the EU. This is attributable in part to aspects of the EU's regulatory process, including that for preparing and adopting post-legislation "implementing and delegated acts." These processes lack clarity and efficacy with respect to ensuring that technical regulations, guides, or recommendations within the scope of the WTO TBT Agreement are properly notified to the public for meaningful comment. The United States regularly raises concerns, both in bilateral engagement and in the WTO Committee on Technical Barriers to Trade (TBT Committee), regarding cases in which notification of certain measures that may have a significant effect on trade has not taken place at an appropriate stage, or at all. EU notifications often take place at a procedural stage when it is too late to revise the measure to take into consideration any concerns, including substantive or scientific, raised by other WTO Members.

For example, under the EU's regulatory processes for Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH) and Classification, Labeling, and Packaging (CLP), proposed

restrictions on chemicals and their use in products are typically notified to the WTO only after scientific review committees have convened and the Commission’s domestic consultations are concluded. This prevents affected parties from providing additional scientific or technical data for the optimal consumer and producer outcome. In other cases, measures are simply not notified at all, as was the case with a series of country of origin labeling (COOL) measures. The EU may also make significant changes to a proposed regulation without re-notification. In the case of the EU Regulation on Eco-Design Requirements for Electronic Displays, substantive changes were made to the draft regulation after the public consultation period and WTO notification, meaning that stakeholders did not have an opportunity to comment on those changes. Finally, failure to notify measures with adequate comment periods are also observed at the Member State level, including in the case of recent French recycling labeling regulations. Improvement and greater consistency in EU and Member State notification of measures that may have a significant effect on trade could reduce the emergence of technical barriers to trade by ensuring that the EU takes into consideration significant concerns before it finalizes measures.

The United States is concerned that further transparency and notification issues may arise regarding various initiatives under the European Green Deal, announced in December 2019, which is aimed at making Europe “the first carbon neutral continent by 2050.” The United States is closely monitoring: the “Fit for 55” legislative proposals, which are components of the Green Deal, presented in July 2021; the “Sustainable EU Food System Initiative” launched in September 2021’ and, a legislative proposal presented in November 2021 to address deforestation and forest degradation associated with agricultural commodity production and trade. In 2021, the United States tracked these proposals, including to assess whether any proposed labeling or certification measures have the potential to be more trade-restrictive than necessary to fulfill a legitimate objective, but as of March 2022 has not yet raised them in the WTO TBT Committee. Sanitary and phytosanitary (SPS) concerns with the European Green Deal are discussed later in this chapter.

Under the Circular Economy Action Plan, the EU notified to the WTO TBT Committee and set into force the Single Use Plastic Directive (EU 2019/904), which bans certain plastic products intended to be used just once or for a short period of time. However, the accompanying guidance document, which contained critical additional information for the implementation of the Directive, was delayed and not published until June 2021. The guidelines determined that some bio-based polymers should be included under the scope of the Directive (thereby effectively banning them from the EU market), while some should be exempted. The United States has sought to understand why this distinction was made in the guidelines and raised this issue with the EU in November 2021.

### *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 do not conform to European regional standards (called European harmonized standards or European harmonized norms (ENs)), including international standards that are not harmonized with ENs, even though these international standards may meet or exceed the EU (or third country) regulatory requirements. U.S. producers and exporters thus face additional burdens in accessing the EU market not faced by domestic producers in the EU or by EU exporters when accessing the U.S. market.

EU product requirements in a variety of sectors (*e.g.*, toys, machinery, medical devices) are regulated under measures following the New Legislative Framework (NLF). Under the NLF, EU legislation sets out the “essential requirements” that products must meet to be placed in the EU market and benefit from free movement within the EU. Only products that conform to harmonized ENs under the NLF are presumed to be in conformity with the essential requirements. Moreover, a harmonized EN must be adopted at the

national level by a Member State and any conflicting national standard withdrawn. Harmonized ENs can only be developed through the European Standards Organizations (ESOs) as directed by the Commission through a standardization request. The three ESOs are the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC), and the European Telecommunications Standards Institute (ETSI). Products conforming to these harmonized ENs can bear what is known as a “CE mark” and can be sold throughout the EU.

While the NLF does not explicitly prohibit other standards from being used to meet the EU’s essential requirements, it can preclude the use of other standards, including international standards. Attempting to demonstrate that use of an alternative standard fulfills the EU essential requirements instead of using a harmonized EN can be prohibitively costly, involve additional conformity assessment requirements, and comes with uncertainty for manufacturers and exporters. For example, if a manufacturer chooses not to use a harmonized EN, it needs to assemble a more extensive technical file through a costly and burdensome process because the alternative standard cannot be granted a presumption of conformity with the essential requirements or applied directives. This process must be repeated each time a similar new product is introduced to the market. Even if a manufacturer assembles such a file, there is no certainty that Member State authorities will treat the product as conforming to the EU’s essential requirements. As a result, U.S. producers often feel compelled to use the relevant harmonized EN developed by the ESOs for the products they seek to sell on the EU market. This is the case even where U.S. products produced according to relevant international standards provide similar or higher levels of safety and performance.

CEN and CENELEC technical committees, which draft harmonized ENs, generally exclude non-EU nationals from participating in their standard-drafting process. In the limited instances where non-EU nationals do participate, they are not allowed to vote. Accordingly, when a U.S. producer uses a harmonized EN, it is typically using a standard that has been developed through a process in which it had no meaningful direct or representational opportunity to participate or provide technical input. This has a pronounced impact on SMEs and other companies that do not have a European presence. The opportunity for U.S. stakeholders to influence the technical content of EU legislation setting out essential requirements (*i.e.*, technical regulations) is also limited. This is because when the EU notifies proposed legislation containing essential requirements to the WTO, it does not identify the specific CEN or CENELEC standards for which the presumption of compliance will be given. Furthermore, the EU only notifies legislation after the Commission has transmitted it to the Council and Parliament and is no longer in a position to revise the legislation in light of comments received. Consequently, U.S. stakeholders often do not have the opportunity to comment on critical technical elements of proposed technical regulations and conformity assessment procedures contained in EU legislation, or on the standards that may be used to fulfill that legislation’s essential requirements. In other words, they are precluded from participating in the development of requirements in addition to the means by which those requirements will be fulfilled.

The Vienna and Frankfurt Agreements, which establish technical cooperation between CEN and the International Organisation for Standardisation (ISO) and between the CENELEC and the International Electrotechnical Commission (IEC), respectively, allow for the fast-track adoption of CEN and CENELEC standards by ISO/IEC. This approach limits opportunities for non-European stakeholders to contribute to the development of the standards at an early stage.

Finally, CJEU rulings, such as in *James Elliot Construction* (C-613/14), have led to increased EU Commission engagement in the oversight of standards development processes and to the development of non-standard technical specifications. In particular, the ruling in *James Elliot Construction* led to the legal conclusion that harmonized ENs are part of EU law. U.S. industry has begun noting concerns of a subsequent deviation from reliance on international and European standards in favor of non-standard technical solutions, including technical specifications and codes of conduct. There is also a decreased

availability of international or European standards that may be predictably relied on to demonstrate conformity with a piece of legislation’s essential requirements. A delay in standardization is also typical.

As for conformity assessment, the United States has serious concerns regarding the EU’s conformity assessment framework, set out in Regulation (EC) 765/2008 and Decision 768/2008. Regulation 765/2008 requires each Member State to appoint a single national accreditation body that can accredit conformity assessment bodies and prohibits competition among Member States’ national accreditation bodies. Under the EU system, an accreditation certificate from one Member State accreditation body suffices throughout the EU. The regulation further specifies that national accreditation bodies shall operate as public, not-for-profit entities. This regulation effectively bars the use of trade-facilitative international accreditation schemes and precludes U.S.-domiciled accreditation bodies from offering their services in the EU with respect to any mandatory third-party conformity assessment requirements.

Decision 768/2008 sets out requirements that any mandatory third-party conformity assessment falling within the NLF be performed by a “Notified Body” and permits only bodies “established under national law” to become Notified Bodies. In practice, the EU interprets “established under national law” as a requirement that any entity seeking designation as a Notified Body must be established in the EU and, in particular, in the Member State from which it is seeking such designation. This interpretation denies U.S.-domiciled conformity assessment bodies the opportunity to certify products for the EU market outside of existing mutual recognition agreements, and raises significant market access concerns for U.S. producers, whose products have been tested or certified by conformity assessment bodies located outside the EU. The EU conformity assessment approach adds increased time to market, increases costs for manufacturers, and requires U.S. testing and certification bodies to establish operations in the EU to remain competitive.

The EU also promotes the adoption of harmonized ENs by its trading partners and often requires the withdrawal of non-EU standards as a condition of providing assistance to or affiliation with other countries, which can give EU manufacturers commercial advantages in those markets. Where the withdrawn standards are international standards that U.S. producers use, which may be of equal or superior quality to the ENs that replaced them, U.S. producers must choose between the cost of redesigning or reconfiguring their products to meet the European standards, undergoing additional processes to show they meet requirements, or exiting the market completely. Further, EU trade policy seeks to narrow the definition of what is considered an international standard within the meaning of the WTO TBT Agreement. For instance, as part of its free trade agreements, the EU seeks commitments affirming that only a standard issued by a subset of specific standards-developing organizations, none of which are domiciled in the United States, be considered an international standard (*e.g.*, the EU-Japan Economic Partnership Agreement, Article 7.6). This practice accords preferential treatment to organizations in which the EU carries an outsized influence (*e.g.*, the World Forum for Harmonisation of Vehicle Regulations within the framework of the United Nations Economic Commission for Europe’s 1958 Agreement) or with which the ESOs have existing cooperation agreements (*e.g.*, the ISO and the IEC). Furthermore, this attempt to reinterpret which standards should be deemed international under the WTO TBT Agreement is contrary to relevant decisions of the TBT Committee, which recognizes that standards developed by organizations domiciled in any WTO country can be deemed international, provided they are developed in accordance with relevant WTO principles.

### *Regulation of Emerging Technology*

The EU is seeking to regulate aspects of emerging technology, which will have significant implications for industry’s marketing of products and services in the EU. The United States is closely monitoring progress on legislation such as the proposed revision of the Machinery Directive and a draft regulation proposed in April 2021 setting out harmonized rules on artificial intelligence (AI), commonly referred to as the “AI Act” (both notified to the WTO in November 2021), as well as the development of standards under the

finalized Cybersecurity Act (Regulation 2019/881), seeking to ensure that the EU applies a consistent approach to regulation and encourages the usage of global, industry-driven standards rather than regional standards. The United States also has concerns with conformity assessment processes and the ability for non-EU conformity assessment bodies to test to EU regulations, which could hinder participation of smaller companies in the transatlantic technology marketplace. Finally, the United States also seeks to ensure that there is clarity across various pieces of legislation, particularly in areas such as artificial intelligence. The United States raised concerns on the proposed revision of the Machinery Directive with the EU in November 2021 and plans to raise concerns about both the Machinery Directive and the AI Act again in 2022. The United States has responded with comments to both WTO notifications. For more information, see the discussion of the Artificial Intelligence Act in the Barriers to Digital Trade and Electronic Commerce section of this report.

#### *Revision of the Radio Equipment Directive*

The EU notified to the WTO its proposal to revise what is commonly known as the Radio Equipment Directive in December 2021. The proposal in its current form requires manufacturers to conform to a specific technical design – the USB Type C charger, for mobile devices, tablets, and other electronic devices. Private sector stakeholders argue that by prescribing one specific design codified into the revised Directive, as opposed to specifying product performance characteristics, the proposed regulation will inhibit innovation, affect generational compatibility across devices, and ultimately hinder progress toward more efficient, sustainable, and interoperable charging equipment. Use of relevant international standards, which are regularly updated, on the other hand, can provide for interoperability across generations of USB technologies and address these other key goals. The United States raised this issue bilaterally with the EU in 2022 and also submitted a response to the EU’s notification.

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

The EU regulation concerning the production, marketing, and use of chemicals as substances and in products, known as REACH, entered into force on June 1, 2007. REACH imposes extensive registration, testing, and data requirements on chemicals manufactured in or imported into the EU in quantities greater than one metric ton. REACH contains provisions permitting the Commission to limit or ban the sale of certain substances and their uses in products on the EU market. It also contains provisions allowing the Commission to require manufacturers or users of certain hazardous chemicals to obtain authorizations for those chemicals. Furthermore, enterprises active in virtually every industrial and manufacturing sector need to have awareness of REACH because their products could contain chemicals that may be subject to its registration requirements when placed on the EU market, depending on the sum of the volumes of chemicals in their products and the articles of which the product is comprised, and each chemical registrant must account for the uses of that chemical in the products it places or intends to place on the EU market. REACH also requires exporters of any article that contains a “Substance of Very High Concern” (SVHC) in an amount exceeding 0.1 percent weight-by-weight of said article to notify their supply chain recipients of the presence of these substances and provide relevant information to allow for the safe use of the article.

The United States agrees that it is important to regulate chemicals to ensure environmental and health safety. The United States is concerned, however, that the overall premise of REACH is precautionary and hazard-based, as opposed to risk and science-based. However, stakeholders have raised concerns that as part of the registration process under REACH, they must provide data that is not directly relevant to the specific hazards and proposed uses of a registered substance. Additionally, there appears to be inconsistent and insufficiently transparent application of REACH across Member States, which can result in requirements that are more onerous for U.S. exporters than they are for EU businesses. The United States and many other WTO Members continue to raise concerns regarding various aspects of REACH at WTO TBT Committee meetings, particularly in light of their impact on small businesses. WTO Members remain

committed to gaining greater transparency in the development and implementation of REACH requirements and frequently cite the need for further information and clarification, in addition to problems producers have in understanding and complying with REACH's extensive registration, labeling, and safety data information requirements. In 2021, the United States raised concerns bilaterally about the risk management measures proposed by the European Chemicals Agency (ECHA) to the Commission for a REACH Annex XV Restriction for "intentionally-added microplastics" based on concerns about the risk assessment processes.

#### *Substances of Concern in Products Database*

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

#### *Substances of Very High Concern*

The United States continues to raise concerns with the EU on the lack of public notice and comment associated with the process by which substances are screened for the SVHC Candidate List (CL) and then, after further review, restricted or banned as SVHCs. Member States take the lead on identifying substances for the CL via the preparation of a Risk Management Option Analysis (RMOA). The RMOA process evaluates the potential hazards of a substance, its uses, and means of managing any identified risks. The problem for U.S. exporters is that more than one Member State may prepare a substance RMOA, and these RMOAs are not always consistent in approach or do not always utilize a public consultation process to receive comments. Once a substance is on the CL, companies manufacturing or importing more than one ton of the substance annually must declare the substance to the EU. Companies are also required to provide safety data sheets to their customers and, as of January 5, 2021, articles and products containing CL substances above a 0.1 percent weight-by-weight concentration are subject to additional registration and reporting requirements through the SCIP database. The requirements are set out in the EU's Waste Framework Directive and the database is managed by ECHA. The United States continues to monitor the SVHC candidate list status of certain siloxanes.

#### *Chemicals: Classification, Labeling and Packaging Regulation (CLP)*

The CLP operates in tandem with REACH, providing for the harmonization of the classifications of REACH substance registrations. CLP requires chemical manufacturers, importers, and downstream users of CLP-classified substances and mixtures to appropriately manage, label, and communicate risk management measures for any potentially hazardous chemicals used in their articles and products. U.S. stakeholders note that the process to determine CLP classifications often seems arbitrary, since the EU only

provides six weeks public comment on its classifications, even when the classification proposed by the EU differs significantly from the classifications used by industry in their REACH registrations.

The United States is concerned that because the CLP is hazard-based, as opposed to risk-based, it may result in product restrictions and labels that are unnecessarily disruptive to trade. The labeling requirements require products to carry a carcinogen label, even when a company can show that there is no risk of exposure to the chemical in the product. The United States is also concerned that the EU only notifies the classifications to the WTO once ECHA's scientific reviews are largely completed, calling into question whether comments provided at this stage can be meaningfully taken into account. Further, the EU in the 14th adaptation of the CLP admitted that it had not yet even scientifically assessed whether the cobalt residue in metal compounds is a health hazard but intended to go forward with the classification, despite the resulting restrictions on products.

The classification of titanium dioxide offers another example of the challenges for U.S. companies with regard to the CLP's hazard-based approach. The CLP classifies some titanium dioxide particles (less than 10 micrometers) as a carcinogen when inhaled. This automatically restricted the use of titanium dioxide in products and required a carcinogen label, even when there was no demonstrated risk of inhalation. Industry has flagged for the U.S. Government that broad hazard labeling requirements for consumer products, which do not have a scientific basis, dilute the effectiveness of warning labels for products that pose genuine safety risks.

### *Chemicals Strategy for Sustainability*

On October 14, 2020, the Commission released its Chemical Strategy for Sustainability (CSS) to reform the EU's chemicals legislation over the coming years, including a review of REACH, CLP, and other sectoral legislation regulating chemicals. The proposed changes are broad and would include, among other things: (1) the introduction of new hazard classes and labeling requirements under the CLP (*e.g.*, for endocrine disruptors, as well as for persistent, mobile, or bio-accumulative substances); (2) a shift to assessing and prohibiting groups of chemicals as opposed to individual substances; (3) only allowing the use of toxic chemicals when they have an "essential use" application (criteria yet to be defined); and (4) developing criteria for "safe and sustainable by design" chemicals in an effort to spur innovation. Notably, the CSS specifically seeks to ban all but essential perfluorooctanoic acid (PFOA) and per- and polyfluoroalkyl (PFAS) substances. In general, the proposed changes will result in a more restrictive approach to chemicals the EU considers to be harmful (based on an assessment of potential hazard as opposed to risks) and an increase in information requirements for products sold in the EU. The parallel introduction of new rules under the Digital Services Act will also have implications for how U.S. chemical exporters can sell their products to the EU market online.

While in general some of the proposed changes could have a positive effect to the extent they would introduce more transparent data requirements and stricter enforcement (including online sales by non-reputable sellers from outside the EU), U.S. industry is concerned that the CSS could burden businesses with requirements that might not be necessary for consumer safety.

The Commission has also indicated its intention to simplify the chemicals authorization process by adopting a "one substance, one assessment" approach. For U.S. companies, though the details remain unclear, this approach could be a positive change from the current situation in which one substance may be covered by multiple regulations and authorities, each requiring a different authorization process. The initial public consultation for the revision of the CLP regulation took place in fall 2021, and the Commission's legislative proposal is expected to be put forward during the second quarter of 2022. The revision of the REACH regulation is expected to follow closely behind. The United States continues to monitor developments in

this area and ensure that U.S. companies are informed of the ongoing discussions. The United States raised the CSS with the EU over the course of 2021.

### *French Circular Economy Law*

In February 2020, France enacted Law No. 2020-105 (Regarding a Circular Economy and the Fight Against Waste). The law is an implementing measure of the EU Directive 2019/904 “on the reduction of the impact of certain plastic products in the environment,” which was notified to the WTO in February 2020. However, certain articles of France’s law have not been notified to the WTO TBT Committee, including Article 17 that would create new requirements to place a France-specific recycling logo (Triman mark) on the packaging of all household products, textiles and shoes, furniture, tires, and paper products when these products may end up in household waste streams. In addition, in November 2020, a Ministerial Decree set out a fine for the use of recycling logos other than the Triman mark, including the “Green Dot” label, which is widely used (and in some cases obligatory) in other EU Member States, thereby making it difficult for business to include both symbols when exporting their goods to multiple markets. While the French fine on the Green Dot has been suspended pending ongoing litigation, Article 17 mandating the use of the Triman mark went into effect on January 1, 2022, raising concerns regarding France’s transparency obligations under the WTO TBT Agreement as the measure has not yet been notified as of March 2022. This measure will likely have costly trade implications for companies present in the EU market, who will have to redesign packaging to meet a requirement that does not exist elsewhere in the EU market. The United States has raised concerns about the proposal’s trade impact with the EU and with France.

U.S. industry has additional concerns about Articles 77 and 80 of Law No. 2020-105, which, respectively: (1) prohibit fresh fruits and vegetables from being sold in plastic packages at retail unless specifically exempted; and (2) prohibit labels affixed directly to fresh fruits and vegetables unless they are fully biodegradable in a home composting environment.

Finally, in July 2021, France issued a decree setting minimum quotas for the proportion of reused packaging placed on the French market annually between 2022-2027. The minimum reuse quota covers glass, cans, and cases and refers to all packaging, whether produced in France or imported. France submitted its unnumbered draft decree to the EU internal Technical Regulation Information System database in July 2021.

### *Renewable Fuels: Renewable Energy Directive*

The EU Renewable Energy Directive (RED) requires that biofuels and biofuel feedstocks obtain a “Proof of Sustainability” certification to qualify for tax incentives and national use targets. To that end, RED also establishes a methodology and accounting system by which Member States may record and calculate required greenhouse gas emission savings as compared to a baseline for fossil fuels.

In January 2019, the Commission recognized the U.S. Soybean Sustainability Assurance Protocol (SSAP) as a voluntary scheme under RED. This allowed soybean oil made from SSAP-certified soybeans to be used as feedstock for biodiesel production in the EU. However, the EU has reopened consideration of the RED program as part of the European Green Deal, so long-term benefits of the SSAP could be affected by future modifications to RED.

In 2018, the Commission adopted a new directive (RED II) for the period 2021 to 2030. RED II entered into force on January 1, 2021. RED II introduces sustainability requirements for forestry biomass (wood pellets). The United States exported approximately \$287 million in wood pellets to the EU in 2021. The United States continues to actively monitor certain unresolved issues regarding the impact of RED II’s complex sustainability criteria for biomass on U.S. exports of sustainable wood pellets.

RED II requires Member States to prepare 10-year National Energy and Climate Plans (NECP) for 2021 to 2030 that outline how they will meet the new 2030 targets for renewable energy and for energy efficiency. On July 14, 2021, the Commission published a draft amendment to RED II that proposes to revise the sustainability criteria for forestry biomass. Depending on the final text that the EU adopts, the revised directive could impede hundreds of millions of dollars of biomass exports to the EU. The United States continues to monitor developments and evaluate the potential impact on U.S. exports.

### *Member State Sustainability Criteria*

*The Netherlands:* In March 2015, the Netherlands amended the regulation governing sustainability requirements for solid biomass. The regulation includes a requirement for sustainability certification at the forest level, effectively precluding reliance on the U.S. risk-based approach to sustainable forest management.

### *Glyphosate*

Glyphosate, an herbicide used in plant protection products, is currently approved in the EU until December 15, 2022. Four Member States (France, Hungary, the Netherlands, and Sweden) were appointed to act jointly as rapporteurs for the assessment of the next application for renewal of the approval for use of glyphosate in herbicides. These Member States formed the Assessment Group on Glyphosate (AGG). The normal review process usually involves one Rapporteur Member State (RMS) and one Co-RMS, and the process typically takes three years to complete.

A group of companies known as the Glyphosate Renewal Group submitted an application to renew approval of glyphosate in December 2019. The AGG completed its Renewal Assessment Report (RAR) on June 15, 2021 (updated on August 10, 2021). The European Food Safety Authority (EFSA) launched parallel public consultations with the ECHA on the RAR on September 23, 2021, which closed on November 22, 2021. All contributions will be considered by the Member State competent authorities, EFSA, and ECHA as the scientific assessment progresses. The AGG's conclusions are expected to be submitted to Member States for a vote by the end of 2022 or beginning of 2023.

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

*Austria:* After two unsuccessful attempts to ban glyphosate and its products, the Austrian Parliament adopted a partial ban in 2021, which entered into force on June 5, 2021. The amendment to the Austrian Pesticide Law bans the use of glyphosate in “sensitive” areas, which include publicly accessible areas like playgrounds, parks, and areas designated for vulnerable groups of people like healthcare facilities and retirement communities. The law also prohibits the use in home and community gardens and for private or non-professional use. Professional use of glyphosate, including application in agriculture, continues to be allowed.

*France:* In October 2020, the French Government announced plans to reduce the use of phytopharmaceutical products by 50 percent by 2025 and to phase out the use of glyphosate for most of its uses, “as long as replacement is available.” Since a law regulating the use of phytopharmaceutical products entered into force in 2017, local governments have not been allowed to use glyphosate in public green areas

(parks, forests, streets, etc.). As of July 2022, this ban will apply to all places, private or public. To encourage farmers to phase out glyphosate-based products, the French Government in October 2021 announced a tax credit of €2,500 (approximately \$3,030) for farmers who declare in 2021 or 2022 that they no longer use glyphosate.

France is also encouraging a phase-out of glyphosate at the EU level and is a member of the AGG, the EU evaluation team for glyphosate license renewal.

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

### *Medical Devices & In-Vitro Diagnostics*

The United States continues to be concerned about the implementation timeline for both the Medical Device Regulation (MDR) and the In-Vitro Medical Device Regulation (IVDR), especially the shortage of notified bodies available to assess medical devices and in vitro medical devices. Delays in implementation for the MDR until May 2021, and for the certain classes of IVDR products until May 2022, offered some relief to producers of medical devices and in vitro diagnostics, but several challenges remain, including an inability to provide in-person audits due to the COVID-19 pandemic. In addition, the shortage of notified bodies is particularly problematic for manufacturers of medical devices seeking compliance. The United States engaged the EU in 2021 through the WTO TBT Committee and bilateral discussions around those meetings to seek updates on the implementation of the MDR and IVDR, including the number of qualified notified bodies to perform conformity assessment requirements.

Furthermore, many of the standards for both medical devices and in vitro diagnostics referenced in the Commission's mandate to CEN/CENELEC are based on European standards instead of relevant international standards. This divergence will require producers to comply with a different set of standards to access the European market, requiring duplicative efforts and additional burdens on manufacturers without discernable improvements to health or safety. Accordingly, the European standards present a risk of creating additional barriers to trade.

The Commission also adopted the European Medical Device Nomenclature (EMDN). EMDN is based on the Italian "Classificazione nazionale e internazionali" (CND), which is not harmonized with the well-established Global Medical Device Nomenclature (GMDN). GMDN was developed with the support of the ISO and the International Medical Device Regulators Forum. It is widely adopted by the medical device industry and is used by over 70 national medical device regulators. The United States remains highly concerned that the EU's adoption of EMDN is undermining the interoperability of UDI systems for tracking and reporting purposes and will pose several significant obstacles to the medical device and healthcare community.

### *Wine Traditional Terms*

The EU continues to restrict the use of "traditional terms," such as "tawny," "ruby," and "chateau," on labels on imported wine. This impedes U.S. wine exports to the EU, including U.S. wines that include these traditional terms within their trademarks. U.S. wines sold under a trademark that includes one of the traditional terms can only be marketed in the EU if the trademark was registered before May 2002.

In June 2010, U.S. stakeholders submitted applications to be able to use traditional terms in connection with products sold within the EU. In 2012, the EU approved the applications for use of two terms, “cream” and “classic,” but has not taken action on other terms. The United States has repeatedly raised this issue in the WTO TBT Committee and the WTO Committee on Trade in Goods and has pursued bilateral discussions, including in 2021. Beyond approving the two terms, the EU has not taken any visible steps to address U.S. concerns and for the past nine years has consistently refused to provide a timeline for review of the applications submitted by U.S. industry.

### *Distilled Spirits Aging Requirements*

The EU requires that for a product to be labeled “whiskey” (or “whisky”), it must be aged a minimum of three years. The EU considers this a quality requirement. U.S. whiskey products that are aged for a shorter period cannot be marketed as “whiskey” in the EU market or other markets that have adopted EU standards, such as Israel and Russia. With a long history of quality whiskey production, the United States views a mandatory three-year aging requirement for whiskey as unwarranted. Recent advances in barrel technology enable U.S. micro-distillers to reduce the aging time for whiskey while producing a quality product. The United States will continue to urge the EU and other trading partners to end whiskey aging requirements that are restricting U.S. exports of whiskey from being labeled as such.

### *Certification of Animal Welfare*

The EU requires animal welfare statements on official sanitary certificates. The U.S. position is that official sanitary and phytosanitary certificates—the purpose of which is broadly limited to prevent harm to human, animal, or plant life or health from diseases, pests, or contaminants—should only include statements related to animal, plant, or human health, such as those recommended by Codex Alimentarius Commission (Codex), the World Animal Health Organization (OIE), and the International Plant Protection Convention, or those that have scientific justification. The EU’s certification requirements do not appear to advance any food safety or animal health objectives. As part of the Farm to Fork (F2F) Strategy announced in May 2020, the EU Commission published an animal welfare fitness check roadmap, which should result in additional animal welfare legislative initiatives in 2023, including for enhanced labeling.

## **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 safety objectives because they are not based on science, are maintained without sufficient scientific evidence, or are applied beyond the extent necessary.

As part of the European Green Deal, described above in the Technical Barriers to Trade section, the EU Commission published its F2F Strategy in May 2020 that included targets and policy proposals for enhancing food and agricultural sustainability by 2030. Among other things, these targets aim to reduce pesticide and fertilizer use by farmers, antimicrobial use in livestock, and change land use in agriculture by transitioning farmland into organic production or taking other farmland out of production. The EU has stated it will seek to “obtain ambitious commitments from third countries in key areas,” which suggests that the EU may try to expand the reach of this policy beyond the EU. The targets must be converted into legislative proposals, and the European Parliament and Member States will shape and amend these proposals as part of the EU legislative process between 2021 and 2024. The EU Ministers of Agriculture adopted conclusions on the F2F Strategy in October 2020, endorsing goals while registering a request that farming models other than organics be considered and that any new legislation must be based on “scientifically-sound ex-ante impact assessments.” As of March 2022, a legislative proposal on the F2F

Strategy has yet to be published. However, as noted above in the Technical Barriers to Trade section, the EU published several related initiatives in 2021, including the “Fit for 55” legislative proposals presented in July 2021 and the inception impact assessment for the “Sustainable EU Food System Initiative” launched in September 2021. It remains to be seen how the EU will implement the broader objectives of the F2F through these interrelated initiatives, which appear to blend SPS issues with potential TBT requirements like labeling or certification schemes.

### *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 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 verification program to ensure that hormones, beta agonists, or other growth promotants have not been used in their production.

For example, the EU continues to ban the use of the beta agonist ractopamine, which promotes leanness in animals raised for meat. The EU maintains this ban even though international standards promulgated by Codex have established an MRL for the safe trade in products produced with ractopamine. The Codex MRL was established following scientific study by the Food and Agriculture Organization of the United Nations/World Health Organization Joint Expert Committee on Food Additives that found ractopamine at the specified MRL does not have an adverse impact on human health.

The EU’s ban on growth promotant hormones in beef is inconsistent with its WTO obligations. In 1996, the United States brought a WTO dispute settlement proceeding against the European Communities (the EU predecessor entity) over its ban on beef treated with any of six growth promotant hormones. A WTO dispute settlement panel concluded—and a subsequent report of the WTO Appellate Body affirmed—that the ban was maintained in breach of the EU’s obligations under the WTO Sanitary and Phytosanitary (SPS) Agreement. Following the failure by the EU to implement the recommendations of the WTO DSB to bring itself into compliance with its WTO obligations, the United States was granted authorization by the WTO in 1999 to suspend concessions. Accordingly, the United States levied *ad valorem* tariffs of 100 percent on imports of certain EU products. The value of the suspended concessions, \$116.8 million, reflected the damage that the hormone ban caused to U.S. beef sales to the EU.

In September 2009, the United States and the Commission signed a Memorandum of Understanding, which established a new EU duty-free import quota for grain-fed, high quality beef (HQB) as part of a compromise solution to the U.S.–EU hormone beef dispute. Since 2009, Argentina, Australia, Canada, New Zealand, and Uruguay have also begun to ship under the HQB quota. As a result, the market share of U.S. beef in the HQB quota has decreased significantly. To remedy the erosion of U.S. beef access to the HQB, the United States and the EU engaged in negotiations to change the HQB quota, after the EU received a mandate to do so from the Council in October 2018.

In 2019, the United States and the EU concluded a new agreement, which established a duty-free tariff-rate quota (TRQ) exclusively for the United States. Under the agreement, American ranchers will have an initial TRQ of 18,500 metric tons annually, valued at approximately \$220 million. Over seven years, the TRQ will grow to 35,000 metric tons annually, valued at approximately \$420 million. The agreement went into effect on January 1, 2020. The United States continues to engage the EU regarding the unscientific ban on meat and animal products produced using hormones, beta agonists, and other growth promotants.

### *Antimicrobial Resistance and the Restrictions on the Use of Veterinary Medicinal Products*

In December 2018, the EU published Regulation (EU) 2019/6 on veterinary medicinal products, which revised EU protocols for the approval and use of veterinary medicinal products. A stated goal of the regulation is to address antimicrobial resistance by more strictly defining the criteria for use of antimicrobial products in animal medicine and defining a list of products that will be exclusively reserved for human medicine and no longer permitted in agricultural production. Article 118 of the regulation also expands these restrictions to operators in third countries, although it is unclear how the EU intends to justify or enforce these restrictions. The official implementation date for (EU) 2019/6 was January 28, 2022. That said, as of March 2022, the EU has yet to finalize the legislation necessary to implement the regulation, which raises significant questions regarding the potential impacts on U.S. exports of animal products to the EU upon entry into force.

In March 2021, the EU published an amendment to the Official Controls Regulation (EU) 2017/625, which clarified the legal mechanism for verification of compliance with Article 118. In October 2021, the EU published Commission Delegated Regulation (EU) 2021/1760, which fixed the criteria used to establish the list of antibiotics exclusively preserved for human medicine. On March 1, 2022, the European Medicines Agency (EMA) published the draft list of antimicrobials that will be reserved for human medicine. The Commission will use the EMA advice to inform the final list to be published in an implementing act. Additionally, the Commission is also expected to publish a draft Delegated Regulation, which will formally implement Article 118. The United States continues to engage the EU regarding management of antimicrobial resistance and encourage science-based approaches.

### *Agricultural Biotechnology*

Decades of data and experience demonstrate the safety of genetically engineered (GE) crops, in addition to the benefits of their use in reducing carbon emissions, pesticide use, and impact on non-target organisms, while increasing soil health, crop yields, and farmers' incomes. Despite these benefits, the lack of predictability, excessive data requirements, and delays in the EU's approval process for GE crops have prevented products from being exported to the EU, even though these products have been approved and grown in the United States.

The United States continues to reiterate concerns with delays in the EU's biotechnology approval procedures and to engage the EU in efforts to normalize trade of these products, including through semiannual consultations in accordance with the 2008 decision by the United States and the EU to suspend Article 22.6 arbitration proceedings associated with the WTO dispute settlement proceeding against the European Communities (the EU predecessor entity) regarding the approval of biotechnology products. In 2021, the EU issued 12 approvals and 6 renewals for GE crops, compared to 1 approval in 2020. While these new authorizations were welcomed, the EU's average approval time for new GE crops in 2021 was approximately 5 and a half years. The EU's own legally prescribed approval time for such products is 12 months (6 months for the review with EFSA and 6 months for the political committee process known as comitology).

As of March 2022, the United States is tracking approximately 49 agricultural biotechnology product applications (including renewals) submitted to the EU, with respect to corn, soybean, rapeseed, and cotton. Of those applications, 41 are under scientific review by the EFSA and 8 await action by the Commission through comitology. Delays in both of these stages contribute to increasingly lengthy EU approval timelines. For example, EFSA continues to demand unnecessary studies while conducting risk assessments, which result in unpredictable delays in issuing final opinions. In comitology, repeated findings of "no opinion" by the relevant Standing Committee on Plants, Animals, Food and Feed (PAFF) also delay the EU from taking decisions on GE approvals, by requiring products to go through an additional assessment

by an Appeal Committee before receiving a final approval. The United States continues to engage the EU on delays of this nature and urge the EU to address other barriers to trade of biotechnology products. For example, the EU has yet to establish a practical low-level presence policy and instead maintains a 0.1 percent limit for unapproved biotechnology traits in feed shipments, which is not commercially feasible and disrupts trade in products that have otherwise passed U.S. safety assessments.

More broadly, in 2021 the EU announced next steps in its policy approach for innovative products of biotechnology created using genome editing. On April 29, 2021, the Commission published a study that determined that the regulations implemented under EU Directive 2001/18/EC (commonly referred to as the “GMO Directive”) are not necessarily “fit for purpose” for plants produced through certain genome editing techniques. The Commission subsequently launched an inception impact assessment in September 2021, which outlined plans for a policy initiative and formal public consultations to consider the regulatory status of these products in the second quarter of 2022. Both of these activities were conducted after the European Council requested that the Commission develop a legislative proposal, in order to address a 2018 ruling by the CJEU that genome-edited crops are subject to the EU’s GMO Directive. It remains to be seen whether the Commission’s proposed policy approaches for genome-edited products will address or further exacerbate the existing barriers facing the trade of older agricultural biotechnology products.

### *Member State Measures*

#### *Agriculture Biotechnology Cultivation Opt-Out*

In March 2015, the EU adopted a directive that allows Member States to ban the cultivation of GE plants in their respective territories for non-scientific reasons (EU Directive 2015/412). Under the transitional measures, the Member States had until October 2015 to request to be excluded from the geographical scope of the authorizations already granted or in the pipeline. Eighteen Member States “opted-out” of GE crop cultivation for all or part of their territories. These decisions have not led to a change in the field, because none of the five Member States (the Czech Republic, Portugal, Romania, Slovakia, and Spain) that grew GE corn opted-out. However, as of 2021, commercial cultivation of GE corn is only occurring in Portugal and Spain.

Seventeen Member States have opted out of cultivation using biotechnology seeds. The 17 Member States that requested exclusion of their entire territory from the geographical scope of biotechnology applications are Austria, Bulgaria, Croatia, Cyprus, Denmark, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, and Slovenia. Additionally, one region in Belgium, Wallonia, has also opted out of cultivation. All of these Member States and regions have decided to ban the cultivation of Monsanto 810 corn (MON810) and the seven varieties of corn that were in the pipeline in 2015, apart from Denmark and Luxembourg, which have only banned MON810 and three of the seven varieties of corn in the pipeline.

*Austria:* The Austrian Government implemented EU Directive 2015/412 by enacting Austria’s 2015 Biotech Cultivation Framework Law, which establishes a common legal basis for all Austrian provinces to ban the cultivation of GE crops. In addition, the Austrian Government has used the geographical scope exclusion to ban cultivation of EU approved agricultural biotechnology crops in Austria.

*Bulgaria:* Bulgaria’s entire territory is excluded from the geographical scope of agricultural biotechnology applications. In 2015, Bulgaria decided to ban the cultivation of MON810, seven varieties of corn, soybeans 40-3-2, and carnation Moonshadow 1. The ban also extended to field research.

*Croatia:* Croatia adopted legislation in 2015 to implement EU Directive 2015/412.

*Greece:* Greece does not have a coexistence policy and maintains a *de facto* ban on both the cultivation and importation of GE products. In Greece, there are no GE plants or crops under development. Greece has maintained a *de facto* ban on GE products since April 2005, when it implemented a “safeguard clause” prohibiting the field release of MON810. Greece is in the process of adopting new legislation that will incorporate EU Directive 2015/412 to officially implement the cultivation opt-out clause. The draft legislation passed the public comment period in 2016 and is still awaiting governmental action.

*Italy:* Italy does not commercially cultivate any GE crops, even for GE seed production. Since 2013, Italy has banned the cultivation of GE crops despite two EFSA rulings stating no new scientific evidence has been presented to support Italy using the safeguard clause. Since 2015, Italy has opted out of cultivating EU authorized crops under EU Directive 2015/412.

*Poland:* The Feed Act of 22 July 2006 (OJ 2006 No. 144, item 1045) includes a prohibition on the manufacture, marketing, and use of GE feed and GE crops intended for feed use. These provisions have never been enforced and have been postponed several times since 2006. The Polish Parliament postponed the prohibition in December 2020, for an additional two years until January 1, 2023.

*Slovakia:* Since 2017, Slovakia has issued annual notices stating that no GE plants were cultivated in a given year. In April 2021, the Slovakian Parliament adopted an amendment to the Act on the Use of Genetic Technology and Genetically Modified Organisms, which transposed EU Directive (2015/412). There is no outright restriction or ban on the cultivation of GE crops in place.

#### *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 impacted, because the Commission has failed to approve several pathogen reduction treatments (PRTs) that have been approved for use in the United States. PRTs are rinses used to kill microbial pathogens that commonly exist on meat after slaughter. The PRTs at issue have been approved by the U.S. Department of Agriculture (USDA), after establishing their safety on the basis of scientific evidence.

In 1997, the EU began blocking imports of U.S. products that had been processed with PRTs, which have been safely used by U.S. meat producers for decades. After many years of consideration and delay, in May 2008 the Commission prepared a proposal to authorize the use of the four PRTs during the processing of poultry but imposed unscientific highly trade-restrictive conditions with respect to their use. Member States rejected the Commission’s proposal in December 2008.

In June 2013, the USDA submitted an application dossier for the approval of peroxyacetic acid (PAA) as a PRT for poultry. In March 2014, EFSA published a favorable scientific opinion on the safety and efficacy of PAA solutions for reduction of pathogens on poultry carcasses and meat. After a long period of inaction, the Commission eventually put forward the authorization of PAA as one part of a three-pronged strategy to mitigate campylobacter in poultry. It later withdrew the proposal from the relevant PAFF Standing Committee agenda in December 2015, citing lack of evidence of PAA’s efficacy against campylobacter. The Commission has no plans to put forward the proposal for approval at the PAFF Standing Committee at this time.

In March 2017, the National Pork Producers Council submitted an application to the Commission for the approval of two organic acids, lactic and acetic, for use on pork. The application was submitted to EFSA by the Commission in September 2017. EFSA published its evaluation in December 2018, confirming the

safety of the use of acetic acid and lactic acid in pork processing. To date, the Commission has taken no action for the approval of pork PRTs.

The United States maintains that the use of PRTs is a critical tool during meat processing that helps further the safety of products being placed on the market. The United States has engaged the EU to share scientific data regarding the safe use of PRTs, and the United States will continue to engage the EU regarding the approval of PRTs for beef, pork, and poultry as an effective tool to improve food safety.

### *Certification Requirements*

EU certification requirements are limiting U.S. agricultural exports such as fish, meat, dairy, eggs, processed products, and animal byproducts by requiring exporters to certify an increasing number of public health, animal health, or animal welfare claims. These certifications are increasingly adding costs and burden to the movement of exports in Europe, irrespective of whether these goods are destined for commercial sale in the EU, transiting through the EU, or intended for cruise ships located in the EU. The EU's requirements often appear to have been established without scientific evidence, a risk assessment, or consideration of Codex guidance on certifications, the latter of which establish the minimum amount of information necessary to ensure the safety of the product being traded. Moreover, the EU's changes to certificates are increasingly frequent, complex, and instituted through updates to multiple EU implementing or delegated regulations, making compliance difficult for manufacturers, exporters, and EU importers, as well as U.S. regulatory agencies. Differences in interpretation of EU legislation by Member State authorities also creates legal instability and often results in trade disruptions, creating additional burden for U.S. exporters.

In December 2020, the EU updated its animal health certification requirements through implementing regulation (EU) 2020/2235 for products of animal origin, including dairy, eggs, meat, casings, animal byproducts, composite products, live animals, and aquatic animals, with an implementation deadline of April 2021. In August 2021, the EU extended the implementation deadline to March 15, 2022, as long as certificates for affected products were certified before January 15, 2022. In January 2022, the EU issued another series of changes to its requirements under (EU) 2020/2235 and extended the deadline for a subset of products until September 15, 2022, provided that certificates are signed by June 15, 2022. While the EU's extensions have allowed the United States to address EU requirements through updates to U.S. export verification programs, the EU's prescriptive requirements and repeated changes to certificate templates have caused confusion for U.S. exporters and created delays in implementation by U.S. regulatory authorities. The United States is working to address remaining issues on certificates for products of animal origin transiting the EU that are destined for third countries, as well as certificates for composite products with multiple ingredients of animal origin. The United States continues to engage the EU bilaterally to resolve concerns regarding the EU's certification requirements.

### *Ban of titanium dioxide in food*

On October 13, 2021, the EU notified the WTO Committee on Sanitary and Phytosanitary Measures (WTO SPS Committee) of its intent to ban the use of titanium dioxide (E171) in food for humans and for animals in the EU. Titanium dioxide is a permitted color additive exempt from batch certification in the United States for use in foods, drugs, cosmetics, and medical devices. It is widely used and considered safe in multiple other countries, as well as under Codex guidelines. The EU's proposed regulation to remove titanium dioxide from its list of permitted food additives is based on findings in an EFSA opinion issued in May 2021. The draft regulation, which provides for a six-month transition period, is expected to be adopted in early 2022 and to enter into force by summer 2022. Per the Commission's mandate, in September 2021, the EMA concluded an impact assessment that found it is not feasible to remove titanium dioxide from use in medicines at this time. While the EU's notification includes a waiver (three years) for titanium dioxide

use in human and veterinary medicines to prevent shortages in the EU market of essential medicines, stakeholders remain concerned that the EU has not extended the phase-out window for use of titanium dioxide for other products. The Commission has tasked the EMA with reviewing the situation by April 2024.

### *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. Since April 1, 2012, the EU has required imports of dairy products that require EU health certificates to also comply with EU SCC requirements. Specifically, the EU requires certification to establish that the SCC does not exceed 400,000 cells per milliliter, a threshold that is significantly lower than the U.S. requirement for Grade A milk of 750,000 cells per milliliter. The EU certification requirement does not appear to have scientific justification and increases the cost of compliance for U.S. producers. Thus, the certification necessary to meet the EU requirement is more burdensome than necessary, requiring farm-level sampling and a Certificate of Conformance. The United States continues to engage the EU regarding the SCC requirement in the appropriate technical working groups.

### *Animal Byproducts, Including Tallow*

The EU considers all animal byproducts sourced from animals raised under conditions not essentially identical to those in the EU to be hazardous materials (categories 1 and 2 materials). Since 2002, the EU has made modifications to its regulations and implementation practices governing animal byproducts that have resulted in the treatment of U.S. products being considered hazardous. The current EU interpretation of the animal byproducts regulations could potentially prevent most exports of U.S. animal byproducts. Several Member State border inspection posts have already blocked consignments of various technical blood products.

Tallow exported to the EU must meet criteria that do not appear to be scientifically justified and significantly exceed the recommendations of the OIE. The United States has requested that tallow be allowed entry into the EU for any purpose without verification other than that the tallow and derivatives made from this tallow contain no more than a maximum level of insoluble impurities consistent with international recommendations. Specifically, tallow with less than 0.15 percent insoluble impurities does not pose any risk of bovine spongiform encephalopathy (BSE). Tallow under these specifications should be allowed for import without any animal health-related requirements according to the OIE's international and scientifically based recommendation.

Used cooking oil (UCO) is used for the production of biodiesel. Individual Member States implement national measures for the importation of UCO. However, the EU in 2016 circulated a draft regulation to harmonize requirements EU-wide. The draft requirements appear to follow the EU's non-science-based approach regarding importation of tallow and would curtail U.S. exports of UCO to the EU. The United States provided feedback in writing to the EU on its proposed measure and continues to encourage the EU to eliminate unjustified restrictions on imports of UCO.

### *Live Cattle*

Live cattle from the United States are not authorized to be exported to the EU, or transited through the EU on route to third countries, due to EU certification requirements for several bovine diseases. Although the USDA's Animal Plant Health and Inspection Services (APHIS) successfully resolved issues related to bovine leucosis and bluetongue in 2003, the EU subsequently established certification requirements for BSE that precluded U.S. exports. Since then, the EU model certificate has been amended to align the EU

BSE requirements with the standards and recommendations of the OIE. Although the United States can now meet the BSE certification requirements, U.S. exporters remain blocked because the United States and EU have not agreed on the conditions and format for the export certificate. APHIS continues to work with the EU to resolve the remaining import health conditions and agree on a mutually acceptable certificate through the U.S.–EU Animal Health Technical Working Group.

#### *Specified Risk Materials Certification Requirement*

The EU has a different definition of specified risk materials (SRM) from the United States for the animal tissues most at risk of harboring the transmissible spongiform encephalopathies. The EU requires that materials exported to the EU meet the EU’s SRM definition and be derived from carcasses of animals that can be confirmed as never having been outside of regions that the EU considers to be of negligible risk for BSE. Although the United States has been recognized by OIE as having negligible risk, the source cattle for U.S. ruminant origin animal byproduct exports may not necessarily come from negligible risk countries. The SRM requirement thus unnecessarily impedes U.S. exports of ruminant origin animal byproducts and would potentially limit the market for ovine/caprine meat were other market impediments removed.

The SRM requirement otherwise has not been an issue for bovine meat for human consumption, because the special EU required production controls in the non-hormone-treated cattle program already provide 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 appropriate fora, including bilateral technical working groups.

#### *Agricultural Chemicals*

##### *Hazard-based Cutoff Criteria - Categorization of Compounds as Endocrine Disruptors*

Active substances can only be approved for use in crop protection products in the EU if they fulfill the approval criteria established in Regulation (EC) 1107/2009. Under this regulation, the EU’s determination includes hazard-based “cutoff” criteria that exclude certain categories of products from consideration for normal authorization for use in the EU. In instances where an active substance triggers the cut-off criteria, the EU regulatory process allows for an active substance to remain unapproved, regardless of risk exposure. For such products, the EU is not required to perform a risk assessment. Rather, the EU discontinues authorization for a particular product at the time of re-approval, as has already happened for some substances. The EU has also declared new products to be ineligible for authorization, based solely on the intrinsic properties of the product, without taking important risk factors such as level of exposure or dosage into account, a “hazard-based approach.” The United States is concerned that increasing numbers of safe and widely used substances will not be reapproved or have reasonable import tolerances set for their use due to these arbitrary cutoff criteria when current registrations expire.

One category of crop protection products subject to this hazard-based approach are substances classified as endocrine disruptors (EDs). EDs are naturally occurring or man-made substances that may mimic or interfere with hormone functions. The United States evaluates possible endocrine effects associated with the use of certain chemicals to ensure protection of public health and the environment, while the EU appears to be setting up approaches to regulating these compounds that are not based on scientific principles and evidence, thereby restricting trade without improving public health.

In June 2016, the Commission presented two draft legal acts outlining scientific criteria to identify EDs in agricultural products, one falling under the Biocidal Products legislation and the second under the Plant

Protection Products legislation. In the draft legal acts, the Commission proposes to use the WHO definition of endocrine disruptors and include examination of all available information in order to base decisions on weight of evidence. However, the proposal does not specifically state that it will include consideration of other hazard characterizations such as potency, severity, and reversibility in these examinations. Without such considerations, the EU may potentially block substances regardless of the actual level of risk to human health.

In April 2018, following a series of revisions for the proposed criteria and the insertion and removal of a procedure for derogations allowing usage of substances falling under them, the Commission published Regulation 2018/605, identifying endocrine-disrupting properties under Regulation 1107/2009 on plant protection products in the Official Journal. Since November 2018, the criteria to identify endocrine disruptors have applied to all ongoing and future evaluations of active substances used in plant protection products. The biocidal products criteria were adopted earlier and have applied since June 2018.

In June 2018, the ECHA and the EFSA published a technical guidance document to implement the criteria. The scope of trade effects of this regulation is broad and overlaps with that of the other hazard criteria and environmental criteria the EU uses in regulating pesticides. The EU obscures its hazard-based decisions with onerous data requirements that allow the Commission to claim an inability to measure risk. The United States continues to monitor this issue and raise concerns in international and bilateral fora.

#### *Pesticide Maximum Residue Limits*

MRLs and import tolerances are established under separate legislation, Regulation (EC) 396/2005, which is risk-based rather than hazard-based. However, for active substances that are not approved due to the EU's cut-off criteria under Regulation (EC) 1107/2009, the EU may forgo the risk assessment process established under Regulation 396/2005, withdraw MRLs, and reduce import tolerances to the default level of 0.01 mg/kg. The EU conducted an evaluation of existing legislation on plant protection products and pesticide residues through the Regulatory Fitness and Performance process. However, it is still unclear whether the EU will adjust Regulation 396/2005 to further align with the hazard-based principles of Regulation (EC) 1107/2009. As the number of substances ineligible for reauthorization by the EU increases, and as the EU reduces the corresponding MRLs and import tolerances to the default level, the significant negative effect on agricultural production and trade is likely to increase.

The EU regulations also establish transitional periods to allow producers to adjust to changes in EU MRLs, although the transition periods established by the EU are generally not long enough to avoid trade disruption. For many products, there may be a gap of several years between pesticide application and when a final product is offered for sale, creating a situation where products that are compliant with EU MRLs at the time of production do not have time to clear the channels of trade. EU products on the other hand appear to remain available for sale as long as they are produced prior to MRLs changing.

The United States has raised concerns over the EU's policy approaches for years and continues to engage on these issues in the WTO SPS Committee. The United States is also monitoring the EU's actions with regard to evaluating and establishing import tolerances for active substances, which have the potential to create further trade disruptions when MRLs are set to levels that are not commercially viable. According to industry estimates, U.S. exports valued at over \$5 billion and global trade amounting to \$75 billion are at risk of significant harm. Discontinuing the use of critical substances without a proper science-based risk assessment, and withdrawing or lowering MRLs to levels that are not commensurate with the findings of a risk assessment, would have serious adverse effects on agricultural productivity and global markets.

## GOVERNMENT PROCUREMENT

Government procurement is governed by the EU public procurement directives. In 2014, the European Parliament approved revised directives addressing general public procurement and procurement in the utilities sector. The Parliament also approved a new directive on concessions contracts. Member States were required to transpose the new directives into national legislation by April 2016.

The directive on procurement in the utilities sector covers purchases in the water, transportation, energy, and postal sectors. This directive requires open and competitive bidding procedures, but it permits Member States to reject bids with less than 50 percent EU content for tenders that are not covered by an international or reciprocal bilateral agreement. The EU content requirement applies to foreign suppliers of goods and services in water (the production, transport, and distribution of drinking water), energy (gas and heat), urban transport (urban rail, automated systems, trams, buses, etc.), and postal services. Subsidiaries of U.S. companies may bid on all public procurement contracts covered by the EU directives.

The EU is a Party to the WTO Agreement on Government Procurement (GPA). U.S.-based companies are allowed to bid on public tenders covered by the GPA.

In July 2019, the EU published guidance to public buyers in Member States on participation of third country (non-GPA or non-trade agreement partners) bidders in the EU procurement market, aimed at reinforcing the importance of reducing predatory low-priced bids. This guidance does not change the access that U.S. companies have to the EU under the GPA. However, the guidance provides neither a definition of what constitutes an abnormally low bid, nor a method to conduct the evaluation. While a public buyer must give the third country bidder an opportunity to explain and justify a low-priced bid, Member States are free to set up national rules and methods to implement this process.

The EU's lack of country-of-origin data for winning bids makes it difficult to assess the level of U.S. and non-EU participation. The most recent report, commissioned by the EU in 2011, noted that only 1.6 percent of total Member State procurement contracts were awarded to firms operating and bidding from another Member State or a non-EU country, demonstrating that in practice the value of direct cross-border procurement awards even among Member States was very small. The same study said that U.S. firms not established in the EU received just 0.016 percent of total EU direct cross-border procurement awards.

### *International Procurement Instrument*

The Commission published a revised proposal for an International Procurement Instrument (IPI) in 2016. The proposal, which is, as of March 2022, being considered by the EU Parliament, Council, and Commission in trilogue negotiations, would enable the Commission to limit or exclude, on a case-by-case basis, access to its public procurement markets by economic operators originating in countries that apply restrictive or discriminatory procurement measures to EU businesses. Under the current Commission proposal, WTO GPA and free trade agreement parties are not exempt. Therefore, procurement not covered by the WTO GPA that U.S. suppliers have had access to may be affected. The IPI is at a critical stage in its development, with the European Parliament having provided numerous proposed amendments. The United States understands that procurement from non-market economies is the principal target; however, U.S. goods, services, and suppliers could fall within the proposal's scope depending on the revisions. The United States raised this issue bilaterally with EU counterparts in 2020 and 2021.

### *Member State Measures*

Lack of transparency in certain Member State public procurement processes continues to be an almost universally cited barrier to the participation of U.S. firms. U.S. firms seeking to participate in procurement

in Bulgaria, Croatia, the Czech Republic, France, Greece, Hungary, Italy, Lithuania, Romania, Slovakia, and Slovenia have all voiced concerns over a lack of transparency, including with respect to overly narrow definitions of tenders, language and documentation barriers, and implicit biases in favor of local vendors and state-owned enterprises. The Commission's 2014 EU Anti-Corruption Report concluded that Member State public procurement is one of the areas most vulnerable to corruption. Additional Member State-specific trade barriers to U.S. participation in public procurement processes are discussed below.

*Croatia:* U.S. companies have complained about instances in which technical specifications and scoring in public procurement tenders appear to favor a specific bidder, typically a local or other EU Member State company, thus impacting the participation of competitive U.S. firms.

*France:* France continues to maintain ownership shares in several major defense contractors (10.9 percent of Airbus, formerly EADS, shares through its holding company SOGEP (Societe de Gestion de Participations Aeronautiques)); 11.2 percent of Safran shares; 62.3 percent of the Naval Group; and 25.7 percent of Thalès shares). It is generally difficult for non-EU firms to participate in French defense procurement, and even when the competition is among EU suppliers, French companies are often selected as prime contractors.

*Greece:* U.S. firms have complained that Greece often requires suppliers to source services and production locally or partner with Greek manufacturers as a condition for the awarding of some defense contracts. Additional complaints center on onerous certification and documentation requirements for U.S. firms.

*Italy:* U.S. firms continue to cite widespread corruption in procurement, especially at the local level. In 2018, dissatisfied with the efficacy of anticorruption measures passed in 2012 and 2015, the Italian Parliament approved legislation to strengthen efforts against public sector corruption. In May 2021, in a key step to unlocking EU pandemic recovery funds, the Italian Government approved a decree accelerating and simplifying bureaucratic procedures for public works, in addition to establishing a governance and accountability structure for the administration of EU pandemic recovery funds. To increase transparency, the decree sets out criteria the government must use to award contracts. These criteria include qualitative aspects of competing offers, in addition to cost. The decree also simplifies the processes for conducting environmental impact assessment and for approving renewable energy projects.

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

*Poland:* In the past, U.S. firms reported disappointment that "lowest cost" was the main criterion Polish officials used to award contracts. Polish officials often overlooked other important factors in bid evaluation, such as quality, company reputation, and prior experience in product and service delivery. A long-awaited change came in October 2019, when the Polish President signed the new Public Procurement Law (PPL). This law departs from the price criterion and allows a more collaborative approach between the government agency and the bidders, and rewards innovation. The law, which entered into force in 2021, aims to strengthen the position of contractors and subcontractors by increasing competition, simplifying procurement procedures, and making appeals against a contracting authority's decision easier. Because the PPL was only recently implemented, its impact and effectiveness are still to be determined.

Defense companies operating in Poland have indicated that the Ministry of Defense may use statutory exclusions to bypass tendering procedures in signing contracts, and that it sometimes requests significant offsets and technology transfers primarily associated with large-scale acquisitions.

*Slovakia:* Stakeholders, including U.S. companies, report that “lowest cost” continues to be the main criterion used in awarding most government procurements in Slovakia, despite EU legislation allowing for aspects other than cost to be taken into consideration. The perceived lack of transparency in procurement, in addition to the excessive length and complexity of tender verification and appeal procedures, remains an impediment to the widest possible participation of potential bidders. Lock-in contracts, in which the government commits to procure a basic service and subsequently expands the contract to include additional services, continue to hamper the access of U.S. firms to public procurement, especially with regard to information technology services.

*Slovenia:* U.S. firms report short timeframes for bid preparation, tendering documentation that is difficult to understand, and opacity in the bid evaluation process as major impediments. Slovenia’s quasi-judicial National Revision Commission (NRC), which reviews all disputed public procurement cases, has received multiple complaints. The NRC has the authority to review, amend, and cancel tenders, and its decisions are not subject to judicial appeal. In the instances where U.S. companies alleged improprieties in the procurement process, Slovenian authorities directed them to the NRC, which is not required to justify its decisions.

## **INTELLECTUAL PROPERTY PROTECTION**

As part of its Digital Single Market (DSM) Strategy, the Commission in September 2016, issued a proposed Directive on Copyright in the Digital Single Market (Copyright Directive), with the stated goal of addressing legal uncertainty for both right holders and users with regard to certain uses of copyright-protected works and other subject matter in the digital environment. The Copyright Directive was published in April 2019, and Member States were required to transpose it by June 7, 2021. Only four Member States have implemented the Directive by the deadline. The Commission requested an explanation from the remaining 23 Member States by September 26, 2021, and the Commission is analyzing the answers from Member States before starting more formal infringement procedures. The United States continues to follow copyright issues in the EU and its Member States, including legislative developments relating to the transposition of the Copyright Directive into national laws and will continue to engage with various EU entities as appropriate to address the equities of U.S. stakeholders.

The Commission is exploring the possibility of a directive or other legislative instrument in response to the CJEU judgment in *Recorded Artists Actors Performers*, C-265/19. The CJEU held that all performers, regardless of nationality, are entitled to equitable remuneration. Some Member States would like to modify the EU acquis in response to the CJEU’s judgment so that U.S. performers are excluded from the right to a single equitable remuneration, shared with phonogram producers, when a phonogram is published for commercial purposes, or a reproduction of such phonogram is used for broadcasting by wireless means or for any communication to the public.

The United States is closely monitoring the Commission’s Digital Services Act (DSA) proposal, which is a legislative initiative intended to regulate certain online services, including rules for how content is shared online. Some U.S. stakeholders have expressed concern that the DSA’s adoption of the framework for limitations of liability from the E-Commerce Directive (2000/31/EC) could include modifications to eligibility threshold and conditions that adversely impact intellectual property rights, in particular copyright and trademarks. U.S. stakeholders have raised concerns that the EU Council’s version of the DSA proposal could weaken the current liability regime and have a detrimental impact on the existing standards and

practices for addressing illegal content and activities, including online infringement of copyright and related rights.

The Commission's Digital Markets Act proposal includes requirements for large providers ("gatekeepers") of certain online services to share their data with their European competitors. These rules could force some U.S. companies to give free access to databases in which they have heavily invested and to reveal their trade secrets. Furthermore, the Commission is reviewing the possibility of reopening the Directive on Trade Secrets and the Directive on Databases.

The United States remains highly troubled by the EU's overbroad protection of geographical indications (GIs), which adversely impacts both protection of U.S. trademarks and market access for U.S. products that use common names in the EU and third country markets. Regulation 1151/2012, for example, contains numerous problematic provisions with respect to the protection and enforcement of Protected Designations of Origin (PDOs) and Protected Geographical Indications (PGIs). Troubling provisions include those governing the scope of protection of PDOs and PGIs, including expansive rules about evocation, extension, co-existence, and translation, among others, which not only adversely affect trademark rights and the ability to use common names, but also undermine access to the EU market for U.S. rights holders and producers. The EU has granted GI protection to thousands of terms that limit use in the EU market to only certain EU producers, and the use of any term that even "evokes" a GI is also blocked. However, despite this level of protection afforded to products sold within the EU, some producers in Member States still produce products that are protected as GIs in other Member States and then export these products outside the EU, such as feta made in Denmark and France. The EU has also granted GI protection to the cheese names danbo and havarti, widely traded cheeses which are covered by international standards under Codex. Several countries, including the United States, opposed GI protection of these common names both during the EU's opposition period and at the WTO, but the Commission granted the protection over that opposition and without sufficient explanation to interested parties.

Regulation 1151/2012 also serves as the basis for the EU's international GI agenda, which includes requiring EU trading partners to protect and enforce specific EU GIs in their markets, with often only limited due process requirements to safeguard existing producers, rights holders, consumers, importers, and other interested parties. Regulation 1151/2012 replaced the former GI regulation for food products, Council Regulation (EC) 510/06, which was adopted in response to WTO DSB findings in a successful challenge brought by the United States (and a related case brought by Australia) that asserted that the EU GI system impermissibly discriminated against non-EU products and persons. The DSB findings also agreed with the United States that the EU could not create broad exceptions to trademark rights guaranteed by the Agreement on Trade-Related Aspects of International Property Rights (TRIPS). Regulation 1151/2012 sped up the registration procedure for registering GIs, reduced the opposition period from six to three months, and expanded the types of products capable of being registered as a GI.

In October 2020, the Commission published an inception impact assessment on the revision of the GI system for agricultural products, foodstuffs, and wines and spirit drinks. As part of the review, the Commission aims to streamline the GIs application process for European farmers and cooperatives through modified registration and enforcement procedures.

The United States continues to have concerns about the EU's GI regulations and monitors carefully their implementation and effects on bilateral trade. The United States does not believe that the EU should bargain for specific GI recognition in its bilateral trade agreements in return for market access, because such intellectual property (IP) rights should be evaluated independently on their merits, based on the unique circumstances of each jurisdiction. The United States is also concerned by the EU's attempts to restrict common terms for wine in third country markets and by its push for the introduction of a system of *sui*

*generis* protection of non-agriculture products. The United States is carefully monitoring the implementation of each of these regulations and proposals.

The United States remains extremely concerned by the conduct and outcome of the 2015 World Intellectual Property Organization (WIPO) negotiations to expand the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration to include GIs. Of particular concern to the United States was the manner of engagement in these negotiations by the Commission and by several Member States, including the Czech Republic, France, Greece, Italy, and Portugal, which took precedent-setting steps to deny the United States and the vast majority of WIPO countries full negotiating rights and depart from longstanding WIPO practice regarding consensus-based decision-making. Likewise, the resulting text—the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications—raises numerous and serious legal and commercial concerns, including with respect to the degree of inconsistency with the trademark systems of many WIPO countries, and could have significant negative commercial consequences for trademark holders and U.S. exporters that use common terms. The EU became a party to this Agreement in November 2019. The Agreement entered into force in February 2020.

In addition, the EU approved amendments to its patent term restoration mechanism, Supplemental Protection Certificates (SPC) (Regulation EC 469/2009). The amendments alter the exclusive rights conferred via an SPC through the introduction of an export and stockpiling waiver, thereby allowing the manufacture of pharmaceutical products, including generic pharmaceuticals and biosimilars, in the EU for the exclusive purpose of export to third countries as well as for stockpiling during the last six months of the validity of the SPC for the EU market. These amendments entered into force in July 2019. The U.S. pharmaceutical industry has expressed concerns as to the possible ramifications of the SPC manufacturing waiver, particularly the possibility of the diversion of pharmaceuticals produced pursuant to the waiver either within the EU or in foreign markets. The United States is closely monitoring this matter.

#### *Member State Measures*

Although Member States generally maintain high levels of IP protection and enforcement, the United States remains concerned about the IP practices of several countries. The United States actively engages with the relevant authorities in these countries and will continue to monitor the adequacy and effectiveness of IP protection and enforcement, including through the annual Special 301 review process. The United States is particularly concerned about counterfeit pharmaceuticals and personal protective equipment.

*Austria:* With regard to trade secrets, U.S. companies reported gaps in criminal liability, insufficient specialization of judges, low criminal penalties, and procedural obstacles that limit efforts to effectively combat trade secret theft and misappropriation. The Austrian Parliament adopted legislation in 2019 meant to strengthen protections and implement the EU Trade Secrets Directive, but criminal penalty legislation is still pending. A local industry association, which also represents U.S. audio-visual copyright holders, raised concerns that the draft implementing legislation for the EU Directive on Copyright includes additional obligations for rights holders, such as limitations to company takeovers or provisions that weaken the ability of rights holders to control access to their works.

*Bulgaria:* Enforcement concerns in Bulgaria include inadequate prosecution efforts, lengthy procedures, and insufficient criminal penalties, particularly in the area of online piracy. Stakeholders have raised concerns as to notorious online pirate sites reportedly hosted in Bulgaria. The number of prosecutions against individuals continues to be low and penalties for IP criminal violations, including in the area of online piracy, fail to offer any meaningful deterrent. In addition, Bulgaria still has not adopted the technique of evidence sampling in connection with criminal investigations involving online infringement. Bulgaria

previously agreed to adopt this technique of reviewing random samples of content from online sites, instead of reviewing all of the content, to determine whether infringement is occurring.

*France:* The French Government is increasing its efforts to combat online piracy. A law on the regulation and protection of public access to cultural works in the digital era approved on September 29, 2021, established the Regulatory Authority for Audiovisual and Digital Communication (ARCOM) capable of regulating websites and audiovisual and digital communications. The law also introduced a fast-track remedy to prevent the illegal broadcast of sporting events.

The French Government issued an order in December 2020, transposing into French law the EU Directive on Audiovisual Media Services and the EU Directive on Copyright. This implementing legislation requires financial contributions from French and U.S. platforms for the production of EU and French television and movies based on their revenues in France. The government also issued an order on May 12, 2021, enforcing in France the EU Directive on Copyright, which holds content-sharing platforms liable for the unauthorized communication of copyrighted content. The United States will continue to monitor ways this legislation may impact U.S. stakeholders.

*Germany:* Germany implemented the EU Directive on Copyright in 2021. It introduced an ancillary copyright for press publishers and new requirements for online platforms regarding user uploads of potentially copyright-protected content, including the development of pre-flagging mechanisms through which users can mark individual uploads as legitimate and obligations to take down “obviously falsely marked content.” The United States will monitor the ways implementation may impact U.S. stakeholders.

Germany also amended its patent law in June 2021. The amended law provides that infringement of a patent does not always entitle the right holder to injunctive relief in cases of disproportionate hardship for the defendant or third parties.

*Greece:* In 2020, Greece was removed from the Watch List in the [2021 Special 301 Report](#) as a result of its progress in addressing concerns regarding IP protection and enforcement and in light of its steps to address the widespread use of unlicensed software in the public sector. Specifically, Greece allocated significant funds and made a subsequent award to purchase software licenses, which had been a long-standing concern of rights holders. Moreover, Greece made progress in online enforcement and introduced legislation to impose fines on those possessing counterfeit products. The removal and continued steps to improve protection of IP appear to have spurred U.S. investment in Greece, particularly in the technology sector. The United States will continue to monitor Greece’s enforcement efforts.

*Poland:* Stakeholders continue to identify copyright piracy online as a significant concern in Poland and noted inconsistent enforcement on the part of regional police forces and backlogs in the Polish courts. In July 2020, Poland amended the Code of Civil Procedure, introducing a new category of court cases called “Proceedings in Matters of Intellectual Property” and establishing five regional courts and two courts of appeal specializing in the protection of intellectual property. The specialized courts were created to adjudicate cases of copyright, industrial property rights, unfair competition, and certain categories of personal rights.

In May 2019, Poland initiated a legal challenge against parts of the EU Copyright Directive, a case which is still pending before the CJEU.

*Romania:* Romania remained on the Watch List in the [2021 Special 301 Report](#). Positive steps include the passing in July 2020 of legislation to implement the EU Trademark Directive and corresponding amendments to the national trademark law. However, online piracy remains a serious concern. Some notorious online pirate sites are reportedly hosted or registered in Romania. Criminal IP enforcement

remains generally inadequate, with questions arising regarding Romania's commitment to resolute enforcement, reflected in a lack of meaningful sanctions. Low penalties for IP violations impede investigations and do not offer any meaningful deterrent to further IP crimes. Romania lacks an effective and timely mechanism for right holders to submit takedown requests against online markets and hosting platforms for infringing material. Adequate resources, including additional training for law enforcement and funding for prosecutors, are also needed to enhance enforcement quality.

*Spain:* Recent enforcement raids, including joint operations with the U.S. Department of Homeland Security, have targeted the manufacturing and distribution of counterfeit toys, games, and auto parts, as well as a crime syndicate alleged to have laundered funds through textile businesses. However, online piracy, illegal camcording, and counterfeit sales remain a concern. The Spanish Government set up an inter-ministerial and intragovernmental task force to address the issue of counterfeit sales in physical markets in December 2019. Spain was removed from USTR's Notorious Markets List in 2020.

Spain transposed the EU Directive on Copyright in November 2021. The United States will continue to monitor whether these changes improve IP protection and enforcement in Spain.

*Sweden:* Illegal streaming activities remain a threat to the movie, television, and live sports telecast industries in Sweden. However, legal sales of music and film have increased in recent years, in part because of enforcement efforts from right holders, as well as from the government, and increased awareness of the importance of IP to Sweden's economy and culture. Enforcement efforts by the Swedish Government have also shown positive results, and right holders report that court cases to enforce their rights are successful in the vast majority of cases. The Swedish Government published and submitted for comment draft implementing legislation to the EU Directive on Copyright, with a proposed entry into force of July 2022.

## **SERVICES BARRIERS**

### **Telecommunications**

#### *Electronic Communications Code*

The EU Electronic Communications Code (EECC), adopted in 2018, regulates the telecommunications sector and includes rules on network access, spectrum management, communication services, universal service, and institutional governance. EU Member States were required to transpose the rules into national laws by December 2020. However, as of September 2021, only nine Member States had fully transposed the EECC into their national laws. Regulation of the telecommunications sector is also addressed by the e-Privacy Directive, the Telecoms Single Market Regulation, the Roaming Regulation, and the Radio Spectrum Decision. Each Member State has its own independent national regulatory authority for the telecommunications sector. The Body of European Regulators for Electronic Communications consists of the heads of these independent regulators and provides advice to the Commission regarding measures affecting telecommunications.

#### *Regulation on Privacy and Electronic Communications*

In January 2017, the Commission proposed a new Regulation on Privacy and Electronic Communications, which would replace the e-Privacy Directive of 2002. The Commission has stated that the proposed regulation will align rules for telecommunications services in the EU with the General Data Protection Regulation (GDPR) and cover the confidentiality of business-to-business communication and communication between individuals. While it would remove existing inconsistencies among Member State rules, the proposed regulation also would expand regulatory coverage intended for traditional telecommunications services providers to over-the-top Internet-enabled services. It also would apply

extraterritorially, including in circumstances where processing is conducted outside the EU in connection with services provided within the EU. U.S. suppliers have expressed concerns that, although the proposed regulation is supposed to align the specific rules for telecommunications services with the GDPR, it actually may lead to additional and potentially conflicting requirements. In late 2017, the European Parliament adopted its final amendments to the proposed regulation, and in February 2021, the Council announced that it had finalized its version, clearing the way for trilogue negotiations to begin. Those negotiations proceeded slowly throughout 2021, but are expected to conclude in 2022.

### *International Termination Rates*

In December 2020, the Commission adopted a Delegated Regulation under Article 75 of the EECC, setting the maximum rates that a telecommunications operator may charge for fixed and mobile voice call termination in the EU at €0.07 cent/min (approximately \$0.08 cents) for fixed and €0.2 cent/min (approximately \$0.24 cents) for mobile. The Delegated Regulation includes a one-year transition period for fixed termination services with the final rate taking effect in 2022 and a three-year transition period for mobile termination services with the final rate taking effect in 2024. In addition, Articles 75(2) and 75(3) of the EECC require the Commission to review the Delegated Regulation every five years.

The WTO Telecommunications Reference Paper, which relates to the General Agreement on Trade in Services, includes disciplines designed to ensure that the charge for terminating a call on a network of a major supplier is cost-oriented. The United States will monitor the implementation of Article 75 of the EECC by the EU and its Member States to ensure that the rates charged by telecommunications operators in the EU for termination services provided to U.S. telecommunications operators are cost-oriented and that Member States do not allow for differentiation of termination rates on the basis of the national origin of the call in a manner that adversely affects U.S. telecommunications operators.

### *Audiovisual Media Services Directive*

In November 2018, amendments to the 2007 Audiovisual Media Services Directive (AVMSD) were adopted. Member States were given 21 months to transpose the amendments into national legislation. On November 23, 2021, the Commission launched proceedings against 23 Member States for failure to transpose the AVMSD into national law. The amendments updated the AVMSD to reflect developments in the audiovisual and video-on-demand markets.

The original AVMSD established minimum content quotas for broadcasting that had to be enforced by all Member States. Member State requirements were permitted to exceed this minimum quota for EU content, and several have done so, as discussed below. However, the original AVMSD did not set any strict content quotas for on-demand services, although it still required Member States to ensure that on-demand services encourage production of, and access to, “EU works.”

The 2018 amendments include provisions that impose on Internet-based video-on-demand providers a minimum 30 percent threshold for EU content in their catalogs and require that they give prominence to EU content in their offerings. The new AVMSD also provides Member States the option of requiring on-demand service providers not based in their territory, but whose targeted audience is in their territory, to contribute financially to EU works, based on revenues generated in that Member State. In addition, the new rules extend the scope of the AVMSD to video-sharing platforms that tag and organize content, which has raised concerns among social media platforms.

## *Member State Measures*

Several Member States maintain measures that hinder the free flow of some programming or film exhibitions. A summary of some of the more significant restrictive national practices follows.

*France:* France continues to apply the AVMSD and other content laws in a restrictive manner in order to promote local industry. France's implementing legislation, approved by the Commission in 1992, requires that 60 percent of television programming in France be of EU origin, thus exceeding the AVMSD threshold. In addition, 40 percent of the programming devoted to EU origin must include original French-language content. These quotas apply to both regular and prime-time programming slots, and the definition of prime time differs from network to network.

The prime-time restrictions pose a significant barrier to U.S. programs in the French market. Internet, cable, and satellite networks are permitted to broadcast as little as 50 percent EU content (the AVMSD minimum) and 30 percent to 35 percent French-language content, but channels and services are required to increase their investment in the production of French-language content. In addition, radio broadcast quotas require that 35 percent of songs on almost all French private and public radio stations be in French. The quota for radio stations specializing in cultural or language-based programming is 15 percent. A July 2016 regulation specifies that the top 10 most commonly played French-language songs on a station can make up only 50 percent of the station's quota. France's CSA oversees implementation of the quotas.

Beyond broadcasting quotas, cinemas must reserve five weeks per quarter for the exhibition of French feature films. This requirement is reduced to four weeks per quarter for theaters that include a French short subject film during six weeks of the preceding quarter. Operators of multiplexes may not screen any one film in such a way as to account for more than 30 percent of the multiplex's weekly shows. While they are in theatrical release, feature films may not be shown or advertised on television. France also maintains a four-month waiting period between the date a movie exits the cinema and the date when it can be shown on video-on-demand.

The French Government issued an order in December 2020, transposing the AVMSD into French law. This implementing legislation requires video-on-demand subscription services such as Netflix, Amazon Prime Video, and Disney+ to contribute at least 20 percent of revenues in France to the production of European and French movies and television fiction.

*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. Quotas for Italian language content aired between 6:00 p.m. and 11:00 p.m. were introduced in 2020. On November 4, 2021, the Italian Government passed a decree transposing the AVMSD. Under Italian law, mandatory quotas that require video-streaming platforms such as Netflix and Amazon Prime to spend a percentage of their net revenue on Italian and European produced content will progressively increase from 17 percent in 2022 to 20 percent 2024.

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

*Poland:* Television broadcasters must dedicate at least 33 percent of their broadcasting time quarterly to programs originally produced in the Polish language, except for information services, advertisements, telemarketing, sports broadcasts, and television game shows. Radio broadcasters are obliged to dedicate 33 percent of their broadcasting time each month and at least 60 percent of broadcasting time between 5:00

a.m. and midnight to programming in Polish. Television broadcasters must dedicate at least 50 percent of their broadcasting time quarterly to programs of EU origin, except for information services, advertisements, telemarketing, sports broadcasts, and television game shows. Television broadcasters must devote at least 10 percent of their broadcasting time to programs by EU independent producers, and compliance is reviewed every three months. On-demand audiovisual media services providers also must promote content of EU origin, especially content originally produced in Polish, and dedicate at least 20 percent of their catalog to EU content. In addition, Poland's Broadcasting Law stipulates that a television broadcasting company may only receive a license if the voting share of non-European owners does not exceed 49 percent and if the majority of the members of the management and supervisory boards are Polish citizens and hold permanent residence in Poland.

*Portugal:* Television broadcasters must dedicate at least 50 percent of airtime to programming originally produced in the Portuguese language, with at least half of this produced in Portugal. Music radio broadcasters must dedicate between 25 percent to 40 percent of programming time to music produced in Portuguese or in traditional Portuguese genres, with at least 60 percent of this produced by EU citizens.

In November 2020, when it enacted the 2018 AVMSD amendments into national law, the Portuguese Government imposed a new one percent annual fee on relevant income from on-demand or streaming platforms. The fees collected under this measure are to be transferred to the Institute of Cinema and Audiovisual, whose main mission is to support Portuguese language productions in Europe and abroad. If it is not possible to determine the relevant income of an on-demand or streaming platform, the annual fee will be €1 million (approximately \$1.1 million). The legislation passed in 2021 and entered into force in January 2022.

*Slovakia:* The Slovak Act on Broadcasting and Retransmission requires that the majority of television programming time (excluding sports, news, game shows, and advertisements) be for EU-origin content and requires a minimum 10 percent airtime allocation (15 percent in the case of public broadcasters) for EU-origin content created by independent producers. Private radio stations must allocate at least 25 percent of airtime per month to Slovak music and state-run radio at least 35 percent. In addition, at least 20 percent of the Slovak songs must be new production (*i.e.*, recorded within the past five years). Similarly, quotas on European and independent production exist for private TV channels and are impossible on private radio stations, per special request. Quotas on the maximum time allocated to paid advertisement are also in place for private and public radio and TV channels.

*Spain:* For every three days that a film from a non-EU country is screened, one EU film must be shown. This ratio is reduced to every four days if the cinema screens a film in an official language of Spain other than Spanish and keeps showing the film in that language throughout the day. In addition, broadcasters and providers of other audiovisual media services annually must invest 5 percent of their revenues in the production of EU and Spanish films and audiovisual programs, and 60 percent of this allocation should be directed towards productions in any of Spain's official languages. This also applies to digital terrestrial television.

In 2010, the Autonomous Community of Catalonia passed the Catalan Cinema Law, legislation that requires distributors to include the regional Catalan language in any print of any movie released in Catalonia that had been dubbed or subtitled in Spanish (but not any film distributed in Spanish). The law also requires exhibitors to exhibit such movies dubbed in Catalan on 50 percent of the screens on which they are showing. In 2012, the Commission ruled that the law discriminated against European films and must be amended. Additionally, the Spanish constitutional court ruled in July 2017 that the law was disproportionate and reduced the requirements of movies to be dubbed in Catalan to 25 percent. As of November 2021, a revised Catalan Cinema Law had not yet reached the Council of Ministers, nor had it been brought before the CJEU. Although the Catalan Cinema Law technically came into force in January 2011, the Catalan regional

parliament has not yet approved a regulation to implement the law. In the absence of the regulation, the regional government and major movie studios in 2012 signed an agreement to dub 20 films in Catalan annually, in addition to 20 independent films, with dubbing financed by the regional government.

In 2015, the Spanish Government awarded six digital terrestrial television broadcasting licenses through a public tender process. U.S. investors were unable to participate directly in this tender process due to restrictions on foreign ownership. U.S. companies have complained about lack of reciprocity in their efforts to purchase portions of Spanish broadcasting companies. The United States continues to engage on these issues with the Spanish Government.

Video-on-demand services in Spain must reserve 30 percent of their catalogs for European works (half of these in an official language of Spain) and contribute 5 percent of their turnover to the funding of audiovisual content. In November 2020, the Spanish Government proposed legislation that would expand this tax on earnings to streaming services not domiciled in the country, but the proposal has not been approved. The revenues would finance EU content, including at least 70 percent by independent producers and 40 percent of independent productions in Spain's official languages.

### **Legal Services**

Austria, Belgium, Bulgaria, Croatia, Cyprus, Greece, Hungary, Latvia, Lithuania, Malta, and Slovakia require EU or EEA nationality or citizenship for full admission to the bar, which is necessary for the practice of EU and Member State law. In many cases, non-EU lawyers holding authorization to practice law in one Member State face more burdensome procedures to obtain authorization in another Member State than would a similarly situated lawyer holding EU citizenship.

#### *Member State Measures*

*Bulgaria:* The Bulgarian Bar Act allows law firms registered in the EU to practice in Bulgaria under their original name after they register with the local bar association. However, at least one of the law firm's partners has to be registered both in Bulgaria and in another Member State if the local partnership is to use an internationally recognized name.

*Hungary:* U.S. lawyers may provide legal services only under a "cooperation agreement" with a Hungarian law firm and may only provide information to their clients on U.S. or international law.

### **Accounting and Auditing Services**

The Commission has taken the position that its directive on statutory auditing prohibits Member States from considering professional experience of foreign auditors acquired outside of the EU when considering whether to grant statutory auditing rights. This interpretation has hampered movement of experienced professionals and inhibited Member States from participating in the growing movement toward mutual recognition in this profession. The United States will continue to advocate for Member States to take into account the experience of U.S. certified public accountants acquired outside of the EU.

#### *Member State Measures*

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

## **Retailing Services**

### *Member State Measures*

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

*Hungary:* In 2018, the Hungarian Government passed a law that requires mandatory tax audits for any company with total revenue of more than \$220 million that has not reported an after-tax profit for two consecutive years, which mainly affects large retail chains. A 2018 modification of the law on construction permits, which requires investors to obtain a construction permit and government approval before converting any building into a retail shop exceeding 400 square meters or remodeling an existing retail unit, also affects large retail chains. Industry representatives have argued that these new laws that distinguish based on revenue and physical size, unfairly advantage domestic retailers competing with non-Hungarian firms because such firms tend to be larger.

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

*Poland:* Retailers have expressed concerns about tax measures directed at companies operating in retail sectors. In July 2016, Poland adopted a new tax on companies engaged in the retail sale of goods that would impose progressively higher rates of taxation based on a company's turnover. In June 2017, the Commission ruled that the measure breached EU rules on state aid by unduly favoring certain companies over others, and Poland subsequently suspended implementation of the tax. In March 2021, the CJEU ruled that the retail sales tax does not violate EU law. The tax is now in effect.

*Romania:* In July 2016, Romania passed a law requiring large supermarkets to source from the local supply chain at least 51 percent of the total volume of their merchandise in meat, eggs, fruits, vegetables, honey, dairy products, and baked goods. This law applies to high-volume supermarkets with more than €2 million (approximately \$2.3 million) in annual sales, affecting all major chains. The law also bans food retailers from charging suppliers for any services, including on-site marketing services, thereby preventing producers from influencing how stores market or display their products and injecting greater unpredictability into the business environment. The Commission notified Romania of possible infringement proceedings in 2017 due to the law's requirements, particularly the "51 percent" rule. In 2020, Romania altered the law and introduced "direct partnership" between commercial retailers and agricultural cooperatives, agricultural producer associations, and agricultural producers and distributors, via 12-month commercial contracts. Romania's Ministry of Agriculture will draft subsequent legislation to establish the terms of these direct partnerships.

## **BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE**

### **Data Localization**

The GDPR took effect in May 2018. The GDPR restricts the transfer of the personal data of EU "data subjects" (any natural person whose personal data is being processed) outside of the EU, except to specific countries that the EU has determined provide adequate data protection under EU law or when other specific requirements are met, such as the use of standard contractual clauses (SCCs) or binding corporate rules. Restrictions on the flow of data have a significant effect on the conditions for the cross-border supply of numerous services and for enabling the functionality embedded in intelligent goods (*i.e.*, smart devices),

among other effects. Because the EU's assertion of extraterritorial jurisdiction for the GDPR, as well as the GDPR's broad impact on many areas of the economy, U.S. companies have expressed concerns that there remains a need for clear and consistent guidance in the implementation and enforcement of the GDPR.

In July 2016, the Commission granted the United States a partial adequacy decision limited to companies participating in the EU-U.S. Privacy Shield Framework. In July 2020, however, the CJEU issued a judgment in the *Schrems II* litigation that invalidated the Commission's decision. Although the CJEU's judgment upheld the overall validity of SCCs, it nonetheless imposed an affirmative obligation on entities using SCCs "to verify, on a case-by-case basis ... whether the law of the third country of destination ensures adequate protection, under EU law, of personal data transferred pursuant to standard data production clauses ...". On June 4, 2021, the Commission published the final version of new text for SCCs. As of September 27, 2021, companies entering into new data transfer agreements were required to use the new SCCs text, and by December 27, 2022, all existing transfer agreements utilizing the old SCCs text must be updated or they will no longer be valid. On June 21, 2021, the European Data Protection Board (EDPB) issued the final version of its "Recommendation 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data." In January and February 2022, multiple European Data Protection Authorities issued rulings that certain websites transferring analytics data to the United States were in breach of the GDPR, based on *the Schrems II* judgment. On March 25, 2022, the United States and EU announced that they have agreed in principle on a new Trans-Atlantic Data Privacy Framework, which is designed to provide a new mechanism to comply with EU data protection requirements for the transfer of personal data from the European Union.

## **Interactive Computer Services**

The Commission has adopted a new strategy for the digital economy, titled "A Europe fit for a digital age." EU leaders have also promoted "technological sovereignty" or "digital sovereignty" as a policy objective, which, while it remains an ambiguous concept, appears to focus largely on the desire to boost the capacity of Europe's domestic industry. As part of this approach, the EU has put forward a broad range of proposals, including regulations on industrial policy, competition, artificial intelligence, and platform liability, in addition to certification schemes. Based upon the public statements of some key EU officials, there is concern among U.S. industry that the Commission's proposals could target large U.S. service suppliers and hamper their ability to provide Internet-based services in the EU.

### *Digital Services Act (DSA)*

In December 2020, the Commission published its proposal for a "Regulation ... on the Single Market for Digital Services (Digital Services Act)." The EU Parliament, Council, and Commission are in trilogue negotiations to reach provisional agreement on the DSA. EU officials have indicated a desire to conclude the legislative process for the DSA in 2022. As proposed by the Commission, the DSA provides the Commission with new authority to regulate the business practices of certain large digital services suppliers. The DSA would provide the Member States and the Commission with the authority to impose fines not exceeding six percent of the total annual turnover of an intermediary service provider. The DSA would also provide the Commission with the power to adopt "delegated acts" for portions of the DSA, which provides the Commission with expansive authority to adopt additional regulation.

The DSA defines as a "Very Large Online Platform" (VLOP) any online platform with "average monthly active recipients of the service" in the EU equal to or higher than 45 million (the EU will adjust this number in the future to ensure it corresponds to 10 percent of the EU population). The DSA would impose additional obligations on VLOPs to address "systemic risks" present in their services. It defines systemic risks as the dissemination of illegal content, any negative effects for the exercise of certain fundamental rights, and intentional manipulation of the service. The VLOP would have to consider how its content

moderation systems, recommendation systems, and systems for displaying advertisements, influence these risks and enact mitigation measures for any systemic risks. A newly created European Board for Digital Services (EBDS) and the Commission will publish an annual report on the systemic risks reported by VLOPs and best practices for mitigation of those risks. The DSA would require VLOPs to subject themselves to an independent, annual audit of their compliance with the DSA and to take any necessary measures to address any deficiencies identified in such audits. The DSA would impose additional obligations on VLOPs for their recommendation systems and display of advertising.

The proposed DSA would incorporate the existing provisions on the liability of providers of intermediary services in the EU E-Commerce Directive (2000/31/EC) and would provide for additional harmonization of notice and take-down procedures across Member States. The DSA would also impose numerous obligations on providers of intermediary services, including hosting services and online platforms.

### *Digital Markets Act (DMA)*

In December 2020, the Commission published its proposal for a “Regulation ... on contestable and fair markets in the digital sector (Digital Markets Act).” In March 2022, the EU Parliament, Council, and Commission reached a provisional agreement on the DMA. EU officials have indicated a desire to conclude the EU legislative process for the DMA in 2022. The European Parliament and Council must still approve formally the final version of the DMA. As proposed by the Commission, the DMA would provide the Commission with new authority to regulate the business practices of certain large digital services suppliers. The DMA would provide the Commission with the authority to impose fines not exceeding 10 percent of the total annual turnover of an intermediary service provider. The DMA would also provide the Commission with the power to adopt “delegated acts” for portions of the DMA, thereby providing the Commission with expansive authority to adopt additional regulation.

The DMA would apply to “core platform services,” which includes a broad swath of existing digital services, including online intermediation services, online search engines, online social networking services, video-sharing platform services, number-independent interpersonal communications services, operating systems, cloud computing services, and advertising services (including networks, exchanges, and any other advertising intermediation services). The DMA would provide the Commission with authority to add new services to the list of “core platform services.” The Commission would have broad authority to determine that any provider of one or more core platform services is a “gatekeeper,” but the DMA sets out that the Commission should designate as a “gatekeeper” any provider that: (1) provides a core platform services in at least three Member States and has an annual EEA turnover of €6.5 billion (approximately \$7.7 billion) or more over the previous three years, or an average market capitalization of at least €65 billion (approximately \$78 billion); and (2) has had for each of the last three financial years, 45 million monthly active end users established or located in the EU and more than 10,000 yearly active business users established in the EU. Once a provider has been designated as a “gatekeeper,” the provider would have six months to come into compliance with a number of obligations set out in Articles 5 and 6 of the proposed DMA. The DMA would give the Commission broad authority to conduct market investigations to determine whether to designate a provider as a gatekeeper and whether a gatekeeper is in full compliance with obligations under the DMA. Under the proposal, if the Commission determines that a gatekeeper has “systemically infringed” obligations in Articles 5 and 6 of the proposed DMA and has “further strengthened or extended its gatekeeper position,” the Commission may impose “any behavioral or structural remedies” that are proportionate to the infringement.

### *Regulation on Preventing the Dissemination of Terrorist Content Online*

The Regulation on addressing the dissemination of terrorist content online was finalized in May 2021, and will go into effect on June 7, 2022. The new rules impose a one-hour deadline for platforms to remove

content following an order from national authorities and require platforms to take proactive measures to ensure that the platforms are not misused for the dissemination of terrorist content online. U.S. companies have expressed concerns with the one-hour deadline and penalties of up to four percent of a company's global revenues.

*Austria:* In January 2020, Austrian legislation to combat online hate speech went into effect. The law requires online social media platforms with more than 100,000 users in Austria and annual revenue of at least €500 million (approximately \$560 million) in Austria to establish a department with a streamlined process for managing complaints regarding hate speech. The law allows individuals to sue in court to compel platforms to delete content ruled to be hate speech. Online platforms that are “directly linked to journalistic activity” and other online information services such as Wikipedia are exempt from the new law. Online retail services are also exempt.

*France:* On August 25, 2021, France's “Upholding Republican Principles” law went into effect. The law requires social media platforms to remove harmful content within a specified timeframe. The law also includes a provision that prohibits divulging on the Internet any personally identifiable information that endangers another person physically, psychologically, or materially. This new offense is punishable by up to three years in prison and a fine of €45,000 (approximately \$54,600). If the targeted individual is a public servant, the punishment is more severe—up to five years in prison and a fine of €75,000 (approximately \$91,000).

*Germany:* In January 2018, the Act to Improve the Enforcement of Rights in Social Networks (NetzDG) went into effect. The NetzDG mandates that social network providers with more than two million users block or remove “obviously illegal” content within 24 hours after notification and any other illegal content within 7 days of notification and provides for fines as high as €50 million (approximately \$57 million) for non-compliance. In April 2021, NetzDG was amended to require, as of February 2022, social network providers to report, in the case of certain severe offenses, information regarding content on their site and its creators to the Federal Criminal Office. In June 2021, another amendment to the law added a requirement that social network providers supply users with a “user-friendly” mechanism for reporting complaints, as well as stronger protection of users against unauthorized deletion of their posts.

### **Digital Services Taxation (DST)**

The United States and EU Member States are among the 137 member jurisdictions to have joined the October 8, 2021, OECD/G20 “Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy.” On October 21, 2021, the United States, Austria, France, Italy, Spain, and the United Kingdom issued a joint statement that describes a political compromise reached among these countries “on a transitional approach to existing Unilateral Measures while implementing Pillar 1.” According to the joint statement, DST liability that accrues to Austria, France, Italy, Spain, and the United Kingdom during a transitional period prior to implementation of Pillar 1 will be creditable in defined circumstances against future corporate income tax liability due under Pillar 1. In return, the United States terminated the existing Section 301 trade actions on goods of Austria, France, Italy, Spain, and the United Kingdom and committed not to take further trade actions against these countries with respect to their existing DSTs until the earlier of the date the Pillar 1 multilateral convention comes into force or December 31, 2023. USTR, in coordination with the U.S. Department of the Treasury, is monitoring the implementation of the political agreement on the OECD/G20 Two-Pillar Solution as pertaining to DSTs, the commitments under the joint statement, and associated measures.

## Cybersecurity Standards and Certification

### *ENISA*

In April 2019, the EU adopted the Cybersecurity Act, which tasked the EU Agency for Network and Information Security (ENISA) with developing voluntary EU-wide cybersecurity certification schemes for ICT products, services, and processes, setting assurance levels of “basic,” “substantial,” and “high.” Currently, the Stakeholder Cybersecurity Certification Group (SCCG) and European Cybersecurity Certification Group (ECCG)—consisting of Member States authorities—are responsible for advising and assisting the Commission and ENISA on these cybersecurity certification schemes. They are currently working on a voluntary scheme for all kinds of cloud services (*i.e.*, IaaS, PaaS, SaaS, and other cloud services) that would cover three assurance levels (basic, substantial, and high) and include transparency requirements such as providing information about the location of data processing and storage. Although the schemes are voluntary, U.S. stakeholders are concerned that the result could be a *de facto* mandatory certification requirement, which may adversely impact U.S. market access depending on the requirements for certifications once finalized. Furthermore, the Commission has said it will assess by December 31, 2023, whether some schemes should become mandatory.

### *NIS 2.0*

In December 2020, the Commission published its proposal for a directive to introduce new measures for a common level of cybersecurity across the EU. The proposal seeks to impose regulatory requirements on all entities involved in the global domain name system resolution chain, potentially subjecting U.S. Government entities to certain requirements, audits, on-site inspections, and other enforcement measures that the Member States implement.

*France:* In May 2021, the French Government adopted a National Cloud Strategy requiring all government agencies to select only from vendors that have a French cybersecurity certification, which requires data storage in France or in the EU. U.S. companies have expressed concern that U.S. cloud services suppliers will be precluded from providing these services to the French Government. There are also concerns that in the future the French private sector would adopt the certification requirement, which could further hamper U.S. cloud service providers from providing services in the French market.

*Italy:* In September 2021, the Italian Government adopted a cloud strategy that requires the storage and processing of encryption keys in Italy. This requirement will apply to any certified commercial cloud service provider that is being used to host critical data and services for either local or central government entities.

## Artificial Intelligence Act

As discussed above in the Technical Barriers to Trade section of this report, in April 2021, the Commission published a draft regulation for setting out harmonized rules on artificial intelligence (AI), commonly referred to as the “AI Act.” The overall goal of the AI Act is to foster an environment that protects people’s safety and fundamental rights. Under the Commission’s proposal, AI deemed to be high-risk would have to comply with requirements related to a range of issues, including data governance, human oversight, transparency, recordkeeping, and security. The Commission has identified a number of AI applications as high-risk, including biometric identification, credit scoring, management of critical infrastructure, access to education, job recruitment, essential private and public services, and law enforcement that may interfere with people’s fundamental rights. High-risk AI systems would also have to undergo conformity assessment before being placed in the EU market. Under the EU’s New Legislative Framework, testing results from third-country testing bodies may be admissible only in instances in which a government-to-government

agreement between the EU and a third country exists. U.S. stakeholders have expressed concerns that these requirements may create bottlenecks in the approval process.

## INVESTMENT BARRIERS

With few exceptions, EU law generally requires that any company established under the law of one Member State must receive national treatment in all other Member States, regardless of the company's ultimate ownership. Laws and regulations pertaining to the initial entry of foreign investors, however, are largely still the purview of individual Member States. As discussed below, the policies and practices of Member States can have a significant impact on U.S. investment.

### *Member State Measures*

*Bulgaria:* The Offshore Company Act lists 28 activities that are prohibited for companies registered in offshore jurisdictions with more than 10 percent offshore participation, including government procurement, natural resource exploitation, national park management, banking, and insurance. The law, however, allows offshore companies to conduct such activities if the physical owners of the parent company are Bulgarian citizens and known to the public, if the parent company's stock is publicly traded, or if the parent company is a media publisher and has declared its physical owners in a prescribed manner.

While Bulgaria generally affords national treatment to foreign investors, more investors continue to cite general problems with corruption, rule of law, frequently changing legislation, and weak law enforcement. Stakeholders continue to express concerns about the non-payment of contractual obligations as an investment deterrent.

In 2021, due largely to the unsuccessful attempts to form a government following two general elections, the Bulgarian Government did not follow through on its sporadic threats to renegotiate the long-term power purchase agreements of two large U.S. investors in the Bulgarian energy sector. The government has cited the Commission's state aid regulations as justification for potentially withholding compensation the companies were contractually promised when they made their initial investments, which came before Bulgaria acceded to the EU. The Commission has not formally ruled on the issue but wishes to have the matter resolved. The United States has engaged extensively on the issue, and the Bulgarian Government recently has indicated its commitment to resolving the dispute.

*Croatia:* U.S. companies doing business in Croatia complain that their operations are negatively affected by inefficient and unpredictable judicial processes. Disputes between U.S. investors and Croatian partners or government authorities can take years to resolve. U.S. investors have reported that local government officials who take action against their assets in violation of court orders are rarely, if ever, penalized. They similarly complain that foreign investors are harmed by local corruption, alleging judicial bias in favor of local parties who have relationships with judges and judicial employees. While investors of all nationalities (including Croatians) cite judicial inefficiency and corruption as common obstacles to doing business in Croatia, U.S. investors have cited concerns that non-local litigants do not enjoy impartial access to the courts, creating a further barrier to investment.

*Cyprus:* Cypriot law imposes restrictions on the foreign ownership of real property and construction-related businesses. Non-EU residents may purchase no more than two independent housing units (apartments or houses) or one housing unit and a small shop or office. Exceptions are available for projects requiring larger plots of land, but are difficult to obtain and rarely granted. Only EU citizens have the right to register as construction contractors in Cyprus, and non-EU investors are not allowed to own a majority stake in a local construction company. Non-EU residents or legal entities may bid on specific construction projects but only after obtaining a special license from the Cypriot Council of Ministers.

Non-EU entities are prohibited from investing in the production, transfer, and provision of electrical energy. Individual non-EU investors may not own more than 5 percent of a local television or radio station, and total non-EU ownership of a local TV or radio station is restricted to a maximum of 25 percent. Non-EU entities cannot invest directly in private tertiary education institutions, although they can do so indirectly by investing through subsidiaries based in Cyprus or elsewhere in the EU. The provision of healthcare services in Cyprus is also subject to certain investment restrictions, applying equally to all non-residents. Finally, the Central Bank of Cyprus's prior approval is necessary before any person or entity, whether Cypriot or foreign, can acquire more than 9.99 percent of a bank incorporated in Cyprus.

*Greece:* Greek authorities consider local content and export performance criteria when evaluating applications for tax and investment incentives, although such criteria are not prerequisites for approving investments.

*Hungary:* In 2020, as part of the measures to offset the adverse economic consequences of the COVID-19 pandemic, the Hungarian Parliament passed a new law and a decree, requiring that foreign investments be reported to the Minister for Innovation and Technology in 23 strategic sectors, including transportation, healthcare, energy, tourism, defense, finance, and information technology. In 2021, legislation determining what is in the state interest expanded further to include higher education institutions, publishing, film, video, television production, sound recording publishing, programming, broadcasting, and telecommunications. The Hungarian Government will grant approvals on the basis of the impact of the notified investment on the public interest, public safety, or public order, among other factors. Additionally, companies in strategic sectors needed to report to the government by the end of December 2021 if there was a capital increase in the company, a change in ownership, a bond, or a decision to transform or split. This legislation, as applied to investments, was initially in effect until December 2020, but has been extended numerous times and will be in force until December 31, 2022.

*Italy:* Some U.S. companies claim their investment plans have been hampered by Italy's unpredictable tax regime, multi-layered bureaucracy, and time-consuming legal and regulatory procedures. Tax rules in Italy change frequently and are interpreted inconsistently. Tax disputes are resolved slowly, and initial findings are frequently reversed, which reduces certainty and increases compliance costs. U.S. companies report long delays in receiving VAT refunds.

U.S. oil and gas companies have argued that, in applying for necessary exploration and drilling permits from the Italian Government and local authorities, they have faced delays longer than needed to determine whether the requirements for such permits have been met. Similarly, U.S. telecommunications interests complained about the difficulty of getting licenses for their satellites and questioned if the Italian Government's aim was to advantage domestic competitors. A U.S. private investment fund also complained about the Ministry of Economic Development not moving forward with issuing concessions for gaming licenses because of legal and bureaucratic hurdles.

*Latvia:* The judicial system in Latvia can present significant challenges to investors. Insolvency proceedings continue to present serious problems. Cases often take several years to resolve, and there have been reports of large-scale abuse by both insolvency administrators and bad-faith creditors who have manipulated the proceedings to seize control of assets and companies and to extract unwarranted settlements and fees. U.S. stakeholders also continue to voice serious concerns about the duration of civil cases, while the nature and opacity of judicial rulings have led some investors to question the fairness and impartiality of some judges. In 2021, Latvia created an Economic Affairs Court aimed at efficiently handling complex commercial disputes and criminal cases of corruption, money laundering, and sophisticated financial crime.

In 2017, Latvia enacted amendments to its Law on Land Privatization in Rural Areas that, among other things, prohibit foreigners who do not possess a working knowledge of the Latvian language from purchasing agricultural land. In June 2020, the CJEU found that the law violated European law. Despite the CJEU decision, Latvia has taken no action to change the law.

Poland: The Wind Turbine Act, enacted in 2016, reflected tensions between the desire to promote investment in renewable energy, and concerns over placement of wind turbines close to residential buildings. One provision prohibited building a wind turbine at a distance of less than 10 times its height from a residential building. In July 2020, the Polish Ministry of Economic Development and Technology took steps to amend the 2016 Wind Turbine Act with draft regulations which, under certain conditions, would allow municipalities to reduce the distance between a wind turbine and a residential building to no less than 500 meters. The proposed amendments have undergone public consultations and the bill is expected to be adopted by Poland's Council of Ministers and sent to the Polish Parliament for approval in the second quarter of 2022.

Since 2017, the Polish tax system has undergone many changes with the aim of increasing budget revenues and compliance. More aggressive tax auditing and collection in some cases has led to delays in re-approval of transfer pricing arrangements, changes in categorization of goods for purposes of using bonded warehouses, possible incorrect collection of excise tax, and unclear guidance on application of the U.S. double taxation treaty for stock options. In addition, an exit tax on both individual and corporate assets may adversely affect foreign investors. On July 26, 2021, the Polish Government announced draft legislation implementing broad tax reforms. The changes affect several areas of taxation including corporate income tax, personal income tax, and VAT. These tax reforms are expected to enter into force at the beginning of 2022, further complicating the Polish tax system.

The Polish Government has expressed a desire to increase the percentage of domestic ownership in some industries such as banking and retail, which have large holdings by foreign companies, and has employed sectoral taxes to advance this aim. Stakeholders have alleged that two new laws in the healthcare sector discriminate against foreign firms, namely a hospital reform law favoring large public hospitals for public reimbursement contracts and a law introduced in 2017 aimed at restricting ownership of pharmacies to licensed pharmacists in an effort to force out pharmacy chains.

*Romania:* Uncertainty and a lack of predictability in legal, fiscal, and regulatory systems pose a continuing impediment to foreign investment in Romania. The perception of corruption, expected changes to fiscal policies, lack of infrastructure, and a lack of predictability in political priorities remain the largest impediments to foreign investment in Romania.

Changing political priorities and a lack of capacity have led to persistent underinvestment in infrastructure, which is well below EU standards. Many companies report experiencing long delays in receiving VAT refunds to which they are legally entitled and allege that deadlines stipulated by law for the processing and payment of refunds often are not respected.

*Slovenia:* Weak corporate governance and a lack of transparency, particularly with respect to state-owned enterprises, continue to present significant challenges for investors in Slovenia. Potential U.S. investors have reported that opaque decision-making processes in the government's privatization program have discouraged investment.

Slovenia maintains certain limits on foreign ownership or control. Aircraft registration is only possible for aircraft owned by Slovenian or EU nationals or companies controlled by such entities. The law forbids majority ownership by non-EU residents of a Slovenian-flagged maritime vessel unless the operator is a Slovenian or other EU national.

## **SUBSIDIES**

Various financial transactions and equity arrangements throughout the EU raise questions as to the role of state funding in supporting or subsidizing private or quasi-private organizations, including in the manufacture of civil aircraft.

### **Government Support for Airbus**

After 15 years of litigation, in October 2019, the WTO authorized the United States to take \$7.5 billion in countermeasures in the dispute against the EU, France, Germany, Spain, and the United Kingdom regarding their illegal subsidies for the Airbus consortium.

On June 15, 2021, the United States and the EU announced a cooperative framework to address the large civil aircraft disputes. The U.S.-EU cooperative framework suspended the tariffs related to this dispute for five years. The United States and the EU also agreed to clear principles, including their shared intent that any financing for the production or development of large civil aircraft be on market terms. The United States and EU further agreed to collaborate on jointly analyzing and addressing non-market practices of third parties that may harm our large civil aircraft industries. The United States and the UK established a working group to address these issues on an ongoing basis.

Over many years, France, Germany, Spain, and the United Kingdom (as well as, to a much lesser extent, Belgium) have provided subsidies to their Airbus-affiliated companies to aid in the development, production, and marketing of Airbus's large civil aircraft. These governments have financed from 33 percent to 100 percent of the development costs (launch aid) of all Airbus aircraft models and have provided other forms of support, including equity infusions, debt forgiveness, debt rollovers, marketing assistance, and research and development funding, in addition to political and economic pressure on purchasing governments. The cooperative framework indicates the EU's intent to provide any future funding of this type only on market terms.

In addition to these subsidies, the EU maintains aeronautics research programs that 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.

The United States will monitor any government financing of Airbus closely to ensure that it does not confer any non-market advantage.

### **Government Support for Airbus Supplier**

#### *Member State Measures*

*Belgium:* The Belgian federal government coordinates with Belgium's three regional governments on the funding of non-recurring costs to be financed by Belgian manufacturers in order to be able to supply parts to Airbus. In this context, the Belgian Government decided in 2000 to set aside a budget of €195 million (approximately \$236 million) for Belgian industrial participation in the A380 program and in 2008, a budget of €150 million (approximately \$206 million) for Belgian industrial participation in the A350 XWB program. Belgium has always stated that these were refundable advances, partially covering nonrecurring costs in accordance with EU regulations. Both in 2006 and in 2009, the Commission initially disputed that view, but later acquiesced. Only industrial research or experimental development projects linked to the A350 XWB and A380 programs can be (partially) financed through reimbursable loans in accordance with

EU regulations. The average intervention for the A380 program, which ended in 2019, was 47 percent and for the A350 XWB program, 54 percent. Belgium did not consider these interventions as grants but reimbursable advances based on sales forecasts for each aircraft, ostensibly risk-sharing between the related companies and the Belgian Government. Statistics indicate that the total reimbursement level is more than 60 percent of the total sum of state interventions for all the Airbus programs, excluding the more recent ones (A380, A350 XWB, and A400M), where production started relatively recently. This level is also influenced by elements outside the control of the Belgian authorities (*e.g.*, Airbus stopped the production of A340 much earlier than initially planned and in 2019 announced that it will shut down the production of the A380 in 2021).

Eurostat, the Commission's statistical unit, notified the Belgian Government in 2014 that these amounts should not be considered as reimbursable advances but subsidies, because they were never totally reimbursed. Beginning in 2016, Belgian federal and regional governments were supposed to include the Airbus interventions as subsidies in their budgets, but the Belgian Government did not do so between 2016 and 2021. However, in March 2022, the Belgian Government confirmed that it now classifies its Airbus interventions as subsidies.

For the A350 XWB and A380 programs, the price distortion resulting from Belgian subcontractors is estimated to be a minimum of €370 million (approximately \$448 million). For the A400M program, the Belgian federal government in 2016 agreed on a €45 million (approximately \$54 million) grant for the 2017 to 2020 period.

*France:* In addition to the seed investment that the French Government provided for the development of the A380 and A350 XWB aircraft, France provides assistance in the form of reimbursable advances for the development by French manufacturers of products such as airplanes, aircraft engines, helicopters, and onboard equipment. In February 2013, the French Government confirmed €1.4 billion (approximately \$1.7 billion) in reimbursable advances for the A350 over the period 2009–2017 and a similar scheme for the helicopter X6 to be built by Airbus Helicopter. The French Government's 2022 budget includes €108 million (approximately \$125.6 million) in reimbursable advances for aeronautical/aviation products, up from €92 million (approximately \$107 million) in the 2021 budget. Since 2018, France has not announced appropriations for new programs in support of research and development.

In July 2008, Airbus, the parastatal Caisse des Dépôts et Consignations, and the Safran Group announced the launch of the Aerofund II equity fund, capitalized with €75 million (approximately \$90 million) destined for the French aeronautical sector. The equity fund's objective is to support the development of small and medium-sized subcontractors that supply the aeronautical sector. Then in 2013, the Aerofund III equity fund was launched with a fundraising target of €300 million (approximately \$363 million) and an objective of becoming the leading aerospace industry investment fund in Europe. At the end of December 2020, assets under management of this fund amounted to nearly €750 million (approximately \$872 million).

The next iteration of the Aerofund was born out of the COVID-19 crisis, which struck the world's aviation industry particularly hard. Since summer of 2020, the private equity investor Ace Management has managed Ace Aero Partenaires, a fund to support and strengthen the aeronautics industry. The fund aims to reach a size of at least €1 billion (approximately \$1.1 billion). This reflects the will of the industry's major players, with the support of the French Government, to support the transformation and consolidation of the aviation supply chain. Airbus, Safran, Dassault, and Thales have jointly committed a total of €200 million (approximately \$231 million) to this fund. The French Government has confirmed its investment of €200 million (approximately \$231 million), of which €50 million (approximately \$57.7 million) is from Bpifrance, a French public investment bank.

*Germany:* Between 2010 and 2015, the German Government provided Airbus with a €1.1 billion (approximately \$1.3 billion) loan package for the new A350 XWB wide-body jet. The loan runs until 2031 and covers deliveries of 1,500 aircraft. In addition to the A350 XWB loan package, Airbus also received a €942 million (approximately \$1.14 billion) loan for the development of the A380 in 2002. Airbus shut down the production of the A380 in 2021. Airbus also receives funds from the German Government's aeronautics research program for a number of projects.

*Hungary:* Following the Hungarian Ministry of Defense's procurement of 36 Airbus helicopters (20 H145M and 16 H225M) in 2018 and 2019 for about €500 million (approximately \$606 million), Airbus agreed to establish a new helicopter spare parts manufacturing site and training center in Hungary in a joint venture with the Hungarian Government, which will have a 30 percent stake. The local government provided 49 million Hungarian forints (approximately \$160,000) in support of the venture. The site will be under the joint ownership of Airbus and the Hungarian Government. Production is expected to start in 2022.

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

*Spain:* In April 2018, the Spanish Government reauthorized the Ministry of Economy, Industry, and Competitiveness (now the Ministry of Economic Affairs and Digital Transformation) to grant a refundable advance to Airbus of €12.7 million (approximately \$15.3 million) for Spain's continued participation in the development program for the A350 XWB aircraft. The subsidy was eliminated via an agreement between Airbus and the Spanish government in July 2020 to comply with Spain's WTO obligations. Airbus is expected to benefit from Next Generation EU funds, but details on the extent of assistance are still being finalized.

## **OTHER BARRIERS**

### *EU Imports of Hydrofluorocarbons*

The EU Fluorinated Greenhouse Gas Regulation No. 517/2014 (F-Gas Rule) places restrictions on the sale of certain refrigeration and air conditioning equipment, foams, and propellants that use fluorinated gases, with a view to reducing their environmental impact. In particular, the F-Gas Rule limits and, over time, progressively restricts the quantity of hydrofluorocarbons (HFCs) available for use in the EU using a quota system. The Commission has announced that it is developing a proposal to revise the F-Gas Rule by April 2022, presenting the possibility of more severe reductions relative to current 2030 targets. U.S. stakeholders have expressed concern that insufficient oversight and enforcement of the F-Gas Rule allows for widespread import of HFCs that exceed and are not accounted for under the EU's quota system. These imports negatively affect U.S. exporters of environmentally friendly alternative refrigerants and undermine stated EU F-Gas Rule environmental objectives.

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

declared on customs forms, or they are imported unaccounted for when already integrated in equipment containing HFCs.

An analysis of public HFC trade flow data commissioned by the European Fluorocarbon Technical Committee concludes that the volume of HFCs placed on the EU market in 2018 as a result of insufficient oversight and enforcement of the F-Gas Rule could be as high as 33 percent of the legally allowed quota. These HFC imports undermine the demand for and sale of environmentally friendly alternative refrigerants, of which U.S. industry is a significant global supplier.

#### *EU Carbon Border Adjustment Mechanism (CBAM)*

The United States is tracking the development of the EU CBAM proposal and has engaged with the Commission over the course of 2021 to seek to ensure that the CBAM would consider regulatory and other non-price mechanisms for reducing carbon emissions. The EU released its proposal for a regulation in July 2021, and the final regulation is expected to apply starting on January 1, 2023. The proposed regulation includes considerations of how imports will be handled, establishes a central administrator for CBAM management, and outlines how emissions values will be assigned, verified, and determined. The United States will continue to monitor the EU CBAM proposal.

# GHANA

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

Ghana's average Most-Favored-Nation (MFN) applied tariff rate was 12.1 percent in 2020 (latest data available). Ghana's average MFN applied tariff rate was 15.8 percent for agricultural products and 11.5 percent for non-agricultural products in 2020 (latest data available). Ghana has bound 15.1 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 92.0 percent. Ghana has bound all agricultural tariffs in the WTO at an average rate of 96.6 percent, more than six times the average level of its MFN applied rates on agricultural goods. Nearly 99 percent of Ghana's tariffs on industrial goods are unbound at the WTO. Ghana can raise tariffs on those products to any rate at any time, which creates uncertainty for importers and exporters.

Consistent with the Economic Community of West African States (ECOWAS) common external tariff (CET), Ghana applies five tariff bands: (1) zero percent duty on essential social goods (*e.g.*, medicine); (2) 5 percent duty on essential commodities, raw materials, and capital goods; (3) 10 percent duty on intermediate goods; (4) 20 percent duty on consumer goods; and, (5) 35 percent duty on certain goods that the Ghanaian Government elected to afford greater protection. The CET was slated to be fully harmonized by 2020, but in practice some ECOWAS Member States have maintained deviations from the CET beyond the January 1, 2020 deadline.

#### *Taxes*

Imports are subject to a variety of fees and charges in addition to tariffs. In addition, like all ECOWAS countries, Ghana imposes a 0.5 percent ECOWAS levy on all goods originating from non-ECOWAS countries to finance the activities of the ECOWAS Commission and Community institutions. Ghana also imposes a 0.2 percent levy on imports from outside African Union (AU) Member States to fund its contribution to the AU.

Under the Ghana Export-Import Bank Act, 2017, Ghana imposes a 0.75 percent levy on all non-petroleum products imported in commercial quantities. This levy replaced the Export Development and Agricultural Investment Fund levy of 0.5 percent. Effective through 2024, Ghana imposes a special levy of 2 percent on all imports, except for machinery and equipment listed under Chapters 84 and 85 of the Harmonized Tariff System and some petroleum products and fertilizers.

Ghana imposes on certain imported items, such as rice, poultry, printed materials, and electricity, a 12.5 percent value-added tax, a 2.5 percent Ghana Education Trust Fund levy, a 2.5 percent National Health Insurance levy, and a 1.0 percent COVID-19 Health Recovery levy, but does not impose these charges on the same categories of domestically-produced goods. All four of these charges are imposed on most other imported items as well as their domestically-produced equivalents.

In April 2020, Ghana amended its customs law. The Customs (Amendment) Act, 2020 (Act 1014) increases the import duty on vehicles and parts to 35 percent from between 5 percent and 20 percent on some specified vehicles such as passenger cars, sport utility vehicles (SUVs), and light commercial vehicles. The increase is part of Ghana's Automotive Development Policy aimed at attracting international companies to assemble

vehicles in Ghana. The increased import duty was scheduled to take effect in November 2020, but has been delayed because of opposition by used vehicle importers.

## **Non-Tariff Barriers**

### *Import Restrictions*

Ghana requires registration certificates for imports of food, cosmetics, pharmaceuticals, and agricultural goods. Since 2014, Ghana has banned the importation of tilapia and has limited the issuance of import permits for corn, poultry, and poultry products, although the government no longer enforces a domestic purchase requirement as a condition for import.

In 2018, the State Minister of Agriculture halted the issuance and renewal of poultry import permits for local traders in an effort to improve competitiveness and productivity in the domestic sector. The Ghanaian Government claims that traders import three to four times Ghana's annual consumption demand but has not provided supporting data. In 2019, the Ministry of Agriculture resumed issuance and renewal of poultry import permits on an *ad hoc* basis, but the issuance and renewal application and approval processes lack transparency, leading to uncertainty for traders.

Ghana announced a temporary ban on the importation of excavators to regulate their use in illegal mining, effective May 2019. Import exemptions are granted on an exceptional basis, but the issuance is often delayed.

### *Customs Barriers and Trade Facilitation*

Ghanaian customs practices and port infrastructure continue to present major obstacles to trade. Officials have introduced risk-management approaches; however, the majority of imports are still subject to inspection on arrival. Anecdotal reports suggest between 60 percent and 80 percent of imports are still subject to physical inspection or scanning, causing delays and increased costs. This is well beyond Ghana's announced goal of reducing inspections to roughly 10 percent of imports. Importers report erratic application of customs and other import regulations, lengthy clearance procedures, and corruption. The resulting delays can contribute to unnecessary demurrage charges and deterioration of products, resulting in significant losses for importers of perishable goods.

The Customs Division of the Ghana Revenue Authority (GRA) has taken on the inspection and valuation role once occupied by five licensed destination inspection companies. This has slightly reduced delays, although the high rate of physical inspections noted above remains an impediment. Ghana has launched several initiatives since 2017 to support online information and processing of trade transactions, including the development of a National Single Window. In September 2017, Ghana introduced electronic ("paperless") cargo clearance at ports to reduce clearance times. In June 2020, Ghana engaged a single service provider to replace the three vendors that had previously provided the single window trade facilitation system. The new Integrated Customs Management Systems (ICUMS) platform processes documents and payments through a single window that provides an end-to-end trade facilitation and automated customs operation and management service. The ICUMS fee is 0.75 percent of the Free On Board (FOB) value of imports. In addition, Ghana applies a one percent customs processing fee on all duty-free imports.

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

Imported vehicles are subject to a customs examination fee of one percent. The GRA Customs Division uses a price list to determine the value of imported used vehicles in order to determine the examination fee. Ghana also uses the price list in establishing the customs value of imported vehicles to calculate duties. In April 2019, the Ghanaian Government announced a reduction in the reference values used for valuation by 30 percent on the “home delivery values” for all vehicles. Imported used vehicles more than 10 years old incur an additional charge ranging from 2.5 percent to 50 percent of the cost, insurance, and freight (CIF) value.

Ghana ratified the WTO Trade Facilitation Agreement (TFA) in January 2017. Ghana has yet to submit transparency notifications related to: (1) the operation of the single window; and (2) the use of customs brokers. Those notifications were due to the WTO on July 22, 2021, according to Ghana’s self-designated implementation schedule.

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

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

Ghana develops its own standards for most products under the auspices of the Ghana Standards Authority (GSA). The GSA has over 2,700 national standards on, *inter alia*, building materials, food and agricultural products, household products, electrical goods, and pharmaceuticals. The Ghanaian Food and Drugs Authority (FDA) is responsible for enforcing standards for food, drugs, cosmetics, and health items.

Ghana classifies some imports as “high risk goods” (HRG) that must be inspected to ensure they meet Ghanaian or international standards. Since January 2019, the GSA ceded its responsibility of verifying a certificate of analysis or a certificate of conformance at the ports in Ghana to Bureau Veritas and Intertek to verify the conformity of HRGs in the country of export. Under a new process called the EasyPASS Program, either Bureau Veritas or Intertek, after satisfactory verification, issues an EasyPASS Certificate (certificate of conformity), which is used to facilitate customs clearance in Ghana. While exporters pay fees ranging from 0.35 percent to 0.50 percent of FOB to Bureau Veritas or Intertek, importers in Ghana are required to register with the GSA and pay an annual registration fee, ranging from \$20 to \$4,000, depending on the type of products they import. Upon arrival of goods at a port in Ghana, the GSA checks the validity of the EasyPASS certificate before releasing a consignment for clearance.

The GSA classifies these HRGs into 11 broad groups (reduced from 20 in 2019 after ceding the inspection of food, cosmetics, pharmaceutical and household chemical products to the Ghanaian FDA), such as toys, sports equipment, electrical appliances, and chemical products. Stakeholders have found this classification system vague and confusing. According to GSA officials, they classify these imports as high risk because they pose “potential hazards,” although that phrase remains undefined in law or regulation. Classifying these imports as high risk has provided Ghana a pretext to require the unnecessary additional step of in-country testing.

The GSA requires that all food products carry expiration and shelf life dates. Expiration dates must extend at least to half the projected shelf life at the time the product reaches Ghana. Goods that do not have half of their shelf life remaining are seized at the port of entry and destroyed. The United States has questioned the requirement’s legitimate objective given its inconsistency with the Codex Alimentarius Commission General Standard for Labeling of Pre-packaged Foods.

In August 2019, Ghana unveiled an Automotive Development Policy aimed at creating a domestic automotive industry as part of Ghana's industrialization plans. It is targeted at attracting automotive assembly manufacturers to invest in Ghana through tax incentives and other facilitation measures such as import incentives. The automotive policy could have a significant impact on U.S. exports. In 2021, the United States exported \$272 million in new and used automobiles and vehicle parts to Ghana, representing 28 percent of U.S. total exports to Ghana.

In December 2019, Ghana also established new compulsory vehicle safety and emissions standards for both imported and locally produced vehicles. Ghana's standards were modeled broadly on the United Nations Regulations developed by the World Forum for Harmonization of Vehicle Regulations (1958 Agreement). The GSA noted in the issued standards that it would accept and publish other applicable standards not listed, as an amendment or revision after the establishment of their equivalence to the Ghana standards. Following U.S. advocacy with Ghana, the Ministry of Trade and Industry and the GSA incorporated amendments to include U.S. Federal Motor Vehicle Safety Standards self-certification and documentation from the U.S. Environmental Protection Agency. Effective January 2021, all vehicle importers are required to register with the GSA and present a motor vehicle emissions report, a road worthiness test report from an agency approved by the GSA, and a certificate of conformity.

### **Sanitary and Phytosanitary Barriers**

To address human health risks, Ghana prohibits the importation of meat with a fat content by weight greater than 25 percent for beef, 25 percent for pork, 15 percent for poultry, and 30 percent for mutton. Imported turkeys must have their oil glands removed.

### **GOVERNMENT PROCUREMENT**

U.S. suppliers of goods and services face difficulties accessing the Ghanaian procurement market. Some large public procurements are conducted with open tendering and allow the participation of foreign firms. However, despite recent government statements about reductions in single source procurements, single source procurements remain common. Guidelines that apply to current tenders open to international competitive bidding give a margin of preference of 7.5 percent to 20 percent to domestic suppliers of goods and services. In July 2020, the Ghanaian Government issued a directive to public institutions for preferential procurement of locally assembled vehicles. Notwithstanding the public procurement law, companies report that locally-funded contracts lack full transparency. Supplier- or foreign government-subsidized financing arrangements appear in some cases to be a crucial factor in the award of government procurements. Allegations of corruption persist in the tender processes across ministries. In a positive example of accountability, the Ghanaian President fired the Chief Executive Officer (CEO) of Ghana's Public Procurement Authority in October 2020, following a 14-month investigation by the Commission for Human Rights and Administrative Justice into the CEO's conflicts of interest. A separate investigation into allegations of corruption, which was referred by the Ghanaian President to the Office of the Special Prosecutor, is ongoing as of March 2022.

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

### **INTELLECTUAL PROPERTY PROTECTION**

In 2016, Ghana launched its national intellectual property (IP) policy and strategy in an effort to create a welcoming environment for innovation and investment. Government officials periodically inspect import shipments and conduct raids on physical markets for counterfeit and pirated goods. However, concerns

remain that IP enforcement activity is weak, and unreasonable delays in infringement proceedings discourage right holders from filing new claims in local courts.

## **SERVICES BARRIERS**

### **Financial Services**

The National Insurance Commission (NIC) imposes nationality requirements with respect to the board and senior management of locally incorporated insurance and reinsurance companies. At least two board members must be Ghanaians and either the Chairman of the board of directors or the Chief Executive Officer (CEO) must be Ghanaian. If the CEO is not Ghanaian, the NIC requires that the Chief Financial Officer be Ghanaian. The NIC only permits the cross-border supply of reinsurance services after local options are exhausted.

The Payment Systems and Services Act, 2019 (Act 987) includes several concerning requirements for payment service companies, including that each company: (1) must have “at least 30 percent equity participation of a Ghanaian company or person”; (2) must maintain an undefined amount of minimum capital within Ghana; and, (3) must maintain a board of directors (five-person minimum) with at least three members residing in Ghana.

### **Telecommunications Services**

Ghana has required a minimum rate of \$0.19 per minute for terminating international calls into Ghana since 2009, which is significantly higher than the prior average rate. The 2009 rate increase correlated with a decrease in call volume from the United States to Ghana and a decrease in U.S. termination payments to carriers in Ghana.

## **INVESTMENT BARRIERS**

All foreign investment projects must be registered with the Ghana Investment Promotion Center. Registration is designed to be completed within five business days, but often takes significantly longer. Foreign investments are also subject to the following minimum capital requirements: \$200,000 for joint ventures with a Ghanaian partner; \$500,000 for enterprises wholly owned by non-Ghanaians; and \$1 million for trading companies (firms that buy or sell imported goods or services) that are wholly owned by non-Ghanaian entities. Trading companies are also required to employ at least 20 “skilled” Ghanaian nationals; the term “skilled” is not defined in the relevant law.

Ghana’s investment code excludes foreign investors from participating in eight economic sectors: petty trading; operation of taxi and automobile rental services with fleets of fewer than 25 vehicles; lotteries (excluding soccer pools); 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 production, supply, and retail of drinking water in sealed pouches.

At times, foreign investors experience difficulties and delays in securing required work visas for their non-Ghanaian employees. The process for obtaining such required visas can be unpredictable and take several months from application to delivery.

Obtaining access to land may also be challenging for foreign investors. Foreigners are allowed to enter into long-term leases of up to 50 years, and the lease may be bought, sold, or renewed for consecutive terms. In December 2020, Ghana passed the Land Act, 2020 (Act 1036), which revises, harmonizes, and consolidates laws on land to ensure sustainable land administration and management. The law changed the interests that

Ghanaian nationals may acquire in land, from freehold to long-term leases. Ghanaian nationals are not subject to the 50-year limit that applies to foreigners. The new law allows businesses with 40 percent or less foreign ownership to acquire land. While the new law seeks to protect current or future landowners, Ghana's complex land tenure system still makes establishing clear title on real estate difficult.

Foreign investors in Ghana may also encounter a politicized business community and a lack of transparency in certain government operations. Entrenched local interests can derail or delay new entrants. The political leanings of the Ghanaian partners of foreign investors are often subject to government scrutiny. Corruption among government and business figures also remains a concern. Ghana's anticorruption laws provide Ghanaian law enforcement and judicial bodies robust legal powers to fight corruption in the country, but these laws are not enforced consistently.

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

## **Mining**

Ghana restricts the issuance of mining licenses based on the size of the mining operation. Pursuant to the Minerals and Mining Act, 2006 (Act 703), foreign investors are restricted from obtaining a small-scale mining license for mining operations of an area less than or equal to 25 acres (10 hectares). In 2019, the criminal penalty for non-compliance with the regulation on mining or promoting mining without a license, and the buying or selling of minerals without a license, was increased from a maximum prison sentence of five years, to a minimum of 15 years for a Ghanaian and 20 years for a non-Ghanaian, with a maximum sentence of 25 years. The change was intended to discourage unlicensed small-scale mining. Non-Ghanaians may apply for a mineral right for industrial minerals only for projects involving an investment of at least \$10 million.

The Minerals and Mining Act, 2006 mandates compulsory local participation, whereby the government acquires a 10 percent equity stake in ventures at no cost. In order to qualify for a license, a non-Ghanaian company must be registered in Ghana, either as a branch office or a subsidiary incorporated under the Companies Act, 2019 (Act 992) or the Private Partnership Act, 2020 (Act 1039).

## **Oil and Gas**

The oil and gas sector is subject to a variety of state ownership and local content requirements. The 2016 Petroleum (Exploration and Production) Act mandates local participation. All entities seeking petroleum exploration and development licenses in Ghana must create a consortium in which the state-owned Ghana National Petroleum Corporation holds a minimum 15 percent participating carried interest, and a local Ghanaian firm or individual holds a minimum five percent interest. The Petroleum Commission issues all licenses, but Parliament must approve all exploration licenses. Further, local content regulations specify in-country sourcing requirements with respect to goods, services, hiring, and training associated with petroleum operations – standards that many international companies describe as unattainable or burdensome. These regulations also require mandatory local equity participation for all suppliers and contractors. The Minister of Energy must approve all contracts, subcontracts, and purchase orders above \$100,000, and notably has the authority to alter the requirements set by law for any specific contract. The criteria for the Minister's approval of local equity partners in commercial transactions remain unclear, which raises concerns of potential corruption and favoritism in the selection of local equity partners in

government-approved concessions or contracts. Non-compliance with these regulations may result in a criminal penalty, including imprisonment for up to five years.

The Petroleum Commission applies registration fees and annual renewal fees on foreign oil and gas service providers, which, depending on a company's annual revenues, range from \$70,000 to \$150,000, compared to fees of between \$5,000 and \$30,000 for local companies.

### **Local Content and Participation Requirements**

In 2017, Ghana introduced regulations requiring local content and local participation in the power sector. The Energy Commission (Local Content and Local Participation) (Electricity Supply Industry) Regulations, 2017 (L.I. 2354) specify minimum initial levels of local participation/ownership and 10-year targets.

The regulations also specify minimum and target levels of local content in engineering and procurement, construction works, post construction works, services, management, operations, and staff. All persons engaged in or planning to engage in the supply of electricity are required to register with the Electricity Supply Local Content and Local Participation Committee and satisfy the minimum local content and participation requirements within five years. Failure to comply with the requirements could result in a fine or imprisonment.

There are specific provisions in the mining regulations that require mining entities to procure goods and services from local sources. The Minerals Commission publishes a Local Procurement List, which identifies items that must be sourced from Ghanaian-owned companies whose directors must all be Ghanaians. Effective January 1, 2019, security services have a 100 percent local content mandate. Under the Classification of New Services Under the Minerals and Mining (Support Services) Regulations, 2012 (L.I. 2174), Ghana restricts to Ghanaians only Class B mining support services which include catering, camp management, and security services. All mine support services, providers, license holders, and dealers are expected to comply with this mandate. Non-Ghanaians are not permitted to enter into new contracts for the provision of such services with other mineral rights holders.

### **OTHER BARRIERS**

#### **Export Ban**

Since 2013, Ghana's Ferrous Scrap Metals (Prohibition of Export) Regulations have banned the exportation of ferrous scrap metals in order to protect the local steel industry.

# GUATEMALA

## TRADE AGREEMENTS

### **Dominican Republic–Central America–United States Free Trade Agreement**

The Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006; for the Dominican Republic in 2007; and for Costa Rica in 2009. The United States and the other CAFTA–DR countries meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

## IMPORT POLICIES

### **Tariffs**

As a member of the Central American Common Market, Guatemala applies a harmonized external tariff on most items at a maximum of 15 percent, with some exceptions. However, under the CAFTA–DR, as of January 1, 2015, 100 percent of U.S. originating consumer and industrial goods enter Guatemala duty free. Textile and apparel goods that meet the Agreement’s rules of origin also enter Guatemala duty free and quota free.

In addition, nearly all U.S. agricultural exports enter Guatemala duty free under the CAFTA–DR. Guatemala will eliminate its remaining tariffs on rice by 2023 and on dairy products by 2025. In 2017, Guatemala eliminated its out-of-quota tariff for fresh, frozen, and chilled chicken leg quarters five years early. For certain products, tariff-rate quotas (TRQs) permit duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Guatemala will liberalize trade in white corn through continual expansion of a TRQ, rather than by the reduction of the out-of-quota tariff. Guatemala is required under the CAFTA–DR to make TRQs available on January 1 of each year. Guatemala monitors its TRQs through an import licensing system, which the United States is carefully tracking to ensure the timely issuance of these permits.

### **Non-Tariff Barriers**

#### *Customs Barriers and Trade Facilitation*

Guatemala notified its customs valuation legislation to the World Trade Organization (WTO) in 2005, and has responded to the WTO Checklist of Issues that describes how the Customs Valuation Agreement is being implemented.

U.S. companies have raised concerns that Guatemala’s Tax Authority (SAT) uses an inaccurate reference price database to determine the value of imported goods, erroneously applies database values as minimums rather than as a reference, and compares imports to dissimilar products in the database. Further, when SAT performs investigations of declared values, the review process can detain the imported product for 20 or more days. Appeals involve a lengthy, opaque process that has lasted as long as four years. The U.S. Government engaged with Guatemala on this issue during 2020 and 2021.

U.S. companies have also reported that Guatemalan customs authorities have challenged the validity of claims of origin based on, among other things, differing interpretations of a product’s tariff classification based on outdated tariff schedules. On December 28, 2020, the Government of Guatemala updated and

established a single internal tariff schedule to simplify and facilitate SAT's application of preferential tariffs under the CAFTA–DR. The U.S. Government is monitoring to see if the harmonization of tariff codes will address tariff reclassification issues.

SAT's consistent rejection of origin certifications has negatively affected imports of U.S. goods. In cases of rejected claims, SAT previously failed to identify in writing the basis of its decisions and only allowed importers to make one correction to the certification of origin per entry. In April 2019, SAT issued a memorandum instructing customs officials on how to correctly apply the certification of origin rules under the CAFTA–DR, which appears to have addressed this specific concern. According to SAT's instructions, if a certification of origin is rejected, SAT must issue a written explanation of the reasons for the rejection. The instructions also clarify that importers can resubmit corrected documents, but only within 15 days. However, the 15-day limit prevents corrections from being made during post importation audits, resulting in fines and fees for even minor problems.

Guatemala ratified the WTO Trade Facilitation Agreement (TFA) on March 8, 2017. Guatemala is overdue submitting one transparency notification related to providing contact information regarding enquiry points. This notification was due to the WTO on February 1, 2020, according to Guatemala's self-designated TFA implementation schedule.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

Guatemala requires product registration for food products (e.g., dairy products) from every importer, as well as for animal feed and pet food. Importers are required to submit necessary documents to the Ministry of Public Health and Social Assistance (MSPAS) and receive approval before products are sold into the market, even if another importer has already registered that product. Industry has raised concerns that the process is burdensome and can delay the importation process by several months. In addition, processed meat and products require import permits from both the Ministry of Agriculture, Livestock, and Feed (MAGA), and MSPAS.

### **Sanitary and Phytosanitary Barriers**

Guatemala published an official list of quarantine pests in November 2016. Fumigated consignments, which pose no or very low risk, may be denied entry due to the presence of quarantine pests without consideration of additional or alternate treatments that would allow the product to safely enter Guatemala. This has resulted in unjustified and expensive mitigation measures affecting U.S. products. In addition, U.S. companies have raised concerns that the Intraregional Organization for Plant and Animal Health (OIRSA), which has been delegated the responsibility for both the quarantine inspection and fumigation services by MAGA, often breaks the cold chain of frozen containers to inspect for pests and requires fumigations for pests that are already dead and therefore pose no risk. U.S. industry is concerned that when treatments are required, products are unloaded, and the cold chain is broken, and the result is additional fees and damage to the cargo. The United States raised this issue during the 2019 meeting of the CAFTA–DR Committee on Sanitary and Phytosanitary Matters, asking MAGA for improved and more transparent protocols at ports. MAGA improved quarantine protocols during 2021, including eliminating inspection of frozen containers for pests. The U.S. Government continues to engage with MAGA to ensure transparency.

## **SUBSIDIES**

### **Export Subsidies**

In February 2016, the Guatemalan Congress amended the Law for the Promotion and Development of Export Activities and Drawback to replace an earlier tax incentive program. The tax exemptions under the 2016 amendments have a narrower scope, applying only to apparel and textile companies, as well as to information and communication technology service providers, such as call centers and business process outsourcing operations.

## **GOVERNMENT PROCUREMENT**

Government institutions are required to use the online government procurement system, GUATECOMPRAS, to track Government of Guatemala procurement processes since March 2004. GUATECOMPRAS has improved the efficiency and transparency of government tendering processes.

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

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

## **INTELLECTUAL PROPERTY PROTECTION**

Guatemala remained on the Watch List in the 2021 [Special 301 Report](#). Although intellectual property (IP) protection appears to have improved slightly in 2021, concerns remain. IP enforcement activities remain limited and appear inadequate in relation to the scope of the problem due to resource constraints and poor coordination among law enforcement agencies. The production of counterfeit apparel with little interference or deterrence from law enforcement is a significant concern. Other concerns include the sale of counterfeit pharmaceuticals and government use of unlicensed software. Cable signal piracy remains a problem and some major cable providers have discontinued contracts with distributors that illegally rebroadcasted U.S. television programming. The United States continues to urge Guatemala to ensure that its IP enforcement agencies receive sufficient resources and to strengthen enforcement, including with respect to criminal prosecution, administrative and border actions, and intergovernmental coordination to address widespread copyright piracy and commercial-scale sales of counterfeit goods. The United States will continue to engage Guatemala on these and other concerns, including through the Special 301 process, and will continue to monitor Guatemala’s implementation of its IP obligations under the CAFTA–DR.

## **SERVICES BARRIERS**

### **Professional Services**

Foreign enterprises may provide licensed professional services in Guatemala only through a contract or other relationship with an enterprise established in Guatemala. Additionally, public notaries must be Guatemalan nationals.

## **INVESTMENT BARRIERS**

A number of U.S. companies operating in Guatemala complain that complex and unclear laws and regulations and inconsistent judicial decisions effectively operate as barriers to investment. Resolution of

business and investment disputes through Guatemala’s judicial system is extremely time-consuming, and civil cases can take many years to resolve.

Delays and uncertainty in obtaining licenses from relevant Guatemalan authorities for exploration and operation in extractive industries inhibit current and potential investment by U.S. firms.

## **LABOR**

The U.S. labor enforcement case brought against Guatemala under Article 16.2.1(a) of the CAFTA-DR was formally concluded in 2017 with the issuance of the panel’s final report. Nevertheless, labor concerns—including with respect to the right of association, the right to organize and bargain collectively, and acceptable conditions of work—persist in the port, agriculture, apparel, and agricultural processing sectors.

## **OTHER BARRIERS**

### **Bribery and Corruption**

The CAFTA–DR contains strong public sector anti-bribery commitments and anticorruption measures in government contracting, and U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of government entities.

However, U.S. stakeholders have expressed concerns that corruption in the Guatemalan Government, including in the judiciary, continues to constrain successful investment in Guatemala.

# HONDURAS

## TRADE AGREEMENTS

### **Dominican Republic–Central America–United States Free Trade Agreement**

The Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006; for the Dominican Republic in 2007; and for Costa Rica in 2009. The United States and the other CAFTA–DR countries meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

## IMPORT POLICIES

### **Tariffs**

As a member of the Central American Common Market, Honduras applies a harmonized external tariff on most items at a maximum of 15 percent, with some exceptions. However, under the CAFTA–DR, as of January 1, 2015, 100 percent of U.S. consumer and industrial goods enter Honduras duty free. Textile and apparel goods that meet the Agreement’s rules of origin also enter Honduras duty free and quota free, creating opportunities for U.S. fiber, yarn, fabric, and apparel manufacturers.

In addition, most U.S. agricultural exports enter Honduras duty free. Honduras will eliminate its remaining tariffs on nearly all U.S. agricultural products by 2025. Honduras will eliminate tariffs on rice and chicken leg quarters by 2023, and on dairy products by 2025. For certain products, tariff-rate quotas (TRQs) permit some duty-free access for specified quantities during the tariff phase-out period, with the duty-free quantities expanding during that period. Honduras will liberalize trade in white corn through continual expansion of a TRQ, rather than by the reduction of the out-of-quota tariff. Honduras is required under the CAFTA–DR to make TRQs available on January 1 of each year. Honduras monitors its TRQs through an import licensing system, which the United States is carefully tracking to ensure the timely issuance of these permits.

### **Non-Tariff Barriers**

#### *Discriminatory Tax*

Honduran Customs imposes a 15 percent sales tax on pork rib imports when the product description is in English. However, if the product description is in Spanish, the pork ribs are considered basic necessities and are exempt from sales tax. In September 2020, the Honduras Customs Administration (HCA) requested assistance from the U.S. Department of Agriculture to train officials to address the issue of cut classification discrepancies. The United States Meat Export Federation trained more than 300 Government of Honduras customs officials on pork and beef cut classification and nomenclature as of November 2021. While the number of sales tax assessment cases for pork ribs has decreased since September 2020, the issue still persists. The HCA is currently drafting an amendment to the law, which would eliminate this disparate treatment based on the language of product description.

#### *Local Content Requirements*

In June 2018 and June 2019, pork importers were required to purchase a quantity of Honduran live hogs from local producers at a price established by the Hog Producers Association. The established price per

pound for live hogs is higher than the price of imported pork meat. Importers forced to purchase Honduran live hogs also face costs for slaughtering and processing – costs they do not face in connection with imported pork meat. The quantity of live hogs that each importer must purchase has been based on the volume of pork that the importer brings into Honduras. Local content requirements may disadvantage U.S. exports of pork to Honduras and importers are concerned that the Honduran Government may pressure them to increase local purchases.

### *Customs Barriers and Trade Facilitation*

In July 2016, Honduras ratified the World Trade Organization (WTO) Trade Facilitation Agreement (TFA). Current compliance priorities under the TFA are making operational the National Trade Facilitation Committee (NTFC) and institutionalizing an Authorized Economic Operator (AEO) scheme. The NTFC has a critical role in trade facilitation and business competitiveness, including objectives to identify and address regulatory and procedural bottlenecks in the trade process, encourage interagency coordination, and provide directives on major trade facilitation issues. The NTFC issued a work plan for 2020 with indicators and milestones for its first year of operation. However, inefficient agency coordination and publication of information piecemeal across ministerial websites reduce the efficacy and transparency of the regulatory process in Honduras.

In July 2020, Honduras' tax administration (Aduanas) requested technical support from the U.S. Agency for International Development (USAID) to establish an AEO program. After developing a proposal for design and rollout, Aduanas formally launched its AEO program in January 2021, and has already certified its first company as AEO-compliant. USAID will continue to support expanding the AEO program to other logistical chain firms (customs and logistics brokers) as well as work to establish an inter-institutional agreement among Government of Honduras border control authorities to validate and recognize the trade benefits provided by AEO compliance. Private sector firms throughout the value chain can then opt to certify, and operators will enjoy expedited or immediate clearance of goods and other trade advantages that reduce transport costs and times.

## **SANITARY AND PHYTOSANITARY BARRIERS TO TRADE**

### *Sanitary Authorization for Import Raw Materials and Additives for Food*

On November 3, 2020, the Sanitary Regulation Agency (ARSA) implemented a new import requirement called the Sanitary Authorization for the Import of Raw Materials and Additives for Food and Beverage Production. This new import requirement is redundant to the existing import permit mandated by SENASA, the Honduran equivalent to the U.S. Food and Drug Administration, for cuts of meat that match ARSA's definition of raw materials for food consumption. Honduras originally notified this regulatory requirement to the WTO in April 2019. The U.S. Government continues to engage with ARSA to facilitate trade.

## **SUBSIDIES**

Under the CAFTA–DR, Honduras may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, Honduras may maintain pre-existing duty waiver measures for such time as it remains an Annex VII “developing country” for the purposes of the WTO Agreement on Subsidies and Countervailing Measures. Honduras currently provides tax exemptions to firms in free trade zones, and employs the following export incentive programs: Free Trade Zone of Puerto Cortes, Export Processing Zones, and Temporary Import Regime.

## **GOVERNMENT PROCUREMENT**

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

## **INTELLECTUAL PROPERTY PROTECTION**

The United States continues to have significant concerns regarding intellectual property (IP) protection and enforcement in Honduras, including with respect to online and software piracy, cable signal piracy, and the distribution and sale of counterfeit and pirated goods. The United States will continue to urge Honduras to fully enforce its IP laws. Additionally, the United States continues to urge Honduras to provide greater clarity regarding the scope of protection for geographical indications (GIs), particularly ensuring that all producers are able to use common food names, including any that are elements of a compound GI. The United States continues to monitor Honduras’s implementation of its IP obligations under the CAFTA–DR.

## **INVESTMENT BARRIERS**

Honduran law places certain restrictions on foreign ownership of land within 40 kilometers of the country’s coastlines and national boundaries. However, the law allows foreigners to purchase properties, with some acreage restrictions, in designated zones established by the Ministry of Tourism in order to construct permanent or vacation homes. Inadequate land title procedures have led to investment disputes, including complaints of fraud and official malfeasance, harming U.S. nationals who are landowners in Honduras.

Although Honduras is open to foreign investment with limited restrictions and performance requirements, companies have experienced long waiting periods for regulatory and legislative approvals. Efforts are underway to streamline administrative procedures through the Government’s Transformation Unit.

## **LABOR**

The United States and Honduras continue to meet through their contact points, under Article 16.4.3 of the CAFTA–DR. This engagement includes reviewing Honduras’ progress toward implementing specific recommendations from the United States that resulted from a U.S. Department of Labor (DOL) report and the United States–Honduras Labor Rights Monitoring and Action Plan. DOL’s report, published in 2015 in response to a submission from the public under the CAFTA–DR, raised significant concerns regarding labor law enforcement in Honduras, especially with respect to the right to freedom of association, the right to organize and bargain collectively, the minimum age for work and the worst forms of child labor, and acceptable conditions of work in various economic sectors, including apparel, automotive parts, and agriculture.

## **OTHER BARRIERS**

### **Bribery and Corruption**

The CAFTA–DR contains strong public sector anti-bribery commitments and anticorruption measures in government contracting, and U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of government entities.

However, many U.S. stakeholders have expressed concerns that corruption in the government, including in the judiciary, continues to constrain investment in Honduras. Administrative and judicial decision-making is inconsistent, nontransparent, and time-consuming, and corruption reportedly remains a problem in

government procurement, the issuance of government permits, and the regulatory system in general. The telecommunications, health, and energy sectors are particularly problematic, as are real estate transactions, especially land title transfers. Several U.S. real estate investors have raised concerns about the difficulty of enforcing land titles.

Honduras has undertaken several efforts to address corruption in the past, including pursuing indictments against current and former government officials; partnering with the Organization of American States to create the independent Mission to Support the Fight against Corruption and Impunity in Honduras (though Honduras failed to renew its mandate in January 2020); 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. After the entry into force of a new penal code in 2020, courts have reopened several corruption cases, and delayed some in progress to retroactively apply some comparatively lenient provisions of the new law. In 2021, the U.S. Department of State named several current and former government officials to public corruption lists such as the Corrupt and Undemocratic Actors (“353”) List.

# HONG KONG

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

On June 30, 2020, Beijing imposed a National Security Law (NSL) on Hong Kong. Among other provisions, Article 31 of the NSL stipulates that an incorporated or unincorporated body, including domestic corporations, international businesses, international non-governmental organizations, and media outlets, can be prosecuted for violating the NSL.

On July 14, 2020, following imposition of the NSL, as well as other actions taken by Beijing to undermine Hong Kong, China's autonomy, the U.S. President issued Executive Order 13936, reflecting a U.S. determination that Hong Kong is no longer sufficiently autonomous to justify differential treatment in relation to China, and that the situation with respect to Hong Kong constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. Accordingly, Executive Order 13936 directed U.S. Government agencies to suspend or eliminate certain policy exemptions under U.S. law that had given Hong Kong differential treatment in relation to China. Among other actions, this directive led to the termination of reciprocal shipping income tax exemption treatments and a requirement that goods produced in Hong Kong and imported into the United States be marked to indicate that their origin is "China," rather than "Hong Kong."

## INTELLECTUAL PROPERTY PROTECTION

Hong Kong generally provides strong intellectual property (IP) protection and enforcement, and for the most part has strong IP laws in place. In June 2020, Hong Kong passed a Trade Marks Ordinance that will enable application of the Madrid Protocol in Hong Kong. Hong Kong also has a dedicated and effective enforcement capacity, a judicial system that supports enforcement efforts with deterrent fines and criminal sentences, and youth education programs that discourage IP-infringing activities.

Hong Kong's failure to modernize its copyright system has allowed it to become vulnerable to digital copyright piracy, particularly from streaming websites and illicit streaming devices, with negative ramifications for businesses and innovators. In 2011 and 2014, Hong Kong's Commerce and Economic Development Bureau (CEDB), the government entity in charge of IP policy, tried but failed to pass updated copyright legislation. In October 2021, CEDB announced that it will reintroduce the 2014 Copyright Bill for a three-month public consultation period starting in November 2021. Once the public consultation period is completed, the bill will be published in the government gazette before being introduced to the Legislative Council for consideration.

While the Customs and Excise Department of Hong Kong investigates IP crimes and routinely seizes IP-infringing products arriving from China and elsewhere, U.S. stakeholders report that counterfeit pharmaceuticals, luxury goods, and other infringing products continue to enter Hong Kong in significant quantities. These products are typically destined for both the Hong Kong market and markets outside of Hong Kong.

# INDIA

## TRADE AGREEMENTS

### The United States–India Trade Policy Forum

The United States and India launched the Trade Policy Forum (TPF) in July 2005 and signed an agreement in March 2010 that formally established the TPF as the primary mechanism for discussions of trade and investment issues between the United States and India. The United States Trade Representative and the Indian Minister of Commerce and Industry met in New Delhi, India for the twelfth TPF Ministerial in November 2021.

## IMPORT POLICIES

The United States has actively sought bilateral and multilateral opportunities to remove obstacles to India’s market. Nevertheless, U.S. exporters continue to encounter significant tariff and non-tariff barriers that impede imports of U.S. goods and services into India. While the Government of India has pursued ongoing economic reform efforts, it also continues to promote programs such as “Make in India” (2014) and “Self-Reliant India” (*Atmanirbhar Bharat* – May 2020) that seek to increase India’s self-sufficiency by promoting domestic industry and reducing reliance on foreign suppliers and imported goods.

### Tariffs and Taxes

#### *Tariffs*

India’s average Most-Favored-Nation (MFN) applied tariff rate was 15 percent in 2020 (latest data available), which was the highest of any major world economy, with an average applied tariff rate of 11.9 percent for non-agricultural goods and 34 percent for agricultural tariff lines. India’s tariff regime is also characterized by large disparities between the World Trade Organization (WTO) bound rates and MFN applied rates. India has bound 74.3 percent of its tariff lines in the WTO, with an average bound tariff rate of 50.8 percent. India’s bound tariff rates on agricultural products are among the highest in the world, averaging 113.1 percent and ranging as high as 300 percent. While India has bound all agricultural tariffs in the WTO, nearly 30 percent of India’s non-agricultural tariffs remain unbound.

India maintains high applied tariffs on a wide range of goods, including vegetable oils (as high as 45 percent); apples, corn, and motorcycles (50 percent); automobiles and flowers (60 percent); natural rubber (70 percent); coffee, raisins, and walnuts (100 percent); and alcoholic beverages (150 percent). In addition, India maintains very high basic customs duties, in some cases exceeding 20 percent, on drug formulations, including life-saving drugs and finished medicines listed on the World Health Organization’s list of essential medicines. India also operates several complicated duty drawback, duty exemption, and duty remission schemes for imports.

While India’s applied tariff rates for certain agricultural products are lower, the rates still present a significant barrier to trade in agricultural goods and processed foods (*e.g.*, poultry, potatoes, citrus, almonds, apples, grapes, canned peaches, chocolate, cookies, frozen french fries, and other prepared foods used in fast-food restaurants).

Given the large disparity between WTO bound and applied rates, India has considerable flexibility to change tariff rates at any time, creating tremendous uncertainty for U.S. exporters. The Government of India took advantage of this tariff flexibility in the 2019/2020 budget by increasing tariffs on approximately

70 product categories, including those covering key U.S. exports in the agricultural, information and communications technology, medical devices, paper products, chemicals, and automotive parts sectors, without any notice or public consultation process. In its 2020/2021 budget, India further raised tariffs for 31 product categories including cotton, palm oil, and denatured ethanol for select end-use, and raised duties on solar inverters and solar lanterns.

Since 2014, the Indian Government led by the Prime Minister has promoted the “Make in India” campaign, a drive to build the country’s manufacturing capacity in part by cutting barriers to foreign investment and introducing regulatory reforms. As part of the campaign, India raised duties in multiple sectors, especially focusing on two broad groups of products to encourage domestic production: 1) an assortment of labor-intensive products; and 2) electronics and communication devices, including mobile phones, televisions, and associated parts and components.

In June 2019, following the U.S. withdrawal of India’s preferential tariff benefits under the Generalized System of Preferences (GSP) program, India implemented retaliatory tariffs, ranging from 1.7 percent to 20 percent, on 28 different products imported from the United States, including almonds, apples, walnuts, chickpeas, lentils, phosphoric acid, boric acid, diagnostic reagents, binders for foundry molds, select steel and aluminum items, and threaded nuts. While the decision to implement these tariffs followed the U.S. withdrawal of India’s GSP benefits, India had originally announced the intention to adopt the tariffs in June 2018 in retaliation against the U.S. decision to implement tariffs on U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. The United States continues to urge India to address the common problem of excess capacity in the global steel and aluminum sectors, rather than maintaining the retaliatory tariffs. In July 2019, the United States launched a WTO dispute settlement proceeding against India challenging the retaliatory tariffs. A WTO panel was established in October 2019; the panel proceeding is ongoing.

### *Taxes*

Prior to the introduction of the Goods and Services Tax (GST) system in July 2017, India maintained a complex and opaque system of taxes, excise duties, and other charges. Imports were subject to state-level value-added or sales taxes, the Central Sales Tax, and various local taxes and charges. The GST simplified the tax regime by unifying India into a single market and improving the ease of doing business. The GST is made up of three main taxes: the Central GST is a fee collected by the central government for sales in all states; the State GST is a fee collected by each state for sales within a state; and the Integrated GST (IGST) is a fee collected by the central government for sales between states and on imported goods. IGST on imports is assessed on the sum of the customs value of the goods and the customs duties assessed on those goods, thereby amplifying the effect of customs tariff rate increases.

Under the new system, goods and services are taxed under four basic rates: 5 percent, 12 percent, 18 percent, and 28 percent. Some items such as bread, fresh fruits and vegetables, and certain dairy products have been exempted from the GST but are subject to certain preexisting taxes. While implementation challenges remain, India’s GST council meets regularly to adjust GST rates and provide clarifications and revisions to GST policy.

In 2018 India implemented a 10 percent social welfare surcharge on imports, which is assessed on the value of other duties (not on the customs value of the imported product). Certain products are exempted from the surcharge pursuant to official customs notifications. A landing fee of one percent is included in the valuation of all imported products unless exempted through separate notification.

## Non-Tariff Barriers

India maintains various forms of non-tariff barriers on three categories of products: banned or prohibited items which are denied entry into India (*e.g.*, tallow, fat, and oils of animal origin); restricted items that require an import license (*e.g.*, livestock products and certain chemicals); and “canalized” items (*e.g.*, some pharmaceuticals and corn under a tariff-rate quota) importable only by government trading monopolies and subject to cabinet approval regarding import timing and quantity.

While the official website of the Directorate General of Foreign Trade (DGFT) under the Ministry of Commerce and Industry (MOCI) maintains a list of restricted items, India often fails to observe other transparency requirements, such as the publication of timing and quantity restrictions in the *Gazette of India* and notification to relevant WTO committees.

### *Import Restrictions*

To manage domestic oversupply, the Indian Government began imposing restrictions on imports of various pulses in 2017. In August 2017, India imposed import quotas on pigeon peas, black matpe beans (Urd or *Vigna radiate*), mung beans (Moong or *Vigna mungo*), and moong and urad lentils. In April 2018, the Indian Government extended these quantitative restrictions to include peas. India’s MOCI again notified quantitative restrictions for the Indian fiscal year 2020/2021 of 150,000 metric tons (MT) for peas and mung beans as well as 400,000 MT for black matpe and pigeon peas. Imports of peas are restricted to the port of Kolkata and are subject to a minimum import price. While India removed a number of the import quotas for pulse crops in May 2021 to calm fears of food price inflation, it is not clear if the removal of the import restrictions is temporary or permanent.

India also subjects boric acid imports to stringent restrictions, including arbitrary import quantity approval restrictions and other requirements that only apply to imports. Long periods of time can pass without the issuance of any import licenses. In addition, the import application requires that non-insecticidal boric acid can only be imported directly by a domestic manufacturer, which prevents independent traders from importing boric acid for resale purposes. Meanwhile, domestic producers continue to be able to sell boric acid for non-insecticidal use, subject only to a requirement to maintain records showing they are not selling to end users who will use the product as an insecticide. India has cited state-level court cases in Kerala and Gujarat endorsing the legal rationale for applying the restriction on boric acid imports.

### *Import Licensing*

India distinguishes between goods that are new, and those that are secondhand, remanufactured, refurbished, or reconditioned, when assessing whether import licenses are required. India allows imports of secondhand capital goods by end users without an import license, provided the goods have a residual life of five years. India requires import licenses for all remanufactured goods because India does not recognize that remanufactured goods have typically been restored to original working condition and meet the technical and safety specifications applied to products made from new materials. Refurbished items must be no more than seven years old and have a remaining life span of at least five years. In addition, U.S. stakeholders have reported that obtaining an import license for remanufactured goods is onerous. Stakeholders noted that excessive details are required in the license application, quantity limitations are set on specific part numbers, and long delays occur between application submission and the grant of a license. A Chartered Engineer’s Certificate is also required to import both refurbished goods and used manufactured goods.

### *Customs Barriers and Trade Facilitation*

In addition to being announced with the annual budget, India's tariff rates are modified on an *ad hoc* basis through notifications in the *Gazette of India* and are subject to numerous exemptions that vary according to the product, user, intended use, or specific export promotion program, rendering India's customs system complex to decipher and open to administrative discretion.

U.S. exporters have raised concerns regarding India's application of customs valuation criteria to import transactions. Indian customs officials will reject the declared transaction value of an import, especially if it is a product for which India maintains benchmark prices, potentially raising the cost of exports beyond what is expected under India's applied tariff rates. U.S. companies have also faced extensive investigations related to their use of certain valuation methodologies when importing computer equipment. Companies have also reported being subject to excessive searches and seizures of imports.

Through Notification No. 91/2017-Customs (N.T.) of 2017, India amended Rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, to allow for the actual cost of transportation and insurance to be included when determining the customs value of imported products. However, India continues to allow for the use of costs that appear fictitious in cases where the actual cost of transportation or insurance is not ascertainable. For example, if Indian customs officials determine they cannot ascertain transportation costs, a cost of a 20 percent Free On Board (FOB) value will be used as the cost of transportation in determining the total customs value of the imported product for the purpose of assessing tariffs. The United States continues to raise questions about these practices in the WTO Committee on Customs Valuation.

India's customs authority generally requires extensive clearance documentation, which leads to frequent and lengthy processing delays. India's complex tariff structure – including the provision of multiple exemptions that vary according to product, user, or intended use – also creates uncertainty and contributes to delays in customs approvals.

### *Medical Device Price Controls*

In 2017, the National Pharmaceutical Pricing Authority (NPPA) issued an order to cap prices of coronary stents. Subsequently, knee implants were brought under price control under paragraph 19 of the Drugs (Prices Control) Order 2013 (DPCO) in 2017. In 2019, NPPA moved knee implants to price monitoring under paragraph 20 of the DPCO, allowing for a 10 percent price increase, but subsequently reinstated the price ceiling in 2020. U.S. companies have raised concerns noting that price controls for cardiac stents and knee implants do not differentiate on the basis of technological innovation and have a dissuasive effect on U.S. companies' willingness to serve the market. Four devices—cardiac stents, drug eluting stents, condoms, and intra-uterine devices—remain included in the National List of Essential Medicines, which provides India's Department of Pharmaceuticals and NPPA the authority to implement price ceilings. For certain medical devices other than coronary stents and knee implants, India has applied a trade margin rationalization approach to price controls, which caps margins throughout the supply chain to reduce patient costs while also allowing for technological differentiation.

### *Ethanol Import Restrictions*

In 2018, the Indian Government released the National Policy on Biofuels 2018, in which it set a target of 20 percent blending of ethanol with gasoline and a target of 5 percent blending with biodiesel by 2030. In 2020, the average ethanol blending rate in gasoline was pegged at 5 percent, up from 4.5 percent in 2019. Furthermore, in January 2021, India advanced the timeline of its blending targets to have 10 percent blending by 2022 and to reach 20 percent blending by 2025. However, according to Oil Ministry officials,

India's average ethanol blending rate stood at just 8.1 percent for the supply year (December 2020 to November 2021).

Despite these targets, India prohibits the importation of ethanol for fuel use. In addition, in 2018, the DGFT amended Schedule I (Import Policy) of the Indian Trade Classification (Harmonised System) of Import Items, 2017 through Notification 27/2015-2020 and restricted biofuel imports (HS 2207.20, HS 2710.20, and HS 3826) for non-fuel use to actual users. As of May 2019, MOCI Notification 6/2015-2020 requires an import license for importing biofuels (HS 2207.20, HS 2710.20, and HS 3826). The 2019 regulation also required that Indian importers obtain an import license from DGFT to import ethanol for non-fuel purposes.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

In addition to discussing technical barriers to trade matters with Indian officials through the TPF, the United States has discussed such matters at, and on the margins of, meetings of the WTO Committee on Technical Barriers to Trade (WTO TBT Committee).

#### *Polyethylene – Quality Control Order*

In January 2020, India notified to the WTO the Polyethylene Material for Moulding and Extrusion Quality Control Order (QCO). On April 15, 2021, the Ministry of Chemicals and Fertilizers published an order establishing an initial implementation date of October 15, 2021. The polyethylene QCO introduced and mandates labeling requirements based on the Indian Standard IS 7328:2020 for polyethylene material for molding and extrusion. The QCO requires manufacturers to label the smallest bag or individual unit package delivered to the customer with a “designation code” identifying a range of information about the packaged polyethylene product, such as grades, properties, and applications. This type of package labeling for polyethylene products would be unique to India. In March 2021, the U.S. Government and U.S. industry raised concerns over the polyethylene QCO at the WTO, highlighting specific concerns regarding the complexity and cost of the labeling requirements and offered an alternative solution to meet the requirements. While the date of implementation has been postponed until April 15, 2022, as of March 2022, the Ministry of Chemicals and Fertilizers has not modified the QCO. U.S. industry has expressed potential difficulties complying with the QCO in its form as of March 2022.

#### *Toys – Quality Control Order*

In February 2020, India notified the Toys (Quality Control) Order to the WTO, and the MOCI announced that the order would take effect in September 2020. India subsequently postponed the implementation date until January 1, 2021. The transition period did not provide sufficient time for U.S. manufacturers to meet the QCO requirements given the disruptions in global trade and manufacturing due to the COVID-19 pandemic. The QCO required toys to conform to Indian Standard IS 9873 (based on the ISO toy standard) and IS 15644, and bear the Standard Mark under a license from the Bureau of Indian Standards (BIS), among other requirements including factory inspections and numerous new fees. Although some domestic factory inspections started in 2021, U.S. industry reported that foreign manufacturers continued to lack certification because of a backlog from pandemic-related travel restrictions preventing Indian officials from conducting factory inspections. Until factory inspections are conducted and Indian authority provide certification, U.S. toy manufacturers will continue to be unable to comply with the QCO and therefore cannot export toys to India. The United States raised concerns with the toys QCO through the WTO TBT Committee in 2020 and 2021.

### *Cosmetics – Registration Requirements*

In November 2018, India’s Ministry of Health and Family Welfare invited comments on a draft of its new Cosmetics Rules. U.S. stakeholders provided comments encouraging a risk-based regulatory framework that would align with good regulatory practices for cosmetics safety and with international standards. These comments were not addressed in the final version of the Cosmetics Rules adopted in 2020.

### *Verification of U.S. Country of Origin Certificates*

In July 2020, the Food and Safety Standards Authority of India (FSSAI) placed temporary holds on consignments of a wide range of U.S. food and agricultural products, including almonds and apples, questioning the validity of the Country of Origin (COO) certificates accompanying those products. FSSAI has been considering whether to accept COO certificates from U.S. chambers of commerce and which documents issued by freight forwarders and shippers will be recognized. The lack of clarity has placed a significant portion of U.S. agricultural exports at risk of being prevented from entering the Indian market. Beginning August 2021, FSSAI began scrutinizing COO certificates on alcoholic beverage consignments from the United States, which has resulted in increased exporter uncertainty.

### *Labeling Requirements*

In October 2020, FSSAI notified to the WTO an amendment to the Food Safety and Standards (Packaging and Labeling) Regulations, which modifies labeling requirements for packaged foods containing sweeteners. The amendment would require warning labels for various kinds of sweeteners. The United States submitted comments through the WTO TBT Committee on the amendment and continues to monitor India’s plans for finalizing the amendment.

### *Food Safety Standards (Alcoholic Beverages) Amendment Regulations, 2019*

In July 2019, FSSAI published its Food Safety Standards (Alcoholic Beverages) Amendment Regulations, and notified the amendments to the WTO. The amendments revised FSSAI’s 2018 mandatory alcoholic beverage standards, which took effect in April 2019. In June 2020, FSSAI issued a directive to operationalize certain provisions of the standards, including the addition of non-alcoholic beer as a separate product category and permitting the use of new colors and additives in distilled spirits. FSSAI has not clarified the timeline for enforcement of its amended regulations. While FSSAI addressed several of the issues that the United States raised with India, several concerns remain, including: (1) the establishment of analytical parameters for a range of naturally occurring components in distilled spirits; (2) minimum and maximum requirements for ethyl alcohol; (3) the lack of explicit protection for Bourbon, Rye, and Tennessee Whiskey as distinctive products of the United States; and (4) a lack of clarity on definitions related to brand owners, date markings, non-retail containers, and multi-unit packs. The United States submitted comments through the WTO TBT Committee on the proposed changes in January 2021.

### *Organic Certification Changes*

In 2020, FSSAI detained at least two U.S. organic shipments at port, asserting the shipments could not be marketed as organic in India without an equivalency agreement between the Agricultural and Processed Food Products Export Development Authority (APEDA) and the U.S. Department of Agriculture (USDA) National Organic Program (NOP) despite previous import approvals by APEDA. On January 11, 2021, USDA NOP terminated its organic recognition agreement with India following APEDA’s failure to address compliance concerns for organic exports to the United States.

### *Livestock Genetics*

The Department of Animal Husbandry, Dairying, and Fisheries (DAHDF) imposes restrictions on imports of livestock genetics and establishes quality standards that result in long delays and add additional burdens for foreign producers. The procedure for obtaining import permission generally takes a minimum of four months but can take longer. Importation of animal genetics requires a No Objection Certificate (NOC) from the state government, import permission from the DGFT, and an import permit from the DAHDF. However, domestic producers of animal genetics are not required to obtain a NOC.

### *Dairy Products*

India imposes onerous requirements on dairy imports. India requires that dairy products intended for food be derived from animals that have never consumed any feeds containing internal organs, blood meal, or tissues of ruminant origin, and that exporting countries certify to these conditions. India has explained that its requirement is based on religious and cultural grounds. To address India's religious and cultural concerns, in 2015 and again in 2018, the United States proposed labeling solutions to allow for consumer choice between dairy products derived from animals that have consumed feeds with ruminant protein and those derived from animals that have not consumed such feeds. India rejected the proposals. 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. The United States continues to press the Indian Government, including through the TPF, to provide greater access to the Indian dairy market.

### *Mandatory Domestic Testing and Certification Requirements for Equipment*

In September 2017, India's Ministry of Communications, Department of Telecommunications published the Indian Telegraph (Amendment) Rules, which require all telegraph equipment to undergo mandatory testing and certification. Under these rules, in 2019 India implemented the Mandatory Testing and Certification for Telecom Equipment (MTCTE) procedures, which require local security testing for telecommunication products. It is still unclear whether India has sufficient lab capacity to fully implement the testing criteria. In May 2021, India's Telecommunication Engineering Center (TEC) proposed new implementing procedures for the MTCTE scheme, which aims to expand the scope of the MTCTE scheme to include "applicable information and communication technologies (ICT) equipment" and "related ICT equipment." The scope was further expanded in September 2021 to include 46 additional product categories.

U.S. industry remains concerned with the in-country testing and certification requirements as well as the overlapping nature of the expanded MTCTE scheme and its impact on products already regulated under other Indian regulatory measures, such as the Ministry of Electronics and Information Technology's Compulsory Registration Order. The United States, bilaterally through the TPF and in the WTO TBT Committee, has urged India to reconsider its domestic testing and certification requirements; to accept test results from International Laboratory Accreditation Cooperation (ILAC) accredited labs; and to adopt the use of the Common Criteria Recognition Arrangement (CCRA).

The United States continues to raise concerns that U.S. electronics and information and communications technology manufacturers have expressed regarding the Ministry of Electronics and Information Technology's (MEITY) Compulsory Registration Order (CRO). The CRO prescribes safety standards and in-country testing requirements for electronic and information and communications technology goods. The policy, which took effect in January 2014, mandates that manufacturers register their products and have them certified by laboratories accredited by the Bureau of Indian Standards (BIS), even if the products have already been certified by accredited international laboratories. In 2017, India increased the coverage of the CRO to 44 product categories, and in 2020 expanded the list to cover an additional 12 products. U.S.

industry reports that MEITY plans to continue to expand the CRO coverage. U.S. stakeholders have raised concerns regarding product registration due to delays in providing registration guidance and resources, such as Test Report Formats, and in launching BIS portals necessary for registrations following the announcement of each new expansion of the CRO. U.S. industry has also cited the following as continued issues: the lack of government testing capacity, a cumbersome registration process, canceled registrations due to administrative reasons that are unrelated to safety, and additional compliance costs that can exceed tens of millions of dollars, including costs associated with factory-level and component-level testing.

The domestic testing requirement is particularly burdensome for Highly Specialized Equipment (HSE), including servers, storage devices, printing machines, and information and communications technology products that are installed, operated, and maintained by professionals who are trained to manage the product's inherent safety risks. These products pose little risk to the general public or consumers. U.S. companies have incurred significant expenses providing testing samples within limited time frames. The samples are also often destroyed during the safety testing process in Indian laboratories. Indian laboratories have also indicated that they do not have the capacity to test some products that require industrial power supply, exceed household or office voltage, or are very large in size and weight. Moreover, U.S. exporters are forced to leave their products in these laboratories for extended and undefined periods of time. The United States has recommended that the Government of India exclude HSE from the scope of the requirements, recognize internationally accredited labs, harmonize labeling requirements with global practices, harmonize the validity period of test reports and certification, and eliminate re-testing requirements. The United States raised this issue bilaterally, including during technical exchanges through the TPF, and multilaterally in the WTO TBT Committee in 2019, 2020, and 2021.

### **Sanitary and Phytosanitary Barriers**

The United States has raised concerns about India's sanitary and phytosanitary (SPS) related trade restrictions in bilateral and multilateral fora, including the TPF, the WTO SPS Committee, and the Codex Alimentarius Commission. The United States will continue to make use of all available fora with a view to securing the entry of U.S. agricultural products, including strawberries, shrimp feed, and pet food, among others, into the Indian market.

#### *FSSAI Order on Non-Genetically Modified and Genetically Modified-Free Certificates*

In August 2020, FSSAI released an order requiring a non-Genetically Modified (non-GM) origin and "Genetically Modified free" (GM free) certificate from the competent authority in the exporting country to be included with imported food shipments that contain any of 24 listed products, effective March 1, 2021. The listed products include grains, oilseeds, fruits, and vegetable products, regardless of whether genetically engineered varieties of those crops are in commercial production and/or are being exported to India. India has not provided any scientific or risk-based justification for the requirement. According to FSSAI, the order is to ensure that only non-GM products are imported, pending new testing protocols and forthcoming regulations in genetically engineered (GE) food products. On October 12, 2020, FSSAI clarified that its order was applicable to only food crops listed in its earlier order and would not apply to processed food products in general. U.S. apples exports to India, valued at approximately \$22.5 million in 2021, were the primary export initially affected by the restriction, facing a *de facto* ban. On February 24, 2021, FSSAI published further clarification of acceptable certification options. These include: (i) non-GM origin and GM-free attestation on the phytosanitary or health certificate for each consignment, provided that all required information and declaration specified in FSSAI's order of August 21, 2020, are included, or (ii) non-GM origin and GM-free certificate issued by an authorized regional (*i.e.*, state level) government authority of the exporting country in the specified format. The United States and several other countries

have pressed India to rescind the requirement in comments submitted to the WTO TBT Committee and will continue to engage the Indian Government, including FSSAI, on the order.

### *Foods Derived from Biotechnology Crops*

Biotechnology products or products containing an ingredient derived from biotechnology must be approved by the Genetic Engineering Appraisal Committee (GEAC) before importation or domestic cultivation. The Food Safety and Standards Act of 2006 includes specific provisions for regulating food products derived from genetically engineered (GE) products. While the FSSAI began drafting regulations in 2018, it has not proposed or implemented new regulations on GE foods. India's biotechnology approval processes are also slow, opaque, subject to political influences, and for the last several years, essentially non-functional. For example, GEAC's progress toward approving a public sector, domestically developed GE mustard plant variety for commercial cultivation was further delayed pending additional government review and the Indian Government has yet to decide whether to allow its sale. Consequently, soybean oil and canola oil derived from GE soybeans and canola remain the only biotechnology food or agricultural products currently approved for import into the Indian market. Certain cotton varieties represent the only GE crop approved for commercial cultivation in India. The slow and uncertain approval process continues to hamper product registrations needed to facilitate trade in biotechnology products. In addition, India's labeling requirements for packages containing GE foods remains unclear.

### *Poultry*

In 2012, the United States commenced WTO dispute settlement proceedings against India due to India maintaining import prohibitions on various agricultural products from the United States, including poultry and poultry products, ostensibly due to concerns regarding avian influenza. In 2014, the WTO panel issued its report finding in favor of the United States. The Appellate Body affirmed these findings, concluding that India's restrictions: 1) are not based on international standards or a risk assessment that takes into account available scientific evidence; 2) arbitrarily discriminate against U.S. products; 3) are more trade restrictive than necessary; and, 4) fail to recognize the concept of disease-free areas and are not adapted to the characteristics of the areas from which products originate and to which they are destined. In 2016, the United States requested authorization from the WTO Dispute Settlement Body (DSB) to suspend concessions or other obligations on the grounds that India had failed to comply with the DSB recommendations within the "reasonable period of time" to which the parties agreed. The U.S. request was referred to arbitration. In April 2017, India requested the establishment of a compliance panel, asserting that it had enacted a revised avian influenza measure that complied with India's WTO obligations. The proceedings are ongoing.

In March 2018, the United States and India agreed to veterinary export certificates for the shipment to India of U.S. poultry and poultry products. In 2019 and 2020, the United States and India on several occasions postponed both the issuance of the arbitrator's decision while the parties discussed potential resolution of the dispute. The United States continues to monitor market access issues related to poultry, such as unnecessary testing requirements.

### *Distillers' Dried Grains with Solubles*

India's regulatory requirements on distiller's dried grains with solubles (DDGS) remain unclear. During the past few years, GEAC has received at least 11 applications from Indian importers to import U.S. DDGS. Local feed companies, along with the U.S. Government, continue to advocate that DDGS be exempted from further regulatory requirements, noting that DDGS are a processed product that are not living, and therefore pose no risk to the environment. In July 2018, the GEAC formed the Sub Committee on Guidelines for Imports of Animal Feed to establish procedures for applications related to the imports of animal feeds,

including DDGS. The Sub Committee submitted recommendations for approval to the GEAC in November 2019. As of March 2022, GEAC has not officially confirmed that it will not regulate DDGS as living modified organisms.

In addition, unclear jurisdiction for the approval process for DDGS continues to complicate the process. For example, in December 2019, FSSAI published Direction 1-95, announcing new requirements for commercial animal feeds and feed materials that are manufactured, imported, or distributed in India. Prior to the publication of Direction 1-95, however, FSSAI had not regulated the manufacture, import, or distribution of either commercial animal feeds or feed ingredients in India. In August 2021, the Government of India approved the import of 1.2 million metric tons of soybean meal derived from biotechnology soybean varieties – a non-living modified organism product that was previously disallowed – which may establish a precedent for DDGS imports.

### *Plant Health Issues*

India maintains zero-tolerance standards for certain plant quarantine pests, such as weed seeds and ergot, that do not appear to be based on risk assessments and result in blocked U.S. grain and pulse imports. Bilateral discussions to resolve these issues, including at the senior official level, have achieved little success to date.

India, without prior notification, changed its inspection policy and practices for weed seeds, resulting in a rejection of a U.S. lentil shipment on October 18, 2019, for the presence of two weed seeds that were not previously on India's published quarantine pest list of 31 weed seeds. On October 25, 2019, India published in the *Gazette of India* an updated quarantine pest list that included an additional 26 quarantine weed seeds, bringing the total number of quarantined pests to 57. Although the shipments were eventually released, this change delayed the distribution of over 200 U.S. containers of lentils at the ports of Chennai and Tuticorin, and uncertainty remains if additional changes might be implemented with no advance notice in the future.

In addition, India requires methyl bromide (MB) fumigation at the port of origin as a condition for the import of pulses. This type of fumigation is not permitted in the United States, and the United States requested that India permit entry of U.S. peas and pulses subject to inspection and fumigation at the port of arrival. India has granted a series of extensions allowing MB fumigation on arrival, but has offered no permanent solution. In April 2018, however, the Government of India confirmed the extension of the fumigation-upon-arrival waiver for U.S. peas and pulses, including chickpeas, indefinitely until both parties come to an agreement on the U.S. systems-based approach.

## **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. India also provides preferences to Indian micro, small, and medium-sized enterprises and to state-owned enterprises. Moreover, in defense procurements, India's offset program requires companies to invest 30 percent or more of the acquisition cost of contracts above the threshold value in Indian-produced parts, equipment, or services, a requirement that continues to prove challenging for manufacturers of high-technology equipment to meet given changing rules and limited opportunities.

In September 2020, the Indian Ministry of Defense announced the final Defense Acquisition Procedures (DAP) 2020, which replaced the Defense Procurement Procedure of 2016 and will be effective from October 1, 2020, until September 30, 2025. Under the DAP 2020, acquisition categories of “Buy (Indian),” “Buy (Indian – Indigenously Designed Developed and Manufactured)” (also referred to as “Buy (Indian-IDDM)”), and “Buy and Make (Indian)” have an indigenous content requirement.

India’s National Manufacturing Policy calls for increased use of local content requirements in government procurement in certain sectors (*e.g.*, information communications technology and clean energy). Consistent with this approach, India issued the Preferential Market Access notification, which requires government entities to meet their needs for electronic products in part by purchasing domestically manufactured goods.

In June 2020, the Department of Promotion of Industry and Internal Trade issued the Public Procurement (Preference to Make in India) Order 2020, a revision to the 2017 procurement order mandating preferences for domestically manufactured goods. The rule was updated again in September 2020, and took immediate effect, instructing each ministry or department to draft a follow-on procurement order that favors domestic suppliers whose products contain 50 percent or more local content and permitting ministries and departments to mandate higher local content percentages that could be used to benefit Indian suppliers. Products that contain less than 20 percent local content are categorized as “non-local suppliers” and cannot participate in government tenders. The Order has constrained U.S. industry’s ability to participate in central government tenders and procurements.

The August 2020 changes to General Financial Rules section 161 state that global tender enquiries may not be accepted under \$31 million and further reductions of the minimum local content requirement cannot be implemented without permission of an appropriate authority. Furthermore, companies must use a third-party or internal auditor to certify the amount of local content that will be used if the value is equal to or greater than 10 Crore (approximately \$1.35 million).

On September 23, 2020, the Ministry of New and Renewable Energy released an order reserving a list of 80 products, including solar cells, modules, wind turbines, and electrical equipment for hydro and biogas for bidding only by suppliers with 50 percent or more of local content irrespective of the purchase value. The Ministry of Power also reserved 86 products for local procurement through a similar order published on September 17, 2020.

In April 2020, the MEITY issued a notification that entities must procure cellular mobile phones only from local suppliers meeting the local content requirement of 50 percent, irrespective of purchase value. A September 2020 MEITY notification specified the mechanism for calculation of local content for: (1) desktop PCs; (2) thin clients; (3) computer monitors; (4) laptop PCs; (5) tablets; (6) dot matrix printers; (7) contact and contactless smart cards; (8) LED products; (9) biometric access control/authentication devices; (10) biometric fingerprint sensors; (11) biometric iris sensors; (12) servers; and, (13) cellular mobile phones.

India is not a party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since February 2010.

## **INTELLECTUAL PROPERTY PROTECTION**

India remained on the Priority Watch List in the [2021 Special 301 Report](#) to concerns over weak intellectual property (IP) protection and enforcement. The [2021 Notorious Markets List](#) includes physical and online marketplaces located in or connected to India. The United States and India continue to engage on a range of IP challenges facing U.S. companies in India with the intention of creating stronger IP protection and enforcement in India.

Developments over the past year include India's continued efforts to reduce delays and backlogs in the examination of patent and trademark applications, promote IP awareness and commercialization throughout India through the Cell for IPR Promotion and Management, and improve IP enforcement, particularly at the state level. However, state-level IP enforcement remains inconsistent throughout India, with some states conducting enforcement actions and others falling short in this regard.

In the field of copyright, procedural hurdles, cumbersome policies, and ineffective enforcement remain concerns. In February 2019, Parliament delayed passing the Cinematograph (Amendment) Bill, 2019, which would criminalize illicit camcording of films. The bill still awaits approval by Parliament. The expansive granting of licenses under Chapter VI of the Indian Copyright Act and overly broad exceptions for certain uses have raised concerns regarding the strength of copyright protection and complicated the market for music licensing. In 2021, India abolished the Intellectual Property Appellate Board and transferred its duties to courts. This development has created uncertainty regarding how certain IP royalties will be set, collected, and distributed.

In 2019, the Department for Promotion of Industry and Internal Trade proposed draft Copyright Amendment Rules that would broaden the scope of statutory licensing to encompass not only radio and television broadcasting but also online broadcasting, despite a high court ruling earlier in 2019 that held that statutory broadcast licensing does not include online broadcasts. If implemented to cover interactive transmissions, the Amendment Rules would have severe implications for Internet content-related right holders. This issue was discussed during the TPF. The United States is monitoring India's next steps on copyright issues, including actions taken in connection with the solicitation of public comments on amending the Copyright Act.

In the field of patents, several factors negatively affect stakeholders' perception of India's overall IP regime, investment climate, and innovation goals. Patent applications continue to face expensive and time consuming pre- and post-grant oppositions and excessive reporting requirements. In October 2020, India issued a revised "Statement of Working of Patents" (Form 27). While some stakeholders have welcomed the revised version of Form 27, concerns remain with respect to whether Indian authorities will treat as confidential sensitive business information that parties are required to disclose on Form 27. Concerns also remain that the potential threat of patent revocations, lack of presumption of patent validity, and the narrow patentability criteria under the India Patents Act impact companies across different sectors. In the pharmaceutical sector, the United States continues to monitor the restriction on patent-eligible subject matter in Section 3(d) of the India Patents Act and its impacts. In terms of progress in patent examination, India issued a revised Manual of Patent Office Practice and Procedure in November 2019 that requires patent examiners to look to the World Intellectual Property Organization's Centralized Access to Search and Examination system and Digital Access Service to find prior art and other information filed by patent applicants in other jurisdictions.

India currently lacks an effective system for protecting against unfair commercial use as well as unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural products. The U.S. Government and stakeholders have also raised concerns with respect to allegedly infringing pharmaceuticals being marketed without advance notice or opportunity for parties to resolve their IP disputes.

U.S. and Indian companies have expressed interest in eliminating gaps in India's trade secrets regime, such as through the adoption of legislation that specifically addresses the protection of trade secrets. In 2016, India's National Intellectual Property Rights (IPR) Policy called for trade secrets to serve as an "important area of study for future policy development," but India appears to have not yet prioritized this work.

## SERVICES BARRIERS

The Indian Government has a strong ownership presence in major services industries such as banking and insurance. Foreign investment in businesses in certain major services sectors, including financial services and retail, is subject to limitations on foreign equity. Foreign participation in professional services is significantly restricted, and is prohibited entirely in the case of legal services. In addition, barriers to digital trade and electronic commerce, such as those imposed on electronic payment providers, have knock-on effects on a wide variety of services.

### Audiovisual Services

U.S. companies have reported that India's satellite programming downlinking policy is overly burdensome. India requires foreign programmers to establish a registered office in India or designate a local agent. Programmers must also prove that they have a net worth of 50 million rupees (approximately \$676,000) in order to downlink one content channel and prove an additional 25 million rupees (approximately \$338,000) of net worth for each additional channel.

The Telecommunications Regulatory Authority of India's regulations on content aggregation and distribution do not allow bundling of channels or certain types of distribution partnerships. Content aggregation is commonly used internationally, as it allows niche and foreign content to be bundled and sold by domestic partners without a large local presence or sales force. These regulations cause difficulties for small and international content providers because these companies must interact with each of the 60,000 local cable operators, radio broadcasters, and television broadcasters that they seek to target.

There are also several limits on foreign ownership in the audiovisual and media sectors, namely cable networks (49 percent); FM radio (26 percent); head end in the sky (74 percent); direct-to-home (DTH) broadcasting (74 percent); teleports (74 percent); news broadcasting (26 percent); and newspapers (26 percent). In August 2019, the Indian Government allowed foreign direct investment (FDI) of up to 26 percent for digital media firms that upload and stream news and current affairs.

### Distribution Services

India imposes certain restrictions on FDI in the retail industry. With respect to single-brand retail, foreign investments exceeding 51 percent are contingent on, among other things, a requirement to source at least 30 percent of the value of products sold from Indian sources, preferably from small and medium-sized enterprises. India has modified the requirements in recent years, including by allowing firms to offset the local sourcing requirement by sourcing products from India for global supply chains. Despite these modifications, the local content requirements remain prohibitive for certain retailers with highly specialized supply chains.

India caps foreign ownership in the multi-brand retail sector at 51 percent and leaves to each Indian state the final decision on whether to authorize such FDI in its territory. In addition, where FDI is allowed, it is subject to conditions, including: (1) a minimum investment of approximately \$100 million, at least 50 percent of which must be in "back-end infrastructure" (e.g., processing, distribution, quality control, packaging, logistics, storage, and warehouses); (2) a requirement to operate only in cities that have been identified by the relevant state government; and, (3) a requirement to source at least 30 percent of the value of products sold from "small" Indian enterprises whose total investments in plant and machinery are under \$2 million each. The local sourcing requirements and other conditions on foreign investment diminish the commercial incentive for multi-brand retailers seeking to invest in India's retail sector.

India permits 100 percent FDI in business-to-business (or “marketplace-based”) electronic commerce but prohibits foreign investment in business-to-consumer (or “inventory-based”) electronic commerce. In February 2019, India implemented regulations that expressly prohibit subsidiaries of foreign-owned marketplace-based electronic commerce sites from selling products on their parent companies’ sites. The rules also prohibit exclusivity arrangements by which electronic commerce retailers can offer a product on an exclusive basis. The only exceptions for FDI in inventory-based electronic commerce are for food-product retailing and single-brand retailers that meet certain conditions, including the operation of physical stores in India. This narrow exception limits the ability of many electronic commerce service suppliers to serve the Indian market.

Indian state governments have periodically challenged the activity of direct selling (*i.e.*, the marketing and selling of products to consumers away from fixed locations) as a violation of the Prize Chits and Money Circulation Schemes (Banning) Act of 1978 (Prize Chits Act), thereby creating uncertainty for companies operating in this sector. Enforcement of the Prize Chits Act is reserved to the states, which have adopted varying implementation guidelines and taken unexpected enforcement actions, including the arrest of the chief operating officer of a direct-selling company, on the basis of the ambiguous provisions of the Act. In 2016, after extensive advocacy by the U.S. Government and private industry, the Indian Government approved the Model Direct Selling Guidelines, which establish clear legal definitions distinguishing legitimate direct selling from activities that violate the Prize Chits Act. However, in 2021, the government issued the Customer Protection (Direct Selling) Rules, which omit the Guidelines’ definition of a “direct selling network.” Industry has raised concerns that this exclusion will lead Indian states to equate legitimate direct selling companies with pyramid schemes and may open stakeholders up to legal challenges.

## **Education Services**

Foreign suppliers of higher education services continue to face a number of barriers in India, including: limitations on establishing independent campuses and issuing degrees; a requirement that representatives of Indian states sit on university governing boards; quotas limiting enrollment; caps on tuition and fees; policies that create potential for double taxation; difficulties repatriating salaries and income from research; limitations on employing foreign faculty; and lack of autonomy in designing curriculum.

The Government of India approved a new National Education Policy (NEP) on July 29, 2020, to replace the three-decade-old National Education Policy of 1986. The NEP 2020 is meant to provide an overarching vision and comprehensive framework for both school and higher education across India. The NEP contains a provision stating that institutions from among the top universities in the world will be permitted to operate and set up campuses in India, and that a separate legislative framework will be put in place to provide these institutions with more autonomy in regulatory and governance matters. The NEP proposes to ensure a level playing field for public and private players, and it proposes a new regulator that would replace several existing regulatory bodies and have authority to regulate, set standards for, and accredit higher education institutions. The NEP will come into effect once implementing laws and regulations are enacted, but those actions remained pending as of March 2022.

## **Financial Services**

### *Banking Services*

Although India allows privately held banks to operate in the country, the banking system is dominated by state-owned banks, which account for approximately 72 percent of total market share and 84 percent of all Indian bank branches. Most privately-owned banks are Indian owned, with foreign banks constituting less than 0.5 percent of the total bank branches in India. Under India’s branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis and their ability to

expand is hindered by non-transparent limitations established by the Indian Government 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 portfolio investors, and non-resident Indians) cannot exceed 74 percent.

In 2020, the RBI issued a notification that limits the ability of banks to offer current accounts to customers who have either cash credit or overdraft facilities from the banking system. Foreign banks operating in India have expressed concerns that the measure will adversely affect their ability to conduct business not only with current accounts but also in related areas such as trade finance. While the RBI's stated goal is to improve financial transparency and reduce the scope for fraud and bad loans, U.S. and other foreign banks are concerned that the rule will disadvantage them, as domestic banks issue a vast majority of credit and loans to Indian customers. U.S. banks noted this shift could incentivize customers to migrate their working capital accounts to India's public sector banks and adversely affect their ability to conduct business not only with current accounts but also in related areas such as trade finance.

### *Insurance Services*

In March 2021, the Government of India passed the Insurance (Amendment) Bill, 2021, which removed restrictions on foreign ownership and control of Indian insurance companies and increased the maximum foreign investment allowed from 49 percent to 74 percent. The law requires that a majority of Board members be Indian residents, and, if an insurer is incorporated or domiciled outside of India, requires that assets be held in an Indian trust with trustees resident in India. This also applies to an insurer incorporated in India, in which at least 33 percent of its capital is owned by investors domiciled outside India or in which 33 percent of the members of the governing body are domiciled outside India.

In August 2021, the Indian Government passed the General Insurance Business (Nationalization) Amendment Bill, 2021, providing for greater private sector participation in public sector insurance companies. The law removes the provision which, with respect to the General Insurance Corporation of India and its four subsidiary insurance companies, required at least 51 percent of shares to be held by the central government. The law also stipulates that part-time directors shall be held liable only for those acts that were committed with their knowledge and were attributable through board processes, and where their consent or connivance was involved or where they did not act diligently.

In 2015, the Insurance Regulatory and Development Authority of India (IRDAI) issued a revision to its regulations governing the provision of reinsurance services in India. The regulations now afford Indian reinsurers a mandatory first order of preference (or right of first refusal) for reinsurance business in India. Such a requirement severely restricts the ability of foreign reinsurers to compete in the Indian market and decreases the interest of foreign reinsurers in establishing branches in India. In 2018, IRDAI reaffirmed that the state-owned General Insurance Corporation of India maintained the right of first refusal for all reinsurance contracts.

The United States has raised concerns relating to informal and formal policies with respect to electronic payments services that appear to favor Indian domestic suppliers over foreign suppliers. In November 2020, the National Payments Corporation of India (NPCI), a state-owned company, announced a market share limitation of 30 percent of the market (measured by transactions) for foreign electronic payment service suppliers processing online payments made through India's United Payment Interface (UPI), which is owned and operated by NPCI. Domestic firms were exempt from the cap. NPCI stated that the policy would insulate the UPI system against systemic collapse should one of the market leaders experience a

failure. Foreign digital payment companies were given until January 2023 to ensure their market share met the 30 percent limit. The United States also has expressed concern over plans to create a National Common Mobility Card that would use a domestic proprietary QR code standard which could disadvantage foreign suppliers.

## **Professional Services**

### *Legal Services*

Membership in the Bar Council of India (BCI), the governing body for the legal profession, is mandatory to practice law in India and is limited to Indian citizens. Foreign law firms are not allowed to open offices in India. The Advocates Act, which is administered by BCI, provides for foreign lawyers or law firms to visit India on a reciprocal basis for temporary periods to advise their clients on foreign and international legal issues.

### *Accounting Services*

Foreign accounting firms face obstacles to entering the Indian accounting services sector. Only accounting firms structured as partnerships under Indian law may supply financial auditing services and only Indian-licensed accountants may be equity partners in an Indian accounting firm.

### *Architecture Services*

Although Indian companies continue to demand high-quality U.S. designs for new buildings and infrastructure development, foreign architecture firms find it difficult to do business in India due to the legal environment. Court cases against foreign design firms seeking to perform work in India and harassment of their potential clients have created uncertainty and business losses for U.S. providers of architectural and related services.

## **Telecommunications Services**

### *Barriers to Entry*

In October 2021, the Government of India began allowing FDI of up to 100 percent in the telecommunications section, removing the previous 49 percent cap, and allows such investments to flow through the automatic route that does not require additional government clearances. However, India's one-time licensing fee for telecommunications providers – at approximately \$500,000 for a service-specific license or approximately \$2.7 million for an all-India Universal License – serves as a barrier to market entry for smaller companies.

### *Remote Access Policy*

Global telecommunications operators have made significant investments in India's network infrastructure. However, telecommunications operators face significant challenges in their ability to remotely access their networks due to a requirement to obtain pre-approval for each remote access site. Delays of as much as a year in gaining such approval leave operators unable to remotely configure and operate their networks, hampering network security and undermining services suppliers' ability to operate networks efficiently.

## *Satellite Services*

India's Ministry of Information and Broadcasting maintains a preference for Indian satellites to provide capacity for DTH subscription television services. In practice, DTH licensees have not been permitted to contract directly with foreign satellite operators and have encountered procedural delays when they have sought to do so. Rather, DTH licensees must procure satellite capacity through Antrix, the commercial arm of the Indian Space Research Organization (ISRO), which in turn only permits foreign procurements if it does not have available capacity on Indian satellites. When ISRO does permit the use of foreign satellite capacity, the foreign satellite operator must sell the capacity to ISRO, which in turn resells the capacity to the end-user with a surcharge. Foreign satellite operators are thus prevented from developing direct relationships with DTH licensees, putting U.S. satellite operators at a competitive disadvantage. The United States continues to encourage India to adopt an "open skies" satellite policy to allow consumers the flexibility to select the satellite capacity provider that best suits their business requirements and to promote market access for foreign satellite service providers.

India also imposes onerous licensing requirements on foreign satellite-based personal communications services. Licenses require high application fees and bank guarantees as well as prohibitively expensive capitalization requirements. Further, licensees must construct local ground station facilities before offering service. In addition, the use of any kind of satellite phone in India requires a license and the use of foreign satellite phones in Indian waters is prohibited entirely. Together, these requirements make it economically unfeasible for many foreign satellite communications providers to offer services in India.

## **BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE**

### **Data Localization**

India has proposed and promulgated several data localization requirements that would serve as significant barriers to digital trade between the United States and India. These requirements, if implemented, would raise costs for service suppliers that store and process personal information outside India by forcing the construction or use of unnecessary, redundant local data centers in India. The requirements could serve as market access barriers, especially for smaller firms.

### *Electronic Payment Services*

In 2018, the RBI implemented a requirement that all payment service suppliers store all information related to electronic payments by Indian citizens on servers located in India. RBI announced this rule without advance notice or input from stakeholders. In 2019, RBI stated that the requirement to store payments data locally also applied to banks operating in India. Requiring local storage of all payment information was a disadvantage for foreign firms, which are more likely to be dependent on globally distributed data storage and information security systems. Furthermore, a domestic data storage requirement hampers the ability of service suppliers to detect fraud and ensure the security of their global networks. In 2021, the RBI asserted that certain U.S. electronic payment service suppliers may not be in compliance with the data localization requirements, and banned issuance of new cards for these suppliers. The United States is monitoring the situation as discussions continue between the RBI and these U.S. electronic payment service suppliers.

### *Personal Data Protection Bill*

In 2019, the Personal Data Protection Bill (PDPB), 2019 was introduced in India's Parliament. The bill would require firms to store a copy of all "sensitive" and "critical" personal information related to Indian persons on servers located in India. The bill would also impose onerous conditions on the cross-border

transfer of “sensitive” personal information, requiring “explicit consent” by the owner of the data. “Critical” personal information – a yet-to-be-defined category – could not be transferred outside of India under any circumstances. Further, in the absence of standalone trade secret legislation, there is little recourse for firms in the event of misappropriation of their sensitive information. These provisions would undermine the ability of foreign firms to supply many services to Indian consumers on a cross-border basis and would not increase the protection of personal information. A joint parliamentary committee evaluating the PDPB submitted its recommendations to the government on November 22 and an updated bill may be presented during a 2022 session of Parliament. The updated draft PDPB is expected to divide responsibilities between the central government and states to enforce the law, create a Data Protection Authority (DPA), and rely on the courts to resolve disputes rather than create a separate administrative mechanism. U.S. firms remain concerned that the new bill will negatively affect firms’ ability to transfer data across borders, the authority of the DPA remains unclear, and the bill may require sharing of certain categories of non-personal data. The joint parliamentary committee recommended that the PDPB incorporate non-personal data into the legislation, covering both personal and non-personal data.

### *Non-Personal Data*

In July 2020, a report on Non-Personal Data Governance Framework was released by the Committee of Experts constituted by MEITY. After incorporating stakeholders’ input, the report was revised and released in December 2020, for an additional round of public, industry, and other stakeholders’ comments. The proposed Framework would impose burdensome requirements on domestic and foreign firms, including requests for mandatory data sharing, administrative obligations, and extending consent obligations to anonymized data. Additionally, these mandatory data sharing requirements may affect copyrighted content, patent, and trade secret protection.

MEITY established a Working Group on Cloud Computing tasked with formulating a framework for promoting and enabling cloud services in India and examining the cybersecurity and privacy aspects of cloud computing.

### *Electronic Commerce Policy*

India is currently developing a new electronic commerce policy, early drafts of which have contemplated broad-based data localization requirements and restrictions on cross-border data flows; expanded grounds for forced transfer of business sensitive information, trade secret information, and other intellectual property and proprietary source code; and preferential treatment for domestic digital products. The United States has strongly encouraged India to reconsider this draft policy.

## **Technology**

Cloud computing service suppliers face several barriers when providing services in India. Service providers are prohibited from purchasing dual-use equipment needed to run networks, and are unable to own and manage a network to cross-connect data centers and connect directly to an Internet Exchange Point. These restrictions affect the ability of cloud services to effectively manage their own networks.

## **Internet Services**

India’s central, state, and local governments regularly shut down Internet services in response to local unrest or in order to suppress certain digital content and services. Observers tallied 41 shutdowns in 2021, 129 shutdowns in 2020, and 106 in 2019. Jammu and Kashmir experienced a 213-day Internet shutdown starting in August 2019, which was one of the longest Internet shutdowns by a democracy. Such

shutdowns—even if temporary—undermine the value of Internet-based services to their customers and impose costs on local firms that depend on these services for their business.

In February 2021, the Government of India published new regulations, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (Rules), to govern a wide range of Internet-based service providers, particularly those that operate social media, messaging, and news and entertainment content in India. These Rules require compliance by “significant” social media intermediaries and platforms with five million registered users or more, which includes a number of U.S. firms. The Rules impose a number of requirements that are either troubling or burdensome for U.S. firms. For example, the Rules impose personal criminal liability on individual employees. The Rules also include an obligation to identify the first originator of information, a requirement to appoint a local compliance officer, imposition of and impractical compliance deadlines and take-down protocols. In 2021, U.S. firms have been subject to an increasing number of takedown requests for content and user accounts related to issues of domestic concern.

### *Digital Taxation*

In 2017, India began assessing a six percent “equalization levy,” a withholding tax on foreign online advertising platforms, with the ostensible goal of “equalizing the playing field” between resident service suppliers and non-resident service suppliers. However, its provisions do not provide credit for tax paid in other countries for the service supplied in India. The current structure of the equalization levy represents a shift from internationally accepted tax principles, which generally hold that mechanisms should be developed to prevent double taxation. The Fiscal Year 2020-2021 budget included an expansion of the equalization levy, adding a two percent digital services tax on foreign electronic commerce and digital services providers. The 2020 and 2021 changes were enacted without prior notification or an opportunity for public comment. Technology firms raised concerns that the definitions of “e-commerce operator” and “e-commerce supply or services” are broad in scope and are likely to cover many digital transactions, including the sale of data. Neither the original levy nor the 2020 expansion applies to firms that are established in India.

In June 2020, the Office of the U.S. Trade Representative (USTR) initiated a Section 301 investigation into India’s two percent equalization levy or digital services tax. In January 2021, USTR issued findings that India’s digital services tax, as well as taxes adopted by other countries, discriminated against U.S. companies, were inconsistent with prevailing principles of international taxation, and burdened or restricted U.S. commerce. The United States and India, along with 135 other jurisdictions, have joined the October 8, 2021 OECD/G20 Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. On November 24, 2021, the United States and India issued statements reflecting a political agreement on a transitional approach to India’s DST during the implementation period of Pillar 1 of the Two-Pillar solution. Under this agreement and in defined circumstances, the liability from India’s DST that U.S. companies accrue in India during the interim period will be creditable against future taxes accrued under Pillar 1 of the OECD agreement. The period during which the credit accrues will be from April 1, 2022, until either the implementation of Pillar 1 or March 31, 2024, whichever is earlier. In return, the United States committed to terminate the section 301 trade action on goods of India, and not to impose further trade actions against India with respect to its existing DST until the earlier of the date the Pillar 1 multilateral convention comes into force or March 31, 2024. USTR, in coordination with the U.S. Department of the Treasury, is monitoring the implementation of the political agreement on an OECD/G20 Two-Pillar Solution as pertaining to DSTs, India’s agreement as reflected in the November 24 statements, and associated measures.

## INVESTMENT BARRIERS

### Local Content Requirements

In 2010, India initiated the Jawaharlal Nehru National Solar Mission (JNNSM), which currently aims to bring 100,000 megawatts of solar-based power generation online by 2022, as well as to promote solar module manufacturing in India. Under the JNNSM, India imposes certain local content requirements (LCRs) for solar cells and modules, and requires participating solar power developers to use solar cells and modules made in India in order to enter long-term power supply contracts and receive other benefits from the Indian Government.

The United States challenged the LCRs through the WTO dispute settlement system. In February 2016, a WTO panel found the LCRs inconsistent with India's WTO commitments. These findings were upheld by the Appellate Body in September 2016, and the DSB adopted the Appellate Body and panel reports in October 2016. In 2017, the United States requested authorization from the DSB to suspend concessions on the grounds that India had failed to comply with the DSB recommendations within the "reasonable period of time" to which the parties had agreed (December 14, 2017). The U.S. request was referred to arbitration. In 2018, India requested the establishment of a compliance panel, asserting that it had complied with the DSB recommendations. The arbitration and compliance panel proceedings are ongoing.

## SUBSIDIES

### Export Subsidies

India's Foreign Trade Policy (FTP) 2015-2020, announced in 2015, is primarily focused on increasing India's exports of goods and services to raise India's share of world exports from 2 percent to 3.5 percent. The FTP consolidated many of India's existing export subsidies and other incentives into two main export incentive schemes: the Merchandise Exports from India Scheme (MEIS), and the Service Exports Incentive Scheme (SEIS). Under MEIS, exports of notified goods and products to notified markets, as listed in Appendix 3B of the Handbook of Procedures, are granted freely transferable duty credit scrips on realized FOB value of exports in free foreign exchange at specified rates. These range from 2 percent to 5 percent, with temporary increases as high as 20 percent. MEIS provides export subsidies for a wide range of agricultural and other goods, including certain dairy products which also receive export subsidy support through state governments. Service suppliers of notified services as per Appendix 3E are eligible for freely transferable duty credit scrip at five percent of net foreign exchange earned. In addition, there are various other duty exemptions and remission schemes, such as the Advanced Authorization scheme, the Duty Free Import Authorization scheme, the Deemed Exports scheme, the Export Promotion Capital Goods (EPCG) scheme, and the Export Oriented Unit (EOU) scheme (which includes the Electronics Hardware Technology Park scheme, Software Technology Park scheme, and Bio-Technology Park scheme).

India also maintains several export subsidy programs, including exemptions from taxes, for certain export-oriented enterprises and for exporters in special economic zones. Numerous sectors (*e.g.*, textiles and apparel, steel, paper, rubber, toys, leather goods, and wood products) receive various forms of subsidies, including exemptions from customs duties and internal taxes. India not only continues to offer subsidies to its textiles and apparel sector in order to promote exports, but has also extended or expanded such programs and implemented new export subsidy programs. As a result, the Indian textiles sector remains a beneficiary of many export promotion measures.

Upon graduation from Annex VII(b) of the WTO Agreement on Subsidies and Countervailing Measures in 2017, India was required to eliminate all export subsidies. In 2018, the United States commenced WTO dispute settlement proceedings against India concerning India's continued export subsidy schemes. On

October 31, 2019, the panel found that five Indian export subsidy programs provided prohibited subsidies that were inconsistent with India's WTO obligations. The Indian programs found to be inconsistent were the MEIS, the EOU scheme, the Special Economic Zones scheme, the EPCG scheme, and a duty-free imports for exporters program. India appealed the panel report in November 2019.

India has begun to phase out the MEIS program, under which reportedly no new benefits could be claimed starting on January 1, 2021. The MEIS program is being replaced with the Remission of Duties and Taxes on Export Product (RoDTEP) program, for which India has not published implementing measures as of the date of this report but has stated that benefits would be available for exports made on or after January 1, 2021. RoDTEP is modeled after the Rebate on State and Local Taxes and Levies (RoSCTL) scheme, which is currently operated by the Ministry of Textiles and is limited to apparel sector exports. Like MEIS, RoDTEP benefits are expected to be available for a broad range of products, and press reports suggest that RoDTEP will surpass MEIS in terms of revenue forgone by India.

### **Agriculture Subsidies**

India provides a broad range of assistance to its large agricultural sector, including credit subsidies, debt waivers, crop insurance, and subsidies for inputs (such as fertilizer, fuel, electricity, and seeds) at both the central government and state government levels. These subsidies, which are of substantial cost to the government, lower the cost of production for India's producers and have the potential to distort the market in which imported products compete. In addition, producers of 25 agricultural products benefit from the government's Minimum Support Price (MSP) scheme, which helps ensure that farmers receive minimum prices that are announced before the planting season. Rice and wheat account for the largest share of products procured by the MSP and are distributed through India's public distribution system. For example, in crop year 2020/2021, the Indian Government purchased 1.6 million metric tons (9.19 million 170 kg bales) of cotton through announced MSP operations, at a cost of nearly \$3.6 billion. In addition, the Indian Government procures pulses and oilseeds when market prices fall below the MSP. India's announcement of MSPs can have the effect of providing a subsidy to the entire crop by distort market prices and planting decisions, resulting in overproduction and limited demand for imports. In addition, in certain years and for specific products, states have provided additional incentives in the form of "bonuses" above the MSPs announced by the Government of India.

In May 2018, the United States submitted the first-ever counter-notification (CN) to the WTO Committee on Agriculture highlighting, based on publicly available information, India's underreporting of its market price support (MPS) for rice and wheat for marketing years 2010/2011 to 2013/2014. The CN estimated MPS well above India's *de minimis* WTO commitment of 10 percent of the total value of production. Subsequently, in November 2018, the United States submitted a CN on India's MPS for cotton covering marketing years 2010/2011 to 2016/2017, estimating MPS for cotton in various years ranging between 53 percent and 81 percent – well above India's WTO commitment of 10 percent of the total value of production. In February 2019, the United States submitted a CN on India's MPS for five pulses: chickpeas, pigeon peas, black matpe, mung beans, and lentils.

India also maintains a large and complex series of programs that form the basis of its public food stockholding program. India maintains stocks of food grains not only for distribution to poor and needy consumers, but also to stabilize prices through open market sales. India uses export subsidies to reduce stocks, and it has permitted exports of certain agricultural commodities from government public-stockholding reserves at below the government's costs. In September 2021, the Indian Government cleared \$244 million in subsidies to sugar mills for exporting 6 million metric tons of sugar for marketing year 2020/2021 (the Indian marketing year is October 1 through September 30) under the Maximum Admissible Export Quota (MAEQ) program. The total budgetary outlay for sugar exports under MAEQ in marketing year 2020/2021 was \$474 million. The current MAEQ policy subsidizes sugar exports up to six million

tons. Between July 2021 and September 2021, India exported close to one million tons without the export subsidy.

## **OTHER BARRIERS**

### **Export Duties**

India applies export duties on numerous raw materials used in the production of metals, in particular steel and aluminum. These include a 30 percent duty on exports of iron ore and concentrate with iron content above 58 percent, a 15 percent duty on exports of aluminum ore, and a 30 percent duty on exports of chromium ore. These various duties, along with other export measures, provide cost advantages to India's domestic metals producers, while distorting international markets for key raw materials used in steel and aluminum production.

### **Transparency**

Traders continue to be negatively affected by a lack of transparency with respect to new and proposed laws and regulations and the lack of uniform notice and comment procedures and inconsistent notification of these measures to the WTO. This, in turn, inhibits the ability of traders and foreign governments to provide input on new proposals or to adjust to new requirements. U.S. stakeholders continue to report new requirements are issued with inadequate public notice and comment periods and/or inadequate consultation or notification at the WTO. This lack of transparency imparts a lack of predictability to the Indian market, diminishing the ability of U.S. companies to enter or operate in India. The United States continues to raise concerns regarding uniform notice and comment procedures with the Government of India, both bilaterally through the TPF and multilaterally in the WTO and other fora.

# INDONESIA

## TRADE AGREEMENTS

### The United States–Indonesia Trade and Investment Framework Agreement

The United States and Indonesia signed a Trade and Investment Framework Agreement (TIFA) on July 16, 1996. The TIFA is the primary mechanism for discussions of trade and investment issues between the United States and Indonesia.

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

Indonesia’s average Most-Favored-Nation (MFN) applied tariff rate was 8.1 percent in 2019 (latest data available). Indonesia’s average MFN applied tariff rate was 8.7 percent for agricultural products and 8.0 percent for non-agricultural products in 2019 (latest data available). Indonesia has bound 96.3 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 37.1 percent.

Over the last decade, Indonesia has increased its applied tariff rates for a range of goods that compete with locally manufactured products, including electronic products, milling machines, chemicals, cosmetics, medicines, wine and spirits, iron wire and wire nails, and a range of agricultural products. Most Indonesian tariffs on non-agricultural goods are bound at 35.5 percent, although tariff rates exceed 35.5 percent or remain unbound on automobiles, iron, steel, and some chemical products. In the agricultural sector, tariffs on more than 1,300 products have bindings at or above 35.5 percent.

In 2020, Indonesia issued Minister of Finance (MOF) Regulation 199/2019 to lower the price threshold for import duty exemptions on imported consumer goods (known as “consignment goods”) from \$75 to \$3. Certain types of books, bags, garments, and footwear are exempted from the regulation.

U.S. stakeholders have asserted that Indonesia is applying tariffs in excess of its WTO bound rates for certain categories of information and communications technology (ICT) products. Since at least 2020, Indonesia appears to be applying a 10 percent duty for certain categories of the tariff subheading 8517.62 which includes switching and routing equipment, and a 5 percent duty on computer servers under tariff subheading 8471.50. Stakeholders assert that Indonesia’s tariffs not only impose an unfair financial burden on foreign firms, but they also limit access for Indonesian consumers and firms to critical ICT products needed to support Indonesia’s digital infrastructure growth goals.

#### *Taxes*

U.S. companies continue to express concerns that MOF’s Directorate General of Taxes’ tax assessment process is arbitrary. Such concerns include a discretionary and cumbersome auditing process, heavy fines for administrative mistakes, lengthy dispute mechanisms, and a lack of legal precedent within the Tax Court.

In 2018, Indonesia issued MOF Regulation 110/2018, increasing “withholding tax” rates for 1,147 imported products, including consumer and luxury goods. The stated objective for this policy was to decrease Indonesia’s current account deficit by reducing imports of these goods.

Luxury goods, imported or locally produced, may be subject to a luxury tax of up to 200 percent. As of January 2022, there are no luxury goods subject to the 200 percent rate, and the applied luxury tax rates generally range from 10 percent to 95 percent. Motorcycles with an engine displacement over 500 cc (a size which is not produced in Indonesia) are subject to a 95 percent luxury tax. Under MOF Regulation 141/2021, MOF reformulated the sales tax for luxury motor vehicles based on fuel efficiency and emissions levels, with the aim of reducing emissions and encouraging the use of energy-efficient and less polluting motor vehicles. The luxury motor vehicle sales tax varies based on the cylinder capacity of the motor vehicle (up to three liters; three to four liters), type of motor vehicle (electric and non-electric), fuel efficiency rate, and emissions level. This luxury tax applies to both locally produced and imported vehicles.

Although Indonesia has eliminated its luxury tax on imported distilled spirits, the current excise tax regime imposes higher excise tax rates on imported spirits than on domestic spirits. Excise tax rates are 150 percent on spirits and 90 percent on wine.

## **Non-Tariff Barriers**

### *Import Licensing*

Indonesian importers must comply with numerous and overlapping import licensing requirements that impede market access. The Ministry of Trade (MOT) requires all importers to obtain an import license as either an importer of goods for further distribution (API-U) or as an importer for their own manufacturing (API-P), but importers are not permitted to obtain both types of licenses. An API-P import license allows companies to import finished products for market testing, after sales service purposes, or for “completing a product line,” as long as the goods are new, consistent with the company’s business license, and meet import requirements. Under Government Regulation 29/2021, importers must also obtain a business identification number (NIB) through the Online Single Submission, a new online processing system intended to streamline business license issuance. A NIB can also serve as a valid import license. On April 1, 2021, MOT issued Regulation 20/2021, which aims to synthesize all import-related regulations, and serve as an “umbrella” regulation for the management of Indonesia’s import policies.

Indonesia is reportedly drafting a presidential regulation to enact a “commodity balance” policy that would replace the current import permit process for certain products. Although information is still forthcoming, the commodity balance policy could impose new quantitative restrictions by making the issuance of import licenses subject to an Indonesian Government assessment of supply and demand for a commodity. Indonesia is expected to implement this commodity balance policy for five commodities (sugar, rice, fish, meat, and salt) in 2022, and could expand implementation to other commodities in 2023. The Coordinating Ministry for Economic Affairs (CMEA) has noted that it could expand the commodity balance policy to apply beyond agricultural and fishery products. Stakeholders have expressed concern regarding the CMEA’s lack of consultation with market participants on this policy.

Under MOT Regulation 82/2012 (last amended by MOT Regulation 41/2016) and Minister of Industry (MOI) Regulation 108/2012, Indonesia imposes burdensome import licensing requirements for cell phones, handheld computers, and tablets. (*For further information, see the Services Barriers section.*)

Under MOT Regulation 68/2020 and its amendment, Regulation 78/2020, Indonesia requires import approvals and stringent reporting requirements for footwear, electronic devices, and bicycles (except such

products imported for market testing or after sales service purposes) with the stated goal of reducing the volume of consumer goods entering Indonesia in favor of local production.

### *Import Licensing for Agricultural Products*

Indonesia continues to maintain unjustified and trade-restrictive licensing regimes for the importation of horticultural products, animals, and animal products despite amending its import licensing regimes several times. In 2013, the United States challenged Indonesia's restrictions under the WTO's dispute settlement procedures because Indonesia repeatedly failed to address U.S. concerns. On December 22, 2016, the WTO issued the panel report, finding for the United States and co-complainant New Zealand on all 18 claims and finding that Indonesia is applying import restrictions and prohibitions that are inconsistent with WTO rules. On November 9, 2017, the WTO Appellate Body rejected Indonesia's appeal and upheld the panel's findings. On August 2, 2018, the United States requested authorization from the WTO to take countermeasures. On August 14, 2018, Indonesia objected to the U.S. request, referring the matter to arbitration. Since 2018, the United States has paused the arbitration to give the parties the opportunity to work towards a solution to the dispute and to increase market access for U.S. agricultural products.

Indonesia has amended its import licensing requirements several times since the Appellate Body ruling, most recently through the issuance of Minister of Agriculture (MOA) Regulation 2/2020. Under this regulation, imports of horticultural products from countries with a food safety system recognized by MOA are exempt from the requirement to provide certain quality and safety certificates. This regulation also extends the validity of horticultural product import licenses for 60 days into the following calendar year. Nevertheless, Indonesia continues to subject imports, including all horticultural products, to its import licensing regime.

In 2020, Indonesia enacted the "Job Creation Omnibus" (Law 11/2020), which amends import licensing provisions contained in the Food Law, Animal Husbandry Law, Farmer Protection and Empowerment Law, and the Horticulture Law. Law 11/2020 requires a general business license for imports of horticultural, feed, meat, and dairy products, and appears to remove the legal basis for requiring MOA import recommendations and MOT import licenses for horticultural products. Businesses continue to await implementing regulations for further detail on how these changes will be implemented. A Constitutional Court ruling on November 25, 2021, found that the passing of the Omnibus Law was unconstitutional due to the opaqueness of the process by which the law was created, including that proposed revisions were not fully shared with the public. The court ordered lawmakers and the Jokowi administration to revise the law within two years, specifying that if no revisions are made by that deadline, the law will become defunct. The ruling stipulates that the Indonesian Government should not issue new regulations of a strategic nature related to the law until improvements are made to the current law.

### *Pharmaceutical Market Access*

The pharmaceutical industry has raised concerns regarding the opportunity for meaningful stakeholder engagement in the Indonesian pricing and reimbursement system. Stakeholders report a lack of clarity regarding how pharmaceutical products are selected for listing on the Indonesian online public procurement catalog system, how price caps are determined, and whether and for how long such products will remain listed. The United States will continue to engage Indonesia on this issue and has requested that the Ministry of Health (MOH) and the National Public Procurement Agency discuss these issues with U.S. stakeholders.

The United States continues to have concerns about barriers to Indonesia's market for pharmaceutical products and medical devices. MOH Regulation 17/2017 mandates that the pharmaceutical and medical devices industries prioritize the use of domestic raw materials. MOI Regulation 16/2020, which went into force in June 2020, defines local content values as including manufacturing, raw ingredients, research and

development, and packaging. It also sets out a process for the issuance of local content certificates and requires priority be given in the national health insurance system (JKN) to products with certified local content value when available. Companies are required to self-assess the local content of their products, further verified by independent assessors appointed by the MOI. Businesses are concerned that the regulation will prioritize drugs with higher local content even when imported versions have equivalent efficacy and safety at competitive prices.

Additionally, MOH Regulation 1010/2008 requires a foreign pharmaceutical company either to manufacture locally or to entrust another company that is already registered as a manufacturer in Indonesia to obtain drug approvals and import permits on its behalf. This regulation also mandates local manufacturing in Indonesia of all pharmaceutical products that are five years past patent expiration and contains a technology transfer requirement. A subsequent pair of regulations, MOH Regulation 26/2018 and National Agency of Drug and Food Control (BPOM) Regulation 16/2015, provide additional information about the application of these local manufacturing requirements.

### *Import Bans and Restrictions*

Indonesia imposes restrictions on feed corn imports, limiting the right to import to the state-owned procurement body, the Bureau of Logistics (BULOG). However, some corn imports intended for starch manufacturing are allowed. As Indonesia's sole importer of feed corn, BULOG prioritizes corn distribution to small-holder poultry farmers. The import volume is set based on the level of domestic feed production. Other feed millers are obligated to use locally produced feed corn but have expressed concern that they are unable to obtain feed corn in quantities sufficient to maintain the poultry industry's growth.

Indonesia also tightly controls and regulates imports of sugar and other food commodities, including through seasonal bans and annual quantity limits based on domestic production and consumption forecasts. Sugar refineries are permitted to import raw sugar based on fixed annual allocations intended to offset idle refining capacity. Some food and beverage companies are permitted to import limited volumes directly, but there remains an expectation to utilize refined domestic sugar. These import restrictions increase the price of sugar (and other commodities) across the domestic economy.

Under Minister of Marine Affairs and Fisheries (MMAF) Regulation 19/2020, Indonesia prohibits the import of 81 fish species that it deems contain "toxins, parasites and/or endanger human life."

Indonesia limits the quantity of imported wines and distilled spirits. Companies must apply to be designated as registered importers authorized to import alcoholic beverages, with an annual company-specific quota set by MOT; that quota has not changed since its enactment in 2009. Currently there are approximately 14 registered importers of alcoholic beverages in Indonesia. Sarinah, a state-owned enterprise (SOE), is one of the largest.

### *Product Testing*

BPOM sets out requirements for testing of heavy metals in cosmetics in its Regulation 17/2014. A 2016 BPOM Circular Letter provides further guidance on these requirements, which is fulfilled through a certificate of analysis that is valid for one year. In practice, Indonesian customs requires each shipment to provide a separate test in addition to the certificate. This measure appears intended to limit imports and adds unnecessary costs. U.S. stakeholders have expressed concern that the pre-market testing requirement goes against the intent of the Association of Southeast Asian Nations (ASEAN) Cosmetics Directive, which stipulates that monitoring of heavy metals should be undertaken via post-market surveillance.

## *State Trading*

BULOG maintains exclusive authority to import standard unbroken rice. Indonesia has cited food security and price management considerations as the principal objectives of this policy. BULOG is not allowed to import rice before, during, or immediately after the main harvest period. Private firms are only allowed to import broken rice for processing or specialty rice varieties, such as basmati and jasmine rice, for retail and food service. Importers of broken and specialty rice must obtain a special MOA importer identification number. Since 2014, Indonesia has refused to issue import recommendations for japonica rice to private traders, although permitted under MOT regulations.

In 2016, BULOG was appointed as Indonesia's sole importer of feed corn, plantation white sugar, and buffalo meat (carabeef). Additionally, through MOT Regulations 57/2017 and 7/2020, the Indonesian Government sets farmer level and consumer level reference prices for corn, soybeans, sugar, shallots, beef, chicken, eggs, and cooking oil, respectively. According to these regulations, BULOG and other SOEs can intervene in the market when prices are above or below threshold targets.

## *Customs Barriers and Trade Facilitation*

Indonesia notified its customs valuation legislation to the WTO in 2001 but has not responded to the Checklist of Issues describing how the WTO Customs Valuation Agreement (CVA) is being implemented. U.S. firms continue to report that Indonesian customs relies on a schedule of reference prices to assess duties on some imports rather than using transaction values as the primary basis of valuation as required by the CVA. Indonesia's Directorate General of Customs and Excise reportedly makes a valuation assessment based on the perceived risk status of the importer and the average price of a same or similar product imported during the previous 90 days.

MOT Regulation 28/2020 requires pre-shipment verification by designated companies (known in Indonesia as "surveyors") for a broad range of products (including electronics, textiles and footwear, toys, food and beverage products, and cosmetics). The verifications are conducted at the importer's expense and impede the entry of imports to designated ports and airports. Further, as of March 2022, Indonesia had yet to notify the WTO of these measures pursuant to the WTO Agreement on Preshipment Inspection.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

#### *Standards and Testing Requirements*

MOI Regulation 24/2013 (as amended by MOI Regulations 55/2013 and 29/2018) requires that imported toys be tested by a laboratory with a mutual recognition agreement with one of Indonesia's product certification bodies. The United States is not aware of any existing mutual recognition agreements, leaving imported toys subject to mandatory testing in Indonesia to obtain certification. U.S. stakeholders have expressed concern about the frequency of testing under these regulations, which is required on a per-shipment basis for imports, but only every six months for domestically produced products. In 2018, MOI issued Regulation 29/2018, introducing an alternative procedure that allows importers to obtain a certification through product testing and an audit of production processes. Indonesia notified this measure to the WTO in November 2018. U.S. manufacturers remain concerned by the lack of clarity on how products can enter the market under the alternative procedure.

In February 2021, Indonesia issued Government Regulation (GR) 28/2021. The measure includes requirements governing conformity assessment to Indonesian national standards ("SNI") for a wide variety

of consumer goods including toys, electronics, and home appliances. U.S. stakeholders report that testing laboratories and conformity assessment bodies have been told to halt certification until MOI issues implementing guidance for GR 28/2021. This standstill has resulted in the halting of imports that use the SNI scheme that requires testing per shipment. Additionally, GR 28/2021 requires that all steps of product testing be conducted by an Indonesian national residing in Indonesia, further complicating product sample collection for products that use a per-shipment testing scheme amid ongoing travel restrictions due to the COVID-19 pandemic and increasing costs for U.S. industry. Indonesia has not yet notified this measure to the WTO. The United States will continue to raise its concerns regarding GR 28/2021 with Indonesia.

### *Halal Certification*

Under Law 33/2014 on Halal Product Assurance, halal certification is mandatory for food, beverages, pharmaceuticals, cosmetics, medical devices, biological products, genetically engineered products, consumer goods, and chemical products sold in Indonesia. All business processes, including production, storage, packaging, distribution, and marketing, are required to comply with this law, which also requires non-halal information to be placed on packaging for non-halal products. In 2017, the Indonesian Government officially established the Halal Product Assurance Agency (BPJPH) under the Ministry of Religious Affairs (MORA) to lead the implementation of halal certification.

MORA continues to develop regulations to implement Law 33/2014. U.S. stakeholders are concerned that Indonesia has finalized many of these regulations without sufficient notice and comment periods as recommended by the WTO Technical Barriers to Trade Committee (WTO TBT Committee). MORA Regulation 26/2019 sets out a transition period whereby halal requirements will go into force for food and beverage products by October 2024, and between 2026 and 2034 for other product categories. MORA Decree 748/2021 outlines a broad range of products requiring halal certification. Indonesia notified these measures to the WTO in October 2019 and July 2021, respectively.

Indonesia has previously indicated the need for a bilateral mutual recognition agreement (MRA) for halal certification. This is currently not possible for the United States as there is no U.S. Government halal certification or accreditation body. The United States has asked for further clarity from the Government of Indonesia about the bilateral MRA process. In the interim, BPJPH has indicated that it will provide temporary recognition for foreign certifiers, including all U.S. halal certifying bodies. These temporary certificates are valid for one year from issuance. The United States continues to raise concerns with the implementing regulations for Law 33/2014 at the WTO TBT Committee and bilaterally.

## **Sanitary and Phytosanitary Barriers**

### *Meat and Rendered Products*

Indonesia requires each U.S. meat and rendering establishment seeking to export to Indonesia to complete an extensive questionnaire that includes proprietary information, and that the U.S. establishment must also be inspected by Indonesian inspectors. The process lacks transparency, and no new plants have been approved in recent years. The United States has raised concerns about this approval system with Indonesia, including at the WTO Committee on Sanitary and Phytosanitary Measures (WTO SPS Committee) and bilaterally, and will continue to raise concerns.

### *Animal-Derived Products*

Indonesia's animal health and husbandry law (Law 18/2009, as amended by Law 41/2014) requires companies that export animal-derived products, such as dairy and eggs, to Indonesia to complete a pre-registration process with MOA. The law allows imports of these products only from facilities that

Indonesian authorities have individually approved. MOA Regulation 15/2021 maintains this requirement and adds a new provision requiring raw materials used for the manufacturing of animal-derived products to originate from facilities that have already been approved by Indonesia.

Under Government Regulation 35/2016, MOA requires that all animal product establishments seeking to export to Indonesia undergo inspections to obtain eligibility certificates. As part of this process, MOA charges fees for a “desk audit” of application materials, an on-site facility inspection, and a post-audit desk review. Dairy production facilities are only required to pass desk audits while other facilities (i.e., meat and rendering) are required to undergo on-site facility inspections and post-audit desk reviews. Indonesia also charges for transportation and lodging costs for MOA officials that conduct inspections in the United States. In total, companies seeking to export to Indonesia could pay up to \$10,000 for each inspection.

### *Horticulture*

MOA Regulation 55/2016 establishes requirements for countries wishing to export “fresh food of plant origin” to Indonesia. The regulation requires that Indonesia recognize either the food safety system of the exporting country or a registered food safety testing laboratory serving that country’s exporters. In 2020, Indonesia granted a three-year recognition of the U.S. food safety system, valid until January 2024.

### *Fisheries*

MMAF Regulation 11/2019 requires completion of a health certificate for all fisheries products imported into Indonesia after February 1, 2021. The health certificate must follow MMAF's guidelines and failure to follow these will result in the product’s detainment. The United States is seeking clarity on these measures from MMAF.

## **GOVERNMENT PROCUREMENT**

Indonesia grants special preferences to encourage domestic sourcing and to maximize the use of local content in government procurement. It also instructs government departments, institutes, and corporations to utilize domestic goods and services to the maximum extent feasible. Presidential Regulations 54/2010 (as amended by Regulation 16/2018) and 38/2015 both require procuring entities to maximize local content in procurement, use foreign components only when necessary, and to designate foreign contractors as subcontractors to local companies. Both regulations provide general minimum requirements for local content and service provision. Depending on the sector or nature of the project, ministries with authority over the project may impose additional restrictions or requirements. In addition, the 2020 Job Creation Omnibus requires the central and local governments to allocate at least 40 percent of government procurement to local micro-, small-, and medium-sized enterprises in addition to cooperatives.

Indonesia’s 2012 Defense Law and Presidential Regulation 76/2014 mandate priority for local materials and components and require defense agencies to use locally produced goods and services whenever available. In addition, when an Indonesian Government entity procures from a foreign defense supplier due to lack of availability from an Indonesian supplier, there is a requirement for “trade balancing” offsets, including by incorporation of local content, production offsets, technology transfer, or a combination thereof.

Indonesia is not a Party to the WTO Agreement on Government Procurement but has been an observer to the WTO Committee on Government Procurement since October 2012.

## **INTELLECTUAL PROPERTY PROTECTION**

Indonesia remains on the Priority Watch List in the 2021 Special 301 Report. Although Indonesia has recently taken steps to improve intellectual property (IP) protection and enforcement, including establishing an IP enforcement task force and increasing efforts to address online piracy, significant concerns remain.

Widespread copyright piracy and trademark counterfeiting (including online and in physical markets) are key concerns. The Mangga Dua Market in Jakarta continues to be listed on the Notorious Markets List, along with multiple online Indonesian marketplaces. Lack of enforcement remains a problem, and the United States urges Indonesia to utilize the new enforcement task force to increase proactive interagency coordination and to provide deterrent-level penalties for IP infringement in physical markets and online. The United States also continues to encourage Indonesia to provide an effective system for protection against the unfair commercial use, in addition to unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. The United States also remains concerned with Indonesia's law regarding geographical indications.

Indonesia addressed certain issues related to local manufacturing and use requirements through the 2020 amendments to the 2016 Patent Law. Indonesia is in the process of further amending the Patent Law, and the United States continues to urge Indonesia to address remaining concerns, including with respect to patentability criteria for incremental innovations and disclosure requirements for inventions related to traditional knowledge and genetic resources.

The United States and Indonesia finalized a bilateral IP work plan in 2018 to improve IP protection and enforcement in Indonesia and will continue to work with the Indonesian government to address deficiencies in IP protection and enforcement and to promote public education and outreach.

## **SERVICES BARRIERS**

### **Audiovisual Services**

Indonesia's 2009 Film Law imposes a 60 percent local content requirement for local exhibitors (movie theaters and TV stations), prohibits local exhibitors from dedicating more than 50 percent of their total screen time to content from a single film production business, film distribution business, or film import business over a period of six consecutive months, prohibits the dubbing of foreign films, and prohibits foreign companies from distributing or exhibiting films. In 2019, the Minister of Education and Culture issued Regulation 34/2019, which if enforced, would implement these provisions of the Film Law.

### **Distribution Services**

Logistics services generally are subject to a maximum 49 percent foreign ownership, except for freight forwarding, warehousing and storage services, and distribution, which are capped at 67 percent foreign ownership.

### **Express Delivery**

Indonesia maintains restrictions on the provision of postal services, broadly defined to include courier, express delivery, and other logistics services. Indonesian law requires that postal service suppliers be majority-owned by Indonesians and that foreign suppliers limit their activities to provincial capitals with international airports and seaports. Under Customs Regulation 11/2020, logistic services companies are required to include a Tax ID Number (NPWP) or designated identification numbers of Indonesian consignees or consignors in the manifest of all inwards and outwards shipments to and from Indonesia.

Indonesian customs has since relaxed the requirement by allowing a phone number to be used in lieu of a NPWP on the manifest. However, the Customs Directorate has not yet issued a written regulation for this relaxation of the policy and industry fears the lack of legal certainty will cause future obstacles for shipping.

## **Financial Services**

Generally, no single investor, foreign or domestic, may own more than 40 percent of an Indonesian bank. In certain cases, the Indonesian Financial Services Authority (OJK) may grant exceptions to this general rule. In addition, a single foreign investor may hold a majority stake in an Indonesian bank if the investor has obtained that ownership stake by acquiring and merging two banks with capital of less than Indonesia rupiah (IDR) 1 trillion (approximately \$70 million) prior to the merger. OJK Regulation No. 12/2021, issued in August 2021, increased the foreign equity cap for commercial banks to 99 percent. Separately, Indonesia's central bank, Bank Indonesia (BI), restricts foreign ownership in private credit reporting firms to 49 percent under BI Circular Letter No. 15/49/DPKL.

Under BI Regulation 18/40/PBI/2016 on payment transaction processing operations, BI limits foreign ownership of payment companies to 20 percent (but exempts existing investments that exceed this foreign equity limitation) and requires data localization. OJK Regulation 77/2016 on peer-to-peer (P2P) lending introduces various guidelines, obligations, and restrictions for P2P lending services, and the organization of P2P lending service providers. This regulation caps foreign ownership of P2P services at 85 percent and mandates data localization. Nonbank financial service suppliers may do business in Indonesia as a joint venture or be partially owned by foreign investors but cannot operate in Indonesia as a branch or subsidiary of a foreign entity. Indonesia issued a moratorium in October 2021 for P2P lending licenses to combat illegal platforms. Under OJK Regulation 13/2018, financial technology companies must register with OJK and implement a regulatory sandbox to test new services and business models.

BI Regulation 19/08/2017 on the National Payment Gateway (NPG) requires all domestic retail debit and credit transactions to eventually be processed through NPG switching institutions located in Indonesia and licensed by BI. The regulation imposes a 20 percent foreign equity limitation on firms that wish to obtain a switching license to participate in the NPG, preventing wholly foreign-owned companies from supplying switching services, and prohibiting the cross-border supply of electronic payment services for domestic retail debit and credit transactions. As of March 2022, BI has not applied this requirement to credit transactions. BI Regulation 19/10/PADG/2017 mandates that foreign firms form partnership agreements with licensed Indonesian NPG switches in order to process domestic retail transactions through the NPG. BI must approve such agreements, and the regulation makes approval contingent on the foreign partner firm supporting development of the domestic industry, including by technology transfer. The United States continues to raise concerns with respect to these policies.

Under BI Regulation 21/2019, Indonesia established national standards (termed QRIS, or Quick Response Code Indonesian Standard) for all payments using QR codes in Indonesia. U.S. companies, including payment providers and banks, noted concern that BI's QR code policymaking process excluded foreign companies which could stymie the development of cashless payment systems.

Indonesia issued regulation No.22/23/PBI/2020, effective July 1, 2021, to implement BI's 2025 Payment System Blueprint. The "umbrella" regulation establishes a new risk-based categorization of payment system activities and a licensing system. The regulation implemented an 85 percent foreign ownership cap for "non-bank payment service operators", also known as "front-end" payment companies. However, foreign investors may only hold 49 percent of voting shares. The foreign ownership cap for "payment system infrastructure operators", or "back-end" companies, remains at 20 percent. Existing investors are grandfathered into the old requirements so they may continue to have higher amounts of foreign equity. BI Regulations No. 23/6/PBI/2021 for front-end payment companies and No. 23/7/PBI/2021 for back-end

payment companies, went into effect July 1, 2021. Stakeholders have expressed concern regarding BI's lack of consultation with market participants prior to issuance of regulations.

U.S. payment systems companies have stated that the new regulations could further limit access to Indonesia's financial services market. Prior regulations required authorization, clearing, and settlement to be processed onshore. The new regulations add initiation of a payment as an onshore processing requirement. The regulations do not specify requirements by product. While the regulations provide for offshore processing if certain requirements are met, offshore processing is subject to BI approval. The regulations also give BI greater authority to regulate pricing, including for fees between payment companies and their client banks and banks' fees to consumers. U.S. payment companies have expressed concern about the expanded authority of BI to set prices that could disrupt business decisions and impact investment returns and future investment, particularly for credit card transactions. Concerns persist about BI creating its own set of local standards, which make it difficult to bring in global products to Indonesia.

## **Health Services**

Presidential Regulation 10/2021 eliminated caps on foreign ownership in and location restrictions for general hospitals, private specialist clinics, dental clinics, and specialized nursing services. Nevertheless, sectoral regulations remain in place requiring foreign hospitals to have a minimum number of inpatient beds that is higher than the minimum number of inpatient beds required for domestic hospitals. Regulations also remain in place that impose restrictions for foreign doctors who can work in Indonesia. Foreign ownership is prohibited for private maternity hospitals, general medical clinics, residential healthcare, and basic health services facilities as these sectors are reserved for micro, small, and medium business.

## **Insurance Services**

The 2014 Insurance Law requires all insurance companies to incorporate locally and limits foreign investment in domestic insurance companies to the acquisition of publicly traded shares. Private equity purchases of company stock are not allowed. Under Government Regulation 14/2018 (GR 14), as amended by Government Regulation 3/2020, Indonesia limits foreign equity in insurance companies to 80 percent. GR 14 exempts companies with foreign ownership higher than 80 percent at the time of the GR 14's issuance, but limits these companies' foreign ownership to their 2018 levels and requires exempted companies to inject new capital at their current equity ratios.

OJK Regulation 14/2015 and OJK Circular Letter 31/2015 requires insurance companies operating in Indonesia to cede to domestic reinsurance companies 100 percent of the reinsurance for many common types of policies, such as life, accident, auto, and health insurance policies, and up to 50 percent of reinsurance for other lines, such as certain property and casualty policies. In June 2020, OJK issued Regulation 39/2020, which provides for the phased elimination of these domestic cessions requirements for purchase of reinsurance from companies domiciled in a country with whom Indonesia has a bilateral agreement.

## **Professional Services**

### *Legal Services*

Only Indonesian citizens may be licensed as lawyers in Indonesia. Foreign lawyers may work in Indonesia as legal consultants with the approval of the Ministry of Law and Human Rights. A foreign law firm seeking to enter the market must establish a partnership with a local firm.

## *Audit and Accounting Services*

A foreign public accounting firm must be affiliated with a local public accounting firm to conduct business in Indonesia. A foreign accounting firm must use the name of its local affiliate in addition to the foreign firm's name in presentations and disclosures. Indonesia allows a maximum of 10 percent foreign national staff for each level of management in the affiliated local accounting firm. In affiliated accounting firms, the ratio of foreign audit signing partners to local signing partners cannot exceed one to four.

## **Transport**

Law 17/2008 on shipping requires all vessels operating in Indonesian waters to be Indonesian-flagged and limits foreign ownership of Indonesian-flagged vessel to 49 percent. However, the Indonesian shipbuilding industry does not have the capacity to build the variety of specialty ships its economy requires and is unlikely to have such capacity in the near to medium term. Full implementation of the law would be particularly problematic for foreign investors in Indonesia's energy and telecommunications sector, which would no longer be permitted to bring in the sophisticated rigs and specialized vessels needed to develop large upstream projects or service undersea cables. The 2020 Job Creation Omnibus appeared to address this problem by permitting foreign ships to operate in Indonesia for special activities (excluding passenger and goods transport) if there is no Indonesian vessel available; however, the implementing regulations introduce inconsistencies and legal uncertainty. Minister of Transportation Regulation 2/2021 details activities permitted for foreign ships to operate: oil and gas survey, drilling, offshore construction, offshore operational support, dredging, salvage and underwater works, electricity activities done by power plant vessels, terminal construction, and pier development and construction activities. Foreign ship usage must obtain approval from the Ministry of Transportation and will be valid for six months. A foreign ship with more than a two-year contract will be required to be nationalized. However, recently enacted Government Regulation 31/2021 does not appear to address utilization of foreign vessels for the above-mentioned activities.

## **Construction, Architecture, and Engineering**

Under Construction Services Law 2/2017, as amended by Law 11/2020, foreign construction service companies must partner with a locally-owned company and their participation is limited to high-risk, high-tech, and high-value projects. Separately, 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.

## **Franchising and Retail Distribution**

Under MOT Regulation 71/2019 retail companies are required to "prioritize" the use of domestic goods and services unless domestic products do not meet a franchisor's "quality standards." MOT Regulation 23/2021 requires modern shops to set aside "promotion" areas for Indonesian micro-, small-, and medium-sized enterprises (MSMEs) products and requires business owners with more than 150 stores to franchise their business.

## **Telecommunications Services**

Indonesia has issued a number of measures that make it difficult to import cellular and Wi-Fi equipped products. Under MOT Regulation 82/2012 (as amended by MOT Regulation 41/2016) importers of cell phones, handheld computers, and tablets are not permitted to sell directly to retailers or consumers. Additionally, importers are required to become a "registered importer" and must confirm that they are working with at least three distributors and provide evidence of contributions to the development of the

domestic device industry or cooperation with domestic manufacturing, design, or research firms in order to qualify for a MOT import license.

U.S. companies have reported that, in some cases, MOI is informally limiting import quantities under existing licenses (issued under MOI Regulation 108/2012) to protect locally manufactured cell phones, handheld computers, and tablets. Companies seeking to import 4G-LTE enabled devices may only do so under a “producers license” (API-P), which is generally held by importers of unfinished goods intended for use in the manufacturing process, threatening to limit the ability of foreign producers to sell these devices in Indonesia. MOT Regulation 41/2016 also requires companies applying for an import license to submit product identification numbers and a certificate from the Ministry of Communications and Information Technology (MCIT). Importers of any type of cell phone, handheld computer, or tablet are also subject to MOI Regulation 68/2016, which requires importers to obtain a MOI recommendation to establish themselves as registered importers of such devices. A recommendation is only available for local manufacturers, importers in a joint venture with a local manufacturer, or importers of “specialized items.” Altogether, Indonesia’s licensing practices impose significant barriers on the importation of cellphones, handheld devices, and other electronic devices.

## **BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE**

### *Data Localization Requirements*

Under Government Regulation 71/2019 (GR 71), private sector electronic system operators (defined as persons, business entities, or communities that operate an electronic system) are permitted to transfer, process, and store data outside of Indonesia. GR 71, however, requires data localization for public sector electronic system operators (defined as state institutions or other institutions appointed by a state institution that operate an electronic system), requiring such operators to process and store data in Indonesia.

Under GR 71, financial service regulators are permitted to “further regulate” the treatment of financial sector data in a manner consistent with GR 71. In 2020, OJK issued Regulations 13/2020 and 38/2020, amended by Regulation 4/2021, which appear to allow some but not all data to be transferred and stored outside of Indonesia for commercial banks and insurance companies. OJK requires that core banking and insurance systems must be maintained onshore. The United States continues to expect that all existing regulations affecting transfer and storage of financial services data will be amended to comply with GR 71, such that all financial services data can be transferred and stored outside of Indonesia.

GR 71 also requires public and private sector electronic system operators to register their electronic systems with MCIT and requires private sector electronic system operators to facilitate “supervision” by government agencies, including by granting access to electronic systems and data for monitoring and law enforcement purposes. In 2020, MCIT issued an implementing regulation for GR 71, Regulation 5/2020, which requires private sector electronic system operators, including those providing services on a cross-border basis, to register with MCIT by May 21, 2021. Operators that do not register, or that fail to provide sufficient updates to their registration, can be subject to blocking by MCIT. Failure to comply with government takedown orders for a potentially broad category of “prohibited electronic information” can also result in blocking. In 2021, MCIT issued Regulation 10/2021, which postpones the registration deadline to within six months of Indonesia’s new registration system for electronic system operators becoming fully operational. As of January 2022, it remains unclear when this registration system will become operational.

### *Digital Products*

In 2018, the MOF issued Regulation 17/2018, which establishes five HS lines at the eight-digit level (with import duty rates currently set at zero percent) for software and other digital products transmitted

electronically, including applications, software, video, and audio. Despite zero tariffs, companies have expressed concern over the potential administrative burden of this new regulation, including potential customs documentation or reporting requirements. MOF has indicated that any data reporting under this system will be voluntary. Imposition of any duties on digital products under this regulation would raise serious concerns regarding Indonesia's longstanding WTO commitment, renewed on a multilateral basis in December 2019, not to impose duties on electronic transmissions. In addition, using a tariff schedule for the application of such duties on non-physical products raises fundamental questions and challenges related to the harmonized tariff system, the role of customs authorities in the digital space, and the determination of country of origin for electronic transmissions.

### *Digital Services Tax*

Under Law 2/2020, Indonesia introduced a series of changes to its tax code, including an expansion of the definition of permanent establishment for purposes of Indonesia's corporate income tax and a new electronic transaction tax (ETT) that targets cross-border transactions where tax treaties prohibit Indonesia from taxing corporate income from the transaction. MOF would need to issue additional legal measures for these new taxes to go into effect. The United States opposes proposals by any country to single out digital companies. Indonesia has refrained from implementing an ETT and joined the international tax consensus reached by the Organization for Economic Cooperation and Development (OECD) in October 2021.

### *Internet Services*

Indonesia has issued measures intended to regulate the electronic commerce sector. In 2019, Indonesia issued Government Regulation (GR 80/2019), which applies to a diverse range of domestic and foreign online merchants, electronic commerce companies, and intermediaries that facilitate electronic transactions between independent merchants and customers. Companies have expressed concern that GR 80/2019 overlaps with other regulations in the areas of data privacy and requires companies to utilize a ".id" web address. In 2020, Indonesia issued MOT Regulation 50/2020 to implement GR 80/2019. MOT Regulation 50/2020 establishes requirements for electronic commerce business activities, including requiring electronic commerce actors to obtain business licenses, promote local products, and provide regular reports to the Indonesia Statistics Agency. Foreign electronic commerce operators that have 1,000 transactions or 1,000 packages delivered to Indonesia per year are required to appoint a representative in Indonesia and/or to register for a foreign business license for electronic commerce. Both foreign and local electronic commerce actors have voiced concerns over the opaque drafting and stakeholder input process for these regulations.

## **INVESTMENT BARRIERS**

In contrast to previous regulations, Presidential Regulation 10/2021 establishes that all business sectors are open for investment unless stipulated otherwise. Defense-related investment remains under the sole purview of the central government. The new investment policy establishes four types of investment categorization: (1) priority investment sectors that are eligible for government incentives; (2) sectors reserved for micro-, small-, and medium-sized enterprises and cooperatives who partner with foreign investors; (3) sectors that are open with certain requirements (i.e., with caps on foreign ownership or special permit requirements); and, (4) sectors that are fully open to foreign investment. Although hundreds of sectors that were previously closed or subject to foreign ownership caps are in theory open to 100 percent foreign investment, in practice, technical and sectoral regulations may stipulate different or conflicting requirements.

## *Energy and Mining*

Over the past decade, the Indonesian government has introduced regulatory changes to increase government control and local content in the energy and mining sectors. The regulatory changes have raised costs for foreign businesses and raised questions about the sanctity of contracts already in force between private companies and the Indonesian government.

In the oil and gas sector, Government Regulation 79/2010 (as amended by Government Regulation 27/2017) allows the Indonesian government to change the terms of certain existing production-sharing contracts, eliminate the tax deductibility of certain expenses, change the terms and criteria for cost recovery, and place limits on allowable costs for goods, services, and salaries. Presidential Regulation 35/2004, which regulates contractor activities in the upstream oil and gas sector, requires contractors to “prioritize” the use of domestic services, including energy-related services, in addition to domestic technologies and engineering and design capabilities. Foreign companies have noted that these local preference policies severely undermine their ability to operate in the Indonesian market. Ministerial Regulation 12/2020 permits contractors the flexibility to choose between a production sharing contract or a gross split, whichever proves more amenable to companies.

Indonesia’s oil and gas regulator, SKK Migas, also maintains stringent rules relating to how local content is measured with respect to oil and gas projects, which are intended to achieve an average of 91 percent local content by 2025. Under these rules, goods and services supplied by companies without majority Indonesian shareholding cannot qualify as local content, which may put foreign energy service companies at a disadvantage compared to majority Indonesian-owned companies. In addition, Minister of Energy and Mineral Resources (MEMR) Regulation 31/2013 limits the amount of time expatriates may work in Indonesia’s oil and gas sector to 4 years and prohibits expatriates from working past the age of 55.

Indonesia’s 2009 Mining Law and its implementing regulations impose onerous requirements on companies doing business in the mining sector, including local content requirements, domestic sale requirements, and a requirement to process raw materials in Indonesia prior to export. This law also created a system for granting mining concessions based on licenses. As mining licenses are subject to future regulatory requirements, permitting, and tax changes, they provide significantly less certainty than “contracts of work” (i.e., private business contracts with the Indonesian government). Additionally, foreign companies that obtain mining licenses must divest 51 percent of their holdings to Indonesian ownership over a 10-year period. In May 2020, the Indonesian Government passed Law 3/2020, amending the 2009 Mining Law. The new law returns licensing authority for mining activities to the central government (previously delegated to provincial authorities); however, it leaves in place most restrictions of the 2009 law.

In the power generation sector, MOI Regulation 54/2012 imposes varying levels of local content requirements with respect to goods and services used in power plants, including steam, hydroelectric, geothermal, gas, and solar plants, and in the transmission and distribution network. The local content requirements for solar power plants were tightened as a result of MOI Regulations 4/2017 and 5/2017, which require 60 percent local content in solar modules and 100 percent in services. MEMR Regulation 19/2016 further mandates that the Indonesian state-owned transmission and distribution company, PLN, prioritize the use of domestic goods and services and meet a minimum standard of local content for solar (photovoltaic) power plant development, in accordance with existing MOI regulations.

As part of the government’s effort to stabilize Indonesia’s currency (the rupiah), Government Regulation 1/2019 mandates that companies engaging in natural resources exports place their foreign exchange proceeds in a designated account in a bank located in Indonesia and restricts the use of these proceeds to five categories: (1) payment of export duties and other levies within the export sector; (2) loans; (3) imports;

(4) profits or dividends; and, (5) other purposes as regulated under Article 8 of the 2007 Investment Law. This includes proceeds from exports of mining, plantation, forestry, and fisheries.

### *Medical Devices and Pharmaceuticals*

Presidential Regulation 10/2021 allows 100 percent foreign ownership for manufacturing and distribution of raw pharmaceutical materials and finished pharmaceutical products, as well as medical devices. However, retail pharmaceutical business and class A health equipment are reserved for MSMEs while traditional medicine is limited to domestic ownership only. MOH Regulations 1010/2008 and 1120/2008 state that all foreign pharmaceutical companies operating in the country must manufacture medicines locally or form a partnership with a local manufacturer in order to register or trade their own products. MOH Regulations 1010/2008 and 1120/2008 remain significant barriers to market access, patient access, and foreign direct investment despite the positive changes made by Presidential Regulation 10/2021.

In June 2021, Indonesia removed 79 medical device categories, covering approximately 5,460 imported products, from the government procurement electronic catalogues in order to require the use of locally manufactured products in the public health care system. U.S. industry requested the Indonesian Government allow a sufficient grace period to assure that there will be no disruption in product supply and patient access to safe and high-quality medical devices. In response, Indonesia offered only limited exceptions to mitigate possible disruptions. U.S. industry has expressed concern that additional categories of imported medical devices will be removed from government procurement electronic catalogues in 2022.

## **SUBSIDIES**

In 2019, for the first time in over twenty years, Indonesia filed a subsidy notification under the WTO Agreement on Subsidies and Countervailing Measures. Indonesia's notification only covered subsidy programs in the fisheries sector. According to the WTO Secretariat Report on the 2020 Trade Policy Review, Indonesia continues to provide fiscal and non-fiscal incentives for manufacturing and exports in connection with its export processing zones and special economic zones programs. These include incentives related to corporate income tax, property tax, import duty, value-added-tax, excise and luxury taxes, and local taxes, in addition to assistance on land acquisition, licensing, investment, and labor. Non-tax incentives in the form of loans and interest rate subsidies continue to be available mainly to MSMEs. Additionally, Indonesia provides various forms of official export financing, insurance, and guarantees through the state-owned Indonesia Eximbank and Asuransi Ekspor Indonesia. The United States will continue to urge Indonesia to submit a WTO notification for all of its subsidy programs.

## **OTHER BARRIERS**

Although the Indonesian Government and the Corruption Eradication Commission investigate and prosecute high-profile corruption cases, many stakeholders continue to view corruption as a significant barrier to doing business in Indonesia. Other barriers to trade and investment include poor coordination within the Indonesian Government, limited access to financing, the slow pace of land acquisition for infrastructure development projects, poor enforcement of contracts, an uncertain regulatory and legal framework, arbitrary tax assessments, and lack of transparency in the development of laws and regulations. U.S. companies seeking legal relief in contract disputes have reported that they are often forced to litigate spurious counterclaims and have raised growing concern about the criminalization of contractual disputes.

## **Export Restrictions**

Indonesia's 2009 Mining Law requires companies to process ore locally before shipping it abroad. Implementing regulations of this law ban the export of over 200 types of mineral ore, including nickel and

bauxite. Under Government Regulation 1/2017, companies with existing work contracts are required to convert to special mining business licenses, divest 51 percent of their shares to Indonesian parties over a period of 10 years, and build a domestic smelter by January 2022, in order to obtain a license to export mineral concentrates. U.S. stakeholders have expressed serious concern about these measures.

As part of the implementation of the 2009 Mining Law, Indonesia prohibits the export of nickel ore, one of several recent measures restricting the export of key steelmaking raw materials. The United States has expressed concern about the impact this measure will have on global nickel supply and prices, in addition the impact on the production and exportation of stainless steel, which Indonesia is producing in rapidly increasing volumes well in excess of its domestic consumption. On December 11, 2019, the United States requested to join consultations initiated by the European Union concerning the consistency of Indonesia's export ban with Indonesia's WTO obligations.

In the oil and gas sector, MEMR Regulation 42/2018 requires all oil and gas contractors to sell their production to state-owned Pertamina in an attempt to reduce Pertamina's crude oil imports. In addition, production-sharing contracts and gross split 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. BI Regulation 13/2011 (as amended by BI Regulation 14/2012) subjects export earnings to Indonesian banking law and regulations, despite production-sharing contracts that allow companies to remit such earnings abroad.

### **Local Content**

Indonesia imposes local content requirements across a broad range of sectors, including telecommunications, mobile technology, energy, agriculture, retail, and franchising. Indonesia has stated its intentions to expand its use of local content requirements by increasing existing mandated local content levels and by creating new local content requirements in hopes to grow its own manufacturing sector. The United States continues to press Indonesia to remove these local content and investment requirements, which may worsen Indonesia's investment environment and discourage potential U.S. investors.

In the mobile technology sector, MCIT Regulation 27/2015 requires all 4G-LTE enabled devices to contain 30 percent local content and all 4G-LTE base stations to contain 40 percent local content. MOI Regulation 29/2017 provides a formula for calculating "local content." MCIT Circular Letter 518/2017 clarifies that MCIT Regulation 27/2015 applies only to base stations, cell phones, tablets, laptops, and Wi-Fi modems.

In the telecommunications sector, MCIT Regulations 7/2009 and 19/2011 require that equipment used in certain wireless broadband services contain local content of at least 30 percent for subscriber stations and 40 percent for base stations and that all wireless equipment contains 50 percent local content. MCIT Regulation 4/2019 requires all TV and set-top boxes based on digital video broadcasting-terrestrial second generation and internet protocol set-top boxes to contain at least 20 percent local content. MCIT Regulations 9/2019 and 10/2019 require wavelength division multiplexing and internet protocol network devices to comply with local content requirements. Industry continues to voice concerns over MOI's refusal to discuss LCR policies with stakeholders.

In the textile sector, Indonesia enacted local content requirements in 2019, which effectively banned imports of finished textile products classified in 430 Harmonized System Codes. U.S. carpet tile manufacturers reported that the sudden implementation of the measures resulted in disrupted contracts with customers in Indonesia and has hindered their ability to bid on relevant new tenders. In November 2021, the U.S. textile industry reported that the 2019 local content requirements had been revoked and replaced with MOT Regulation 20/2021. According to industry, the new regulation allows finished textile products

to be exported to Indonesia again, but requires that importers apply for an import license that is valid for one calendar year. Industry continues to seek further details on MOT Regulation 20/2021.

# ISRAEL

## TRADE AGREEMENTS

### The United States–Israel Free Trade Agreement

The United States–Israel Free Trade Agreement (FTA) entered into force on August 19, 1985. Israel implemented phased tariff reductions culminating in the complete elimination of duties on all non-agricultural products by January 1, 1995. While Israel has eliminated tariffs on non-agricultural goods as agreed, tariff and non-tariff barriers continue to affect a significant number of key U.S. agricultural product exports.

To address the differing views between the two countries over how the FTA applies to trade in agricultural products, in 1996, the United States and Israel signed an Agreement on Trade in Agricultural Products (ATAP), which established a program of gradual and steady market access liberalization for food and agricultural products effective through December 31, 2001. The two parties completed negotiation and implementation of a successor ATAP in 2004. Originally scheduled to last through December 31, 2008, the 2004 ATAP granted improved access for select U.S. agricultural products. The 2004 ATAP has been extended 14 times, most recently through December 31, 2022, 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 categories: unlimited duty-free access, duty-free tariff-rate quotas (TRQs), or preferential tariffs, which are set at least 10 percent below Israel’s Most-Favored-Nation (MFN) rates.

The United States and Israel meet regularly to review the implementation and functioning of the FTA and to address outstanding issues. The United States–Israel Joint Committee is the central oversight body for the FTA, and last met on December 2, 2020.

## IMPORT POLICIES

### Tariffs

#### *Agriculture*

U.S. agricultural exports that do not enter duty free under World Trade Organization (WTO), FTA, or ATAP provisions face barriers, such as high tariffs and a complicated TRQ system. These products include higher-value goods that are sensitive for the Israeli agricultural sector, such as dairy products, fresh fruits, fresh vegetables, almonds, wine, juice, and some processed foods. Stakeholders estimate that full market access in agriculture could result in significant increases in U.S. exports to Israel of a variety of products, including cheese, processed foods, apples, pears, cherries, frozen vegetables, and stone fruits.

## GOVERNMENT PROCUREMENT

Israel has offset requirements that it implements through international cooperation (IC) agreements. Under IC agreements, foreign companies that have been awarded government contracts are required to offset foreign goods or services provided under the contracts by agreeing to localization commitments that require one of the following: (1) investment in local industry; (2) co-development or co-production with local companies; (3) subcontracting to local companies; or (4) purchasing from Israeli industry.

Israel is a Party to the WTO Agreement on Government Procurement (GPA).

Since January 1, 2009, the IC offset percentage for procurements covered by Israel's GPA obligations has been 20 percent of the value of the contract; for procurements excluded from GPA coverage, the offset is 35 percent; and for military procurements, the offset is 50 percent. Under the revised GPA, which entered into force in 2014, Israel committed to start phasing out offsets in 2020 and to eliminate offsets entirely after 15 years from the entry into force of the revised GPA in Israel.

U.S. suppliers have indicated that they believe that the size and nature of their offset proposals can be a decisive factor in close tender competitions, despite an Israeli court decision that prohibits the consideration of offset proposals in determining the award of a contract. Small and medium-sized U.S. exporters often are reluctant to commit to make purchases in Israel in compliance with the IC agreements, and, as a result, their participation in Israeli tenders is limited.

In addition, the inclusion of unlimited liability clauses in many government tenders discourages U.S. firms from competing. When faced with the possibility of significant legal costs for unforeseeable problems resulting from a government contract, most U.S. firms choose to insure against the risk, which raises their overall bid price and reduces their competitiveness, as compared to bids from Israeli firms.

The United States–Israel Reciprocal Defense Procurement Memorandum of Understanding (MOU) is intended to facilitate defense cooperation, in part by allowing companies from both countries to compete on defense procurements in both countries on as equal a basis as possible, consistent with national laws and regulations. The MOU, which has benefited Israeli defense industries by opening up the U.S. procurement market to Israeli products, has not significantly opened the Israeli market for U.S. suppliers interested in competing for Ministry of Defense procurements. Tenders open to U.S. suppliers require the company to have a local agent and/or bank account to be able to transact in New Israeli Shekels (NIS).

## **INTELLECTUAL PROPERTY PROTECTION**

The United States remains concerned with certain issues involving Israel's protection and enforcement of intellectual property (IP) rights. On copyright protection, although Israel is a signatory to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty, it has not ratified either. U.S. industry reports Israel is home to online advertisement networks that are used by pirate websites to generate revenue. RevenueHits, which is listed in the [2021 Review of Notorious Markets for Counterfeiting and Piracy](#), is one such network. Industry has also raised concerns regarding the adequacy of the protection Israel provides 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.

## **BARRIERS TO DIGITAL TRADE**

Data protection in Israel is governed primarily by the Protection of Privacy Law (5741-1981) and the guidelines of the Israeli regulator, the Privacy Protection Authority. Similar to the European Union General Data Protection Regulation, Israeli law restricts the cross-border transfer of personal data of Israelis unless certain specific criteria are met, such as the use of standard contract clauses. The United States remains committed to working with Israel to ensure continuity in cross-border data flows and privacy protection.

## **INVESTMENT BARRIERS**

Israel established a centralized investment-screening (approval) mechanism for certain inbound foreign investments in October 2019. Investments in regulated industries (*e.g.*, banking and insurance) require approval by the relevant regulator. Investments in certain sectors may require a government license.

# JAPAN

## TRADE AGREEMENTS

The United States–Japan Trade Agreement (USJTA) and the United States–Japan Digital Trade Agreement (USJDTA) entered into force on January 1, 2020. Under the USJTA, more than 90 percent of U.S. agricultural exports to Japan are duty free or receive preferential tariff access. The USJDTA includes high-standard provisions that, among other provisions: prohibit the application of customs duties or other discriminatory measures to digital products; ensure the unimpeded cross-border transfer of information; prohibit the mandatory use of local computing facilities; and, provide limitations on civil, non-intellectual-property-rights liability for Internet platforms with respect to third-party content.

The United States continues to engage closely with the Japanese Government to urge removal of a broad range of barriers to U.S. exports, including barriers at the border as well as other barriers to entering and expanding the presence of U.S. products and services in the Japanese market. The United States and Japan meet regularly to review the implementation and functioning of the two agreements, and to address outstanding issues.

## IMPORT POLICIES

### Tariffs

Japan’s average Most-Favored-Nation (MFN) applied tariff rate was 4.4 percent in 2020 (latest data available). Japan’s average MFN applied tariff rate was 15.8 percent for agricultural products and 2.5 percent for non-agricultural products in 2020 (latest data available). Japan has bound 99.7 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 4.6 percent.

While Japan’s average MFN applied tariffs are relatively low for non-agricultural products, certain high tariffs have a negative impact on a range of U.S. industrial goods exports to Japan, such as chemicals, fish, wood products, and jewelry.

Japan is the fourth largest single-country market for U.S. agricultural products, with U.S. exports valued at approximately \$14.3 billion in 2021, despite the existence of tariff and substantial non-tariff market access barriers. While the USJTA removed or reduced tariffs on approximately 90 percent of U.S. food and agricultural exports, there are several important products for which tariffs remain high and limit U.S. market access, including rice and rice products, certain dairy products, fruit juices, pet food, table grapes, frozen blueberries, sugar, chocolate, and sweetened cocoa powder.

### *Fish and Seafood*

Total U.S. fish and seafood exports to Japan in 2021 were valued at approximately \$689 million. However, tariffs of 3.5 percent to 10 percent on several fish and seafood products, such as pollock, herring, salmon, whiting, cod, and fish oil, remain an impediment to U.S. exports, as well as for Japanese importers who rely on U.S. raw product for their processing operations. Other market access issues include Japan’s import quotas on Alaska pollock, cod, Pacific whiting, mackerel, sardines, squid, Pacific herring, pollock roe, cod roe, and surimi. Japan has reduced tariffs, increased import quota volumes, and eased the administrative burdens associated with those quotas. However, the remaining import quotas and tariffs continue to present barriers to U.S. exports, and U.S. companies report that the process of obtaining quota is expensive and

subject to frequent delays. The United States has urged Japan to take further action to reduce and eliminate obstacles to U.S. exports of fish and seafood.

### *Leather and Footwear*

Japan maintains high tariffs on leather, footwear, and travel goods, ranging from 3.5 percent to an *ad valorem* equivalent of approximately 130 percent on certain footwear imported from the United States. In particular, Japan continues to apply tariff-rate quotas (TRQs) to a limited and tightly controlled volume of leather footwear imports. The tariffs on out-of-quota imports are either 30 percent or ¥ (yen) 4,300 (approximately \$39) per pair, whichever is higher. These tariffs can more than double the cost of imports and negatively affect market access for U.S.-made and U.S.-branded footwear. Japan also applies TRQs on some raw hides and skins. The United States continues to seek improved market access for U.S. exports in this sector.

### *Beef Safeguard*

In March 2021, Japan imposed a safeguard on U.S. beef exports, under which U.S. beef exports temporarily do not benefit from preferential treatment under the USJTA. Japan's imposition of the safeguard activated the consultation mechanism under the USJTA side letter on safeguards, which provides for Japan and the United States to negotiate a higher safeguard trigger quantity with a view to concluding negotiations within 90 days. On March 24, 2022, the United States and Japan announced that they had reached an agreement in principle to increase the USJTA beef safeguard trigger level. Both governments will continue to work to finalize the text of the agreement reflecting the new trigger level and complete their respective domestic procedures.

## **Non-Tariff Barriers**

### *Rice Import System*

Japan's highly regulated and nontransparent system of importation and distribution for rice limits the ability of U.S. exporters to have meaningful access to Japan's consumers. Japan has established a global TRQ of 682,200 metric tons (mt) (on a milled basis) for imported rice. The Grain Trade and Operations Division of the Ministry of Agriculture, Forestry, and Fisheries (MAFF) Crop Production Bureau manages the TRQ through periodic ordinary minimum access (OMA) tenders and through simultaneous-buy-sell (SBS) tenders. 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. Under SBS tenders, only a small amount of U.S. rice imported into Japan actually reaches Japanese consumers identified as U.S. rice.

In recent years SBS tenders have not filled due to the non-market-based markup applied to imports of U.S. rice. Industry reports that Japan's 2020/21 SBS tenders were not fully successful, largely because of high markup levels that made imported rice less competitive. MAFF tendered for 215,015 mt of whole kernel rice, against which only 34,273 mt of bids were received, and 27,459 mt were awarded. Japan continues to assert that the markup is set using supply and demand figures and world pricing, but has not changed the markup since 2018. Although U.S. rice exports make up only about four percent of all rice consumed in Japan, industry research shows that Japanese consumers might buy more high-quality U.S. rice were it readily available. The United States will continue to monitor Japan's rice import system in light of Japan's WTO import commitments and engage with Japan on its SBS markup for rice.

### *Wheat Import System*

Japan requires food wheat to be imported through the Grain Trade and Operations Division of MAFF's Crop Production Bureau to secure the lowest tariff rate. The Crop Production Bureau resells the wheat to Japanese flour millers at prices substantially above import prices by imposing a "mark-up." The United States continues to monitor carefully the operation of Japan's state-trading entity for wheat and its potential to distort trade.

### *Pork Import Regime*

U.S. pork exports to Japan are subject to a trade-distorting "gate price mechanism" that functions as a variable levy. To prevent lower-priced imports from competing with Japanese pork, the mechanism levies progressively higher duties on lower-priced imports. For instance, chilled and frozen pork are subject to a specific duty of up to ¥125 per kg (approximately \$1.15 per kg) based on the difference between the actual import value and a government-established reference price. This duty is in addition to an *ad valorem* duty that is charged on all chilled and frozen pork regardless of import value. With the implementation of the USJTA, the variable levy under the pork gate price mechanism will be reduced over time for U.S. pork, but not eliminated.

### *Ethanol*

Japan does not directly blend ethanol in gasoline. To meet Japan's annual transport biofuels target (500 million liters of crude oil equivalent), Japanese refineries primarily blend gasoline with ethyl tertiary-butyl ether (ETBE) to reduce greenhouse gas emissions in the transportation sector. ETBE is an oxygenated gasoline additive, which is manufactured by combining isobutylene with ethanol. Japan limits its use of U.S. corn-based ethanol and ETBE through restrictions on feedstock type. The United States urges Japan to directly blend ethanol in gasoline, eliminate any cap on corn-derived ethanol, and increase its annual biofuels target.

### *Customs Barriers and Trade Facilitation*

The United States has encouraged Japan to raise the *de minimis* threshold below which it will not assess duties, from a current level of ¥10,000 (approximately \$90) to a level closer to the \$800 U.S. *de minimis* threshold. This would U.S. shipments move more quickly across the Japanese border. Expanding Japan's advance rulings system to address more customs issues would also improve transparency and predictability for U.S. exporters. The United States also has certain concerns about unequal customs treatment between Japan Post and private companies. The United States continues to urge Japan to improve the speed of customs processing and to reduce the complexity of customs and border procedures. (*For further information, see the Services Barriers section below.*)

U.S. companies have reported that it is unclear whether Japan permits the deduction of marketing expenses paid by non-resident importers (businesses located outside of Japan that ship goods to customers in Japan and assume responsibility for customs clearance and other import-related requirements) when they declare the customs value of their imports using the deduction method, in which the declaration value is calculated by deducting domestic costs from the sales price. The lack of clarity complicates declaration procedure and imposes unnecessary burdens on importers.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

#### *Labeling Requirements*

In 2017, the Japanese Consumer Affairs Agency amended Japan's Food Labeling Standards to expand country of origin labeling requirements to include the main ingredients by weight in processed foods manufactured in Japan, with a transition period for compliance until March 31, 2022. For example, a Japanese manufacturer of soy sauce would have to identify on the label the country of origin of the soybeans used in its production. While the expanded requirements do not apply to imported processed foods, they have the potential to adversely affect U.S. exports of food ingredients because processed food manufactured in Japan may be produced with imported commodities. In such cases, Japanese processed food manufacturers may avoid using ingredients from multiple origins to minimize labeling burdens. Furthermore, the amendment may result in incorrect food labeling because Japanese processed food manufacturers may indicate an "intended" or historical source of ingredients when an ingredient is not actually sourced from that country. The United States will consult with relevant producers in 2022 to determine whether the new labeling requirements are having a negative impact on trade.

### Sanitary and Phytosanitary Barriers

#### Food Safety

##### *Pre- and Post-Harvest Fungicides*

Japan classifies fungicides applied pre-harvest as pesticides and classifies fungicides applied post-harvest as food additives. Japan's requirement that post-harvest fungicides be classified as food additives does not have a significant impact on domestic producers, as Japanese farmers do not generally apply fungicides after harvest. The United States remains concerned that Japan requires products treated with a post-harvest fungicide to be labeled at the point of sale with a list of fungicides used because these post-harvest fungicides are classified as food additives, whereas pre-harvest fungicides are not. This may disadvantage U.S. products by giving consumers the impression that competing Japanese products have not been treated with fungicides.

##### *Maximum Residue Limits*

Japan has made significant progress in establishing science-based pesticide maximum residue limits (MRLs), and its permanent establishment of numerous MRLs has resulted in fewer disruptions in trade. However, the lengthy review process to register new, safe pesticides and establish science-based MRLs significantly delays the ability of U.S. growers to use newer crop-protection products on exports to Japan.

Japan's procedures for enforcement of MRLs result in uncertainty for shippers, including those who have never violated Japan's standards. After a single pesticide MRL violation, Japan imposes enhanced surveillance of all imports of the product on which the MRL violation was detected from that particular exporting country. If a second violation is found during the enhanced surveillance period, Japan will detain and test all shipments of that product from the exporting country, holding shipments until residue testing proves compliance. The United States continues to work with Japan to address concerns related to MRL enforcement.

## **Plant Health**

In September 2019, the United States and Japan developed and agreed on a phytosanitary framework that addresses many market access requests for the agriculture industry in each country. In November 2021, the United States and Japan agreed to updates to this framework.

### *Potatoes*

U.S. potato exports to Japan are currently limited to chipping potatoes. In March 2020, the United States submitted an official request to Japan for market access for table stock potatoes. The United States and Japan remain engaged on this market access request.

### *Apples*

In 2017, the United States submitted an official request to export apples to Japan under a systems approach, which would eliminate costly pest-mitigation requirements for U.S. exporters. The United States and Japan continue to engage on this request.

### *Stone Fruit*

Japan granted market access for U.S.-grown Japanese plum varieties in August 2021. Japan now allows U.S.-grown European plums and U.S.-grown Japanese plums to be imported into Japan under an audit program. The United States and Japan will continue to engage on phytosanitary topics related to U.S. stone fruit, including the removal of costly fumigation requirements for U.S. exporters.

## **GOVERNMENT PROCUREMENT**

Japan is a Party to the WTO Agreement on Government Procurement (GPA).

Japan is obligated to open its government procurement covered under the GPA to goods, services, and suppliers from the United States and other GPA Parties. Japan has also made commitments to the United States under bilateral agreements. U.S. companies in several sectors have flagged that Japanese Government entities sometimes use technical specifications to exclude U.S. products and services. The United States has expressed these concerns to Japan as they have arisen and will continue to engage with Japanese officials to ensure all procurements covered under these agreements are conducted consistent with Japan's procurement obligations.

## **INTELLECTUAL PROPERTY PROTECTION**

Japan generally provides strong intellectual property (IP) protection and enforcement, although a number of concerns remain.

### *Copyright*

In May 2021, Japan amended its Copyright Act to create a presumption that when a right holder enters into a license agreement authorizing a broadcast or cablecast (linear broadcast rights) of a copyrighted work, the agreement will be presumed to also grant so-called "simulcast" rights to the broadcaster (allowing transmissions of the broadcasted content for one week on other platforms, such as Internet streaming) unless a contrary intention is clearly indicated at the time the rights are originally granted to the broadcaster. This presumption is a departure from the typical operation of copyright law, where express permission for the additional transmission is required from the copyright owner. It is unclear whether the presumption

includes interactive transmissions, such as Internet transmissions, which could raise concerns under prevailing international copyright norms, including those found in the World Intellectual Property Organization Copyright Treaty. Other concerns include whether the presumption only covers simultaneous transmissions limited geographically to Japan and what are the conditions that determine when, how, and in what form a right holder can manifest a “different intention” or “separate indication of intent” that is sufficient to rebut the presumption. The new law took effect on January 1, 2022.

In addition, the United States has urged Japan to adopt measures to protect against piracy in the digital environment. In June 2020, amendments to the Copyright Act expanded the scope of illegal downloads covered by the Act, which was previously limited to copyrighted music and videos, to include all copyrighted material, including manga (comics), books, news articles, and illustrations. The revised Act also regulates “leech websites” (link sites) that use hyperlinks to download torrent files of pirated materials. The ban on illegal downloading took effect on January 1, 2021.

### *Enforcement*

In May 2021, Japan amended its Trademark Act to address concerns over Japan’s personal use exemption for imported goods, which was used increasingly to send counterfeit items to individuals in Japan via postal and courier services. Pursuant to the amendment, items imported from “overseas vendors” for personal use fall within the scope of the Trademark Act, such that counterfeits imported in this manner are subject to seizure. The amendment will come into force in April 2022. The United States will monitor implementation and enforcement of the amendment to determine whether it provides a comprehensive solution to the increase in the import of counterfeit goods into Japan. The United States had previously urged Japan via written comments to disallow the use of the personal use exemption for items received by mail and to limit the quantity of items and number of times an individual can apply the exemption.

Industry has raised concerns about Japan’s mechanism for early resolution of potential pharmaceutical patent disputes. An effective mechanism for the early resolution of such disputes promotes transparency and predictability for stakeholders and the public.

### *Geographical Indications*

Japan’s MAFF has oversight over geographical indications (GIs) for agricultural, forestry, and fishery products. The Ministry of Finance’s National Tax Agency (NTA) oversees the GI protection system for wine, spirits, and other alcoholic beverages. MAFF’s GI protection system came into effect in 2015 based on the Act on Protection of the Names of Specified Agricultural, Forestry and Fishery Products and Foodstuffs (GI Act). The 2015 Notice on Establishing Indication Standards Concerning Geographical Indications for Liquor (NTA Notice No. 19) established the NTA’s GI protection system. Japan’s Administrative Complaint Review Act and the Administrative Case Litigation Law set forth the procedures and statute of limitations for objections to a decision to protect a term. In 2018, the Diet revised the GI Act to limit the continued use of protected terms by third parties to a period of up to seven years.

Japanese and foreign products are eligible for GI protection in Japan. Through domestic registration, Japan has designated GI protection for 108 agricultural, forestry, and fishery products and 21 alcoholic beverages, including one foreign product. Japan also has recognized numerous GIs pursuant to international agreements, and the United States continues to have concerns with respect to exchanges of lists of terms pursuant to international agreements that receive automatic protection as GIs without sufficient transparency or due process.

The United States continues to monitor implementation of Japan’s GI system, as well as implementation of its recent agreements with the EU and other trading partners with respect to GIs. The United States urges

Japan to refrain from measures that would unfairly limit market access for U.S. products and to ensure consistency with core transparency and due process principles, in particular with respect to the protection of existing trademarks, the safeguarding of the use of common names, and the effective operation of objection and cancellation procedures. The United States continues to work with Japan to improve IP protection and enforcement in specific areas through bilateral consultations and cooperation, as well as in multilateral and regional fora.

## **SERVICES BARRIERS**

### **Japan Post Holdings and Related Companies**

Japan Post Holdings (JP Holdings) is a parent company created to replace the former state-owned enterprise Japan Post. Its subsidiary companies include the new Japan Post Company (Japan Post Co.), which runs post offices, postal services, and express delivery, Japan Post Insurance (JP Insurance), and Japan Post Bank (JP Bank). In Japan, insurance products, including JP Insurance products, are sold widely in Japan Post offices and JP Bank branches. According to JP Holdings, as of March 2021, approximately 63 percent of JP Holdings' shares were owned by the Japanese Ministry of Finance (MOF). However, the MOF sold approximately 27 percent of JP Holdings at the end of October 2021, reducing the government ownership of JP Holdings to a little over one third, which is the minimum amount stipulated in Japan's Postal Privatization Law. JP Holdings owns approximately 89 percent of JP Bank as of March 2021. In May 2021, JP Holdings announced it would sell additional JP Insurance stock, which JP Insurance itself bought, reducing JP Holdings' equity ownership of JP Insurance to 49.9 percent.

### **Express Delivery**

The United States remains concerned by unequal conditions of competition between Japan Post Co. and international express delivery suppliers. Private U.S. express carriers are required to declare all shipments for customs clearance and calculate duties and consumption taxes based on cost. Different procedures apply to Japan Post Co., as duty assessment is based on Express Mail Service (EMS) shipment rules. Further, companies report that Japan customs officials may not consistently apply Japan's *de minimis* standards to Japan Post Co. EMS shipments, thereby allowing some EMS packages to avoid inspections and duty tax calculations that would otherwise be due.

Japan Post Co. is regulated by a single agency, the Ministry of Internal Affairs and Communications (MIC), whereas private express delivery companies are subject to rules imposed by various ministries including MOF, the Ministry of Health, Labor, and Welfare (MHLW), MAFF, and the Ministry of Land, Infrastructure, Transport and Tourism (MLIT). This complicates compliance.

The United States continues to urge Japan to level the playing field by equalizing customs procedures and requirements as well as prohibiting the subsidization of Japan Post Co.'s international express service with revenue from non-competitive (monopoly) postal services.

The United States also continues to urge Japan to ensure that the postal reform process, including implementation of revisions to the Postal Privatization Law, is fully transparent, including by providing full and meaningful use of public comment procedures and opportunities for interested parties to express views to government officials and advisory bodies before decisions are made. Timely and accurate disclosure of financial statements and related notes is a key element in the postal reform process, as is the continued public release of meeting agendas, meeting minutes, and other relevant documents.

## Insurance Services

Japan's insurance market is the third largest in the world, after those of the United States and China, with a premium volume of \$414.8 billion in 2020 (latest data available). In addition to the offerings of Japanese and foreign private insurers, insurance cooperatives (*kyōsai*) and JP Insurance also provide substantial amounts of insurance to consumers. The United States continues to place a high priority on ensuring that the Japanese Government's regulatory framework fosters an open and competitive insurance market.

### *Postal Insurance and Banking*

The United States has longstanding concerns about JP Insurance's negative impact on competition in Japan's insurance market and continues to closely monitor the implementation of reforms. The United States has long urged Japan to take steps to address a range of level-playing-field concerns.

The United States continues to urge Japan not to allow JP Bank and JP Insurance to expand the scope of their operations before a level playing field is established. Restraints on the scope of JP Insurance operations—including the cap on the amount of insurance coverage and limits on the types of financial activities and products JP entities can offer—have helped to limit harm to private insurance companies. In 2016, Japan revised a ministerial ordinance to raise the per-customer deposit cap of JP Bank from ¥10 million (approximately \$91,000) to ¥13 million (approximately \$118,500) and to raise the per-policyholder insurance coverage cap of JP Insurance from ¥13 million to ¥20 million (approximately \$182,200). In April 2019, Japan raised the per-customer deposit cap to ¥26 million (approximately \$236,900). The United States continues to monitor these increases, which do not require legislative changes to be enacted, in order to ensure a level playing field.

Japan continues to honor the statement by the former Deputy Prime Minister in 2013 that it will refrain from approving new or modified cancer insurance or stand-alone medical products of JP Insurance until it determines that equivalent conditions of competition with private sector insurance suppliers have been established and that JP Insurance has a properly functioning business management system in place. Concerns related to the condition of JP Insurance's business management re-emerged during 2019 following findings by Japan's Financial Services Agency (FSA) of illegal and deceptive sales of JP Insurance products. JP Insurance fully resumed sales of insurance products from April 1, 2021, after a three-month mandatory suspension followed by a voluntary suspension.

The revised 2012 Postal Privatization Law stipulates that the stock sale of JP Holdings, JP Bank, and JP Insurance should be conducted "as soon as possible," but there is no specific deadline. A separate "Law to Secure Funds for Reconstruction," passed in 2011, earmarks proceeds from the JP Holdings stock sale conducted through the end of Japan's FY2022 (March 31, 2023) for Tohoku earthquake reconstruction. Given the delay in the JP Group's subsequent stock sale, the Diet passed a revision to the latter law in June 2020, extending the deadline for directing proceeds toward reconstruction until the end of FY2027 (March 31, 2028). The Postal Privatization Law states that after JP Holdings reduces its share of JP Insurance to under 50 percent, JP Insurance will be able to engage in new businesses on a "notification basis" instead of the current "application and approval basis," while "giving special consideration not to hamper fair competition with other insurance companies." According to a June 9, 2021 JP Holdings press release, the company notified the MIC Minister on that same day that it had reduced its share below this threshold and that, pursuant to the Postal Privatization Law, JP Insurance will only be required to notify the Prime Minister and the MIC Minister regarding new businesses.

### *Insurance Cooperatives*

Insurance cooperatives (*kyōsai*) hold a substantial share of the insurance business in Japan. Some *kyōsai* are regulated by their respective agencies of jurisdiction (e.g., MAFF or MHLW) instead of by the FSA, which regulates all private sector insurance and financial services companies. These separate regulatory schemes create a nontransparent regulatory environment and afford *kyōsai* critical business, regulatory, and other advantages over their private sector competitors. The United States remains concerned about limited FSA supervisory authority over *kyōsai*.

### *Bank Sales of Insurance*

Banks are an important distribution channel for the sale of insurance products in Japan. In 2007, Japan fully liberalized the range of insurance products eligible for sale through banks. However, limits remain on the sales of some products, different rules exist for the treatment of customer data in some cases, and sales restrictions on insurance are applied to certain categories of customers (for example, customers who work for small or medium-sized corporate borrowers). The United States continues to call on Japan to conduct, in the near term, a fact-based and transparent review of the bank sales channel that includes meaningful opportunities for input from interested stakeholders and considers global best practices to further enhance policyholder protection and improve consumer choice.

## **Professional Services**

### *Legal Services*

Japan imposes cumbersome and time-consuming procedures for the registration of foreign lawyers to provide international legal services in Japan and prohibits lawyers from establishing branch offices in Japan without first incorporating in Japan. In May 2020, the Diet passed an amendment to the “Act of Special Measures concerning the Handling of Legal Services by Foreign Lawyers,” or “*Gaiben Law*,” which: (1) reduces the requirement for post-admission practice of home country law from two years to one year; (2) permits foreign lawyers to establish branch offices jointly with Japanese lawyers, provided they establish a legal professional corporation; and, (3) broadens the scope of representation for international arbitration and mediation to allow foreign attorneys to participate in matters involving foreign clients, laws, and jurisdictions. Some of these revisions will take up to three years to be fully implemented, and stakeholders continue to cite procedural hurdles. The United States continues to urge Japan to further liberalize the legal services market.

### *Educational Services*

The United States continues to urge Japan to tax foreign universities operating in Japan in a manner comparable to Japanese universities and that allows foreign universities to continue providing their unique contributions to Japan’s educational environment. Despite extensive consultations with authorities, no U.S. university has been able to satisfy all the legal requirements to be granted “educational corporation” (*gakkō hōjin*) status, which would confer the same tax benefits enjoyed by Japanese universities. The requirement that such corporations be “independently administered” (i.e., not subject to direct administration by the parent university in the home country) is a particularly difficult legal hurdle to overcome. Lack of *gakkō hōjin* status means foreign satellite universities are also excluded from participation in Japanese Government grant programs that promote international exchange and provide financial support for students wishing to study abroad.

## Telecommunications Services

The United States continues to focus on ensuring fair market opportunities for emerging technologies and business models in Japan, ensuring a regulatory framework appropriate for addressing converged and Internet-enabled services, and maintaining competitive safeguards on dominant carriers.

### *Dominant Carrier Regulation*

The Nippon Telegraph and Telephone Corporation (NTT), established as a state monopoly in 1952, privatized in 1985, and broken into several subsidiaries in 1999 to encourage competition, continues to be the dominant player in Japan's telecommunications market. NTT East and NTT West, providing fiber-to-the-home and other services, hold a 65.2 percent share of fixed-line broadband subscribers in the fiber optical cable infrastructure segment. NTT DoCoMo is Japan's largest mobile carrier with over 84 million subscribers and a 42.6 percent market share.

In December 2019, MIC eased rules to allow joint procurement among subsidiaries of the NTT group. The change was viewed as part of a Japanese Government strategy to boost the global competitiveness of Japan's telecommunications leader but prompted concern among other domestic stakeholders. NTT fully absorbed NTT DoCoMo in December 2020 through a ¥4.3 trillion (approximately \$40 billion) stock purchase and aims to integrate DoCoMo with affiliate NTT Communications, which provides cloud services and data centers, to further consolidate services.

### *Spectrum Allocation*

Unlike most advanced economies, Japan does not use auctions to allocate spectrum for commercial mobile services. Allocation is at the discretion of MIC, based on consultation with the Radio Regulatory Council and consideration of plans submitted by the operators. The factors that MIC uses to evaluate applications have raised questions about the fairness of the allocation process.

Several current spectrum allocations create bands unique to Japan that prevent U.S. company technologies from functioning in Japan. For example, U.S. automakers have long expressed concern about Japan's spectrum allocation for vehicle communication devices, which does not align with prevailing practice globally. Foreign automakers must alter these vehicle devices to sell cars in Japan, which is a significant non-tariff barrier.

### *Handset Pricing*

In 2019, the Diet passed an amendment to the Telecommunications Business Act (TBA) that: (1) prohibits the bundling of handset purchase and carrier service contracts; (2) sets a cap on allowable discounts for handset prices; and, (3) specifies criteria allowing exemptions for retailers to discount "non-performing" inventory. The revisions were part of a Japanese Government effort to improve contract transparency and lower prices for consumers by removing operators' justifications for high subscription charges based on a need to recover handset subsidies.

One exemption related to inventory is particularly problematic. If 24 months have passed since the last procurement of a device, a carrier/reseller may discount any unsold devices by 50 percent. However, for devices no longer in production, the 50 percent discount is permitted after only 12 months since the last procurement, and the allowable discount increases to as much as 80 percent after 24 months. These exceptions to the discount restriction reward Japanese manufacturers, who tend to produce an abundance of cheaper, limited-life devices, and harm foreign companies, including U.S. manufacturers, who create higher-quality devices that retain their functionality and value over time. The United States continues to

push for rules that will enable a level playing field for device manufacturers, increase customer choice, encourage innovation, and allow retailers to have greater control over their businesses.

### *Technical Standards Compliance Certification*

Imported radio devices must receive MIC's "*giteki*" certification, verifying compliance with design and technical standards, in order to be sold legally in Japan. U.S. companies report that the process to obtain the "technical conformity mark" is lengthy, burdensome, and costly. U.S. Federal Communications Commission (FCC) certification is not recognized for *giteki* purposes, and some certified testing labs have refused to analyze U.S. applicant products. U.S. companies say information about the certification process is difficult to obtain and often incomplete, and test methods are not updated.

### **Renewable Energy Services**

U.S. companies attempting to sell renewable energy in Japan have reported being denied grid access because the grid is "full." Despite revisions to the Electricity Business Act implemented in April 2020 that required the legal unbundling of the transmission and distribution business from the power generation and retail business, legacy utility companies still own and operate most of the transmission and distribution grids in Japan through wholly owned subsidiaries. These utility companies reportedly overstate actual grid usage and understate available capacity to prevent competition from new entrants. Many of the utility companies are also holding unused space on the grid for long-idled nuclear power reactors. Japan's technical and safety standards do not always reflect international standards, and complicated codes and slow approval processes for new energy technology benefit incumbents.

In addition, U.S. businesses seeking to procure power have advocated for virtual power purchase agreements (VPPA)—the ability to purchase renewable energy directly from retailers and eliminating the requirement for suppliers to obtain an electricity retail business license—widely used by corporate buyers in the United States to meet voluntary emissions reduction goals. The Ministry of Economy, Trade and Industry (METI) has resisted VPPAs due to the potential impact on the 600 to 700 "middleman" retailers established since Japan's electricity market liberalization.

METI enforces the laws and regulations that apply to renewable energy in Japan and regularly reviews and revises related rules to account for market factors. In September 2020, METI proposed new changes to the feed-in tariff (FIT) mechanism that obliges electricity retailers to purchase electricity generated from biomass, geothermal, and wind renewable energy sources at fixed prices for certain periods determined by METI. The changes will lower prices accepted under the FIT scheme unless companies meet certain conditions, including a deadline for previously approved FIT projects to become operational. In response to public comments and U.S. engagement, METI announced in November 2020 its intention to extend deadlines for projects that have experienced environmental review delays. In addition, METI is finalizing the details of a new "feed-in premium" (FIP) scheme that will be phased in starting in early 2022 as an eventual replacement for the existing FIT mechanism. Under the new FIP mechanism, certain renewable generators are eligible to sell power into the spot market at a premium to the wholesale price, rather than receive a fixed price per kilowatt-hour under the current FIT system. The United States will continue to monitor these developments.

### **Air Transport Services**

In response to the COVID-19 pandemic, Japan implemented caps on international airline arrivals. As of March 2022, the cap was 7,000 passengers per day, though at points over the past year it was much lower. While the arrival quotas are evenly split among domestic and foreign carriers, as of March 2022, each foreign carrier must abide by a per-flight cap of 120 passengers per flight, and a weekly average cap of no

more than 100 passengers per flight. Domestic carriers have a weekly passenger cap. This discrepancy gives domestic carriers an advantage because it allows them to sell more seats on high-demand flights and consolidate a greater number of passengers onto each plane. Foreign airlines are working with the Japanese Government on a new system to allocate passengers based on demand, and the United States is engaged with Japan on resolving this issue.

## **BARRIERS TO DIGITAL TRADE**

### **Privacy Regulation**

The Act on the Protection of Personal Information (APPI) is Japan's principal data protection legislation, and all private enterprises handling the personal information of individuals in Japan are required to conform to this law. In 2019, Japan and the EU mutually recognized each other's data protection laws as providing an adequate level of protection of personal data, allowing personal data to flow freely between the two jurisdictions. As part of the agreement, Japan put in place additional requirements regarding EU data, including supplementary rules restricting the transfer of EU data from Japan to a third country, including to the United States. The APPI was amended to better align with the EU's General Data Protection Regulation and was further strengthened by amendments that the Diet passed in June 2020.

The Personal Information Protection Commission (PPC) was established in 2016 as Japan's centralized data protection authority with enforcement powers backed by penal sanctions. Despite this authority, U.S. industry has expressed concern that other Japanese agencies have created parallel data privacy and protection rules that encroach on PPC's jurisdiction, complicating compliance.

### **Digital Platform Regulation**

In September 2019, a new advisory board, the Digital Market Competition Headquarters (DMCH), was created under the Cabinet Secretariat to lead the coordination of competition policy in the digital market. U.S. companies have expressed concern that they are being subjected to additional regulations and scrutiny that do not apply to most Japanese conglomerates, some of which operate in similar sectors.

In May 2020, the Diet passed a new law developed by the DMCH on "Improving Transparency and Fairness of Specified Digital Platforms," which obliges certain platform operators to improve transparency, including with regard to the terms and conditions of use in their platform. The Transparency Act's provisions state that it will apply only to digital companies "larger than a certain size in areas that are particularly important parts of society" and "for which the state of transactions has been clearly ascertained through surveys". U.S. companies have raised concerns that the Japanese Government's broad discretion under the law could lead to selective enforcement. The Japanese Government's practices to date suggest that before a company is designated under the law, the Japan Fair Trade Commission (JFTC) will conduct a fact-finding analysis, the results of which will establish factual predicates to support a company's designation under the Transparency Act. Further, METI advises that "[t]he regulations under the Act should be applied to all digital platform providers regardless of domestic or overseas original of the business." This approach is similar to other jurisdictions that have adopted an ex ante approach to regulating competition in dynamic digital markets. The law also raises concern because it includes a requirement that companies explain how their search rankings are determined, which if not carefully implemented and enforced could have the unintended consequence of facilitating the artificial manipulation of rankings to the detriment of consumers.

Japan initially used this law, which went into effect in February 2021, to designate major online shopping mall operators and application stores (including the Japanese company Rakuten, as well as the Japanese subsidiaries of Amazon, Google, Yahoo, and Apple) as "specified digital platform providers," thereby

applying the law’s regulations to these entities. In April 2022, a second tranche of designations targeting platforms intermediating digital advertising is expected to come into effect, following 2021 DMCH recommendations to bring this digital business into the scope of the law and a similarly-timed JFTC market study report citing Google’s market position in digital advertising. The DMCH also has announced its intent to study mobile operating systems for possible regulation under the digital platform transparency law in 2022. The United States has been engaging with Japan regarding these and other concerns and will continue to monitor implementation of the legislation.

The JFTC, Japan’s competition enforcement agency, has been similarly interested in digital markets and has instituted new or amended guidelines to address issues unique to digital platforms. In 2019, the JFTC released guidelines on applying the Antimonopoly Act (AMA) to transactions between digital platform operators and consumers, charting new territory for regulating the digital market in Japan. In its “Guidelines Concerning Abuse of a Superior Bargaining Position in Transactions between Digital Platform Owners and Consumers that Provide Personal Information, etc.” (ASBP Platform Guidelines), the JFTC asserts that platform companies are in “a superior bargaining position” (a provision under the AMA) when customers have no choice but to provide their data to use the services and platform companies may commit an “abuse” of that position when use of personal data is not fully and accurately disclosed or protected. After receiving input from stakeholders concerned about insufficient guidance, the JFTC provided several examples in the final guidelines of practices that would or would not constitute ASBP.

U.S. stakeholders have also noted concerns with amendments to Japan’s Telecommunications Business Act (TBA), which the Diet passed in June 2020 and were put into effect April 2021. U.S. and foreign telecommunications services operators in Japan, including over-the-top (OTT) and cloud-based services, are now subject to regulation under the TBA. Businesses that intermediate communications with users in Japan, even if the service is supplied on a cross-border basis, must register as telecommunications providers with MIC, appoint a representative or agent physically domiciled in Japan, and comply with regulations imposed on domestic operators under the TBA, including disclosure and reporting obligations. Such requirements could be particularly burdensome for foreign small and medium-sized enterprises (SMEs).

Of particular concern is compliance with the TBA’s “secrecy of communications” (SoC) provision, which, when extended to digital OTT services, requires user consent to access or transmit communication content and metadata in any electronic commerce, streaming, search, e-mail, messenger, cloud, or payment service deemed by MIC to intermediate two-party communications. The MIC has flagged user consent policies that require users to relinquish their right to secrecy of communications in order to access the service as “inappropriate,” even when services are provided free of charge or do not require the actual identity of the user. Given the vast range of OTT services, U.S. industry says that SoC compliance will be challenging without recognition of blanket consent and exceptions for machine-to-machine and human-to-machine communications, and could potentially limit their ability to offer certain services in Japan. The MIC, in the process of drafting implementing ordinances, has signaled that blanket consent and the exceptions for automated communication are unlikely. Additionally, mandatory reporting of service outages may be overly burdensome if they are triggered by very low levels of service disruption, a particular concern, as the regulator has sought to justify the measure based on the argument that Japanese consumers have a lower tolerance for service problems than others.

The United States will continue to monitor these developments and encourage transparency and multi-stakeholder engagement in the process.

## **INVESTMENT BARRIERS**

Japan continues to have the lowest inward foreign direct investment (FDI) as a proportion of total output of any major Organization for Economic Cooperation and Development (OECD) country. According to

OECD statistics, the inward FDI stock at the end of 2020 (latest data available) was the equivalent of only 4.7 percent of Japan's GDP. Inward foreign merger and acquisition (M&A) activity, which accounts for a large portion of FDI in other OECD countries, also lags in Japan.

While Japan recognizes the importance of FDI to revitalizing the country's economy, its performance in implementing domestic regulatory reforms to encourage a sustained increase in FDI has been uneven. In June 2013, the Japanese Government announced its goal of doubling Japan's inward 2012 year-end FDI stock to ¥35 trillion (approximately \$318 billion) by 2020, and it confirmed this commitment in its 2018 growth strategy. According to OECD statistics, Japan's inward FDI stock was approximately \$232.3 billion in 2020 (latest data available), an increase of 3.8 percent over the previous year.

A variety of factors deter inbound M&A in Japan, including attitudes toward outside investors, unfinished corporate governance reforms, cross-shareholdings, aspects of Japan's commercial law regime, and a relative lack of financial transparency and disclosure. (*For further information, see the Other Barriers section below.*)

## **SUBSIDIES**

### *Wood Products and Building Materials*

Japan maintains numerous support programs at the national, prefectural, and municipal levels that may favor domestic wood products over imports. The Competitiveness Enhancement Program for Plywood, Sawn Wood and Laminated Timber was continued in the 2019 MAFF supplemental budget, making approximately \$340 million available to support up to 50 percent of the expense of building projects to enhance domestic forestry production and logistics systems. The program also subsidizes Japan Agricultural Standard structural lumber, which appears to provide *de facto* support for domestic production. Japan has allocated approximately \$1.1 billion each year under the Forest Management Project to support thinning and selective logging operations. Since 2019, Japan has provided funding for local governments to manage unprofitable forestlands. Starting in 2024, Japan will begin to collect the Forest Environment Tax from each Japanese household to cover the cost of this program (approximately \$550 million). The United States is monitoring the disbursement of these funds and other support programs.

### *Dairy Support Program*

In 2021, Japan extended a dairy support program that incentivizes its dairy processors to replace imported butter and milk powders with Japanese-produced products by paying the price differential. In 2021 U.S. exports of milk powder and butter to Japan totaled approximately \$8.3 million. The United States will continue to monitor how Japan implements its dairy support programs.

## **ANTICOMPETITIVE PRACTICES**

### **Improving Anti-Monopoly Act Compliance and Deterrence**

Japan's Anti-Monopoly Act (AMA) provides for both administrative and criminal sanctions against cartels and administrative sanctions for non-cartel anticompetitive conduct. Criminal prosecutions, which have the strongest deterrent effect against anticompetitive behavior, have been limited, and penalties against convicted company officials have been weak, although the JFTC has routinely imposed sizable civil "surcharges" against cartelists. The AMA's leniency system, under which enterprises that provide information about their participation in restraint of trade can receive full or partial immunity from surcharges, was revised in June 2019 and put into effect on December 25, 2020. The new system grants the JFTC greater discretion in determining fines (surcharges) levied against violators of the AMA based on

the degree of companies' voluntary cooperation with JFTC investigators. The United States has continued to urge Japan to take steps to maximize the effectiveness of enforcement against cartel and bid rigging violations of the AMA to ensure open and competitive markets.

### **Abuse of Superior Bargaining Position**

U.S. stakeholders in Japan continue to express concern regarding JFTC investigations under the “unfair trade practices” clause of the AMA, in particular the implementation of its prohibition against “abuse of superior bargaining position” (ASBP) and related administrative guidance. Stakeholders assert that vague and ambiguous standards for liability in this area provide the JFTC with broad enforcement discretion and may make good faith efforts to comply with the AMA difficult. This concern has intensified with the release of the ASBP Platform Guidelines in 2019, extending application of ASBP to transactions between digital platform operators and consumers. Stakeholders have called for further clarification of each of the forms of abuse listed in the ASBP Platform Guidelines to minimize the substantial uncertainty for companies and users. *(For further information, see the section on Digital Platform Regulation above.)*

### **Recognition of Limited Attorney-Client Privilege**

In 2020, the JFTC introduced protections for certain attorney-client communications, a departure from Japan's general absence of such protections. However, the scope of protected confidential attorney-client communications is extremely limited, protecting only legal advice under the AMA regarding alleged antitrust cartels, which involve price-fixing, market allocation, and bid rigging. In principle, only an external lawyer's advice is protected. An in-house lawyer's advice might be protected only if the in-house lawyer is working independently from the enterprise itself. In addition, only legal advice by lawyers qualified in Japan is protected. Legal advice from foreign lawyers (even if they are registered in Japan as a Registered Foreign Lawyer (*gaikokuho jimu bengoshi*)) is not protected, as a result of Japanese limitations on the practice of law in Japan. The rules further protect communications only for the documents that are carefully segregated from other documents. The United States will continue to monitor developments and advocate for fuller recognition of attorney-client privilege by the JFTC.

## **OTHER BARRIERS**

### **Transparency**

#### *Advisory Groups*

Advisory councils and other government-commissioned study groups are accorded a significant role in the development of regulations and policies in Japan. U.S. companies have raised concerns with a lack of transparency into the decision-making processes and operations of these groups. For example, even when meetings are open to the public, companies report that meetings are sometimes announced with extremely short notice of less than two days. In other cases, meetings are public, but the materials being discussed are not, making it difficult or impossible to understand the topics. 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 Japan by adopting new requirements to ensure that ample and meaningful opportunities are provided for all interested parties, as appropriate, to participate in, and directly provide input to, these councils and groups.

#### *Public Comment Procedure*

Many U.S. companies remain concerned about inadequate implementation of the public comment procedure by Japanese ministries and agencies. In some cases, comment periods appear to be unnecessarily

short, or occur at the same time as national holidays. In other 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 improve the system, such as by lengthening the standard public comment period for rulemaking.

### **Commercial Law**

The United States continues to urge Japan to identify and eliminate impediments to cross-border M&A, ensure the availability of reasonable and clear incentives for many such transactions, and take measures to ensure that shareholder interests are adequately protected when Japanese companies adopt anti-takeover measures or engage in cross-shareholding arrangements. The United States continues to urge Japan to further improve its commercial law and corporate governance systems to promote efficient business practices, capital markets development, and shareholder rights in accordance with international standards. Areas ripe for improvement include facilitating and encouraging active and appropriate proxy voting and strengthening protection of minority shareholders by clarifying fiduciary duties of directors and controlling shareholders.

### **Automotive**

The United States has expressed strong concerns with the overall lack of access to Japan's automotive market for U.S. automotive companies. A variety of non-tariff barriers impede access to Japan's automotive market, and overall sales of U.S.-made vehicles and automotive parts in Japan remain low.

Non-tariff barriers include certain issues relating to non-acceptance of U.S. Federal Motor Vehicle Safety Standards certification; unique standards and testing protocols; unique spectrum allocation for short-range vehicle communications systems; an insufficient level of transparency, including the lack of opportunities for input by interested persons throughout the process of developing regulations; and hindrances to the development of distribution and service networks. Electric vehicle regulation poses an additional concern for U.S. automakers, as Japan aims to transition to 100 percent electric vehicles sold in Japan by 2035. For example, Japan provides a purchase subsidy of up to ¥600,000 (approximately \$5,500) for traditional battery electric vehicles. However, fuel cell electric vehicles, which are primarily produced by Japanese companies, receive a much higher subsidy than battery electric vehicles, up to ¥2.5 million (approximately \$22,800), depending on the size of the vehicle. These barriers, together with other past and current policies and practices, have had the long-term effect of excluding and disadvantaging U.S. manufacturers in the Japanese market.

### **Medical Devices and Pharmaceuticals**

Japan is the third largest pharmaceutical and medical devices market in the world and a critical export destination for U.S. pharmaceuticals and medical devices. According to MHLW's Annual Pharmaceutical Production Statistics, the Japanese market for prescription and nonprescription pharmaceuticals in 2020 (latest data available) totaled \$107 billion. The U.S. market share of pharmaceuticals in Japan is estimated at approximately 20 percent, including local production by U.S. firms and compounds licensed to Japanese manufacturers. MHLW figures show that the Japanese market for medical devices in 2020 totaled \$26 billion. The U.S. market share of medical devices is estimated at 60 percent, including production in Japan by U.S. companies.

Over a decade ago, the Japanese Government started increasing the appeal of Japan's pharmaceutical and medical device markets by reducing regulatory approval timelines and by improving the predictability of the reimbursement pricing system. However, in recent years, Japan has frequently proposed reimbursement adjustments, increasing the unpredictability of the system.

Japan's Price Maintenance Premium (PMP) system, introduced in 2010, adds price premiums to innovative new drugs and protects this price throughout the patent life of a medicine. In the 2018 pricing cycle, Japan made several changes to its PMP rules that have significantly reduced the number of innovative products and companies that receive the full benefit of the PMP. Several criteria introduced in 2018 for use in PMP calculations, such as the number of local clinical trials and local product launches by the company submitting the application, appear to make it easier for Japanese companies to qualify for top premiums and are unrelated to the degree of innovation of the individual product under consideration. Reimbursement outcomes suggest that U.S. companies, especially SMEs, are at a disadvantage compared to Japanese companies.

In addition to failing to address concerns regarding the PMP criteria, in 2020, in the absence of prior public notification and opportunity for comment, MHLW expanded drug repricing for indication changes to allow, for example, price adjustments based on comparisons with products that are not considered to be pharmacologically similar under Japanese law. U.S. industry is concerned about the abrupt and non-transparent nature of this rule change.

Traditionally, Japan had a biennial reimbursement pricing system. However, the initiation of "off-year" price revisions for reimbursement of drugs under Japan's National Health Insurance system, which was approved in 2016 but implemented starting in April 2021, has caused concern. The initial policy called for drug price surveys to be carried out every year on all products and for reimbursement price revisions to be implemented based on their results, covering only products with significant price discrepancies (gaps between reimbursement prices and market prices). The April 2021 off-year price revision, however, covered a larger-than-expected range of products. U.S. industry expressed concerns about the lack of predictability and transparency for this price revision and its implications for future off-year price revisions.

U.S. stakeholders are additionally concerned that Japan's implementation of the Health Technology Assessment (HTA) will create significant uncertainty about prices for advanced medical devices and innovative pharmaceuticals, given limited, meaningful opportunities for stakeholder input.

The U.S. medical device sector has concerns about Japanese regulators' practice of grouping together innovative and less-advanced medical devices in the same "functional categories," which are a key determinant of reimbursement prices for these products. U.S. industry is concerned that the variation in product functionality within these categories has become more pronounced in recent years, which disadvantages more innovative devices that often come from U.S. companies. U.S. industry is also concerned that these and other reimbursement practices in Japan may negatively impact incentives for medical device innovation. Additionally, the U.S. medical device industry has long requested stability and predictability in MHLW's pricing and reimbursement decision-making processes.

U.S. stakeholders have expressed strong concerns about a lack of transparency and stakeholder consultation in the development of all of these pricing reform initiatives. Japan's annual economic and fiscal policy blueprint (*honebuto*) in 2021 spelled out for the first time the need to "secure transparency and predictability" in the drug pricing system. The United States continues to urge Japan to implement predictable and stable reimbursement policies that reward innovation; to solicit and consider the input of all stakeholders, including U.S. stakeholders, when developing any measures related to these policies; and to follow transparent processes in the present and future development of any new policies and measures. The United States also continues to urge Japan to move towards international harmonization of its regulations in clinical development, multiregional clinical trials, and risk management.

## Nutritional Supplements

Japan regulates nutritional supplements as a part of a loosely defined “health food” subcategory of foodstuffs, unlike in the United States, where “dietary supplements” are regulated by the FDA under different regulations than “conventional” foods. Japan has taken steps to streamline import procedures and to improve access in this market. However, significant market access barriers related to Japan’s health claim system remain.

Japan’s Consumer Affairs Agency establishes three categories for both domestic and imported products under the Food with Health Claims system: Food with Function Claims (FFC); Foods for Specified Health Uses (FOSHU); and Foods with Nutrient Function Claims (FNFC). Most U.S. nutritional supplement products are unable to obtain either FOSHU approval or FNFC designation due to FOSHU’s costly and time-consuming approval process and FNFC’s standards and specifications, which limit the range of nutritional ingredients such as vitamins and minerals that can qualify for FNFC. Vitamin and mineral products designated under the FNFC system are excluded from the FFC system. U.S. industry remains concerned that the regulations on health food and dietary supplements are not in line with global best practices, and advocates for science-based risk assessments, alignment of classification and labeling systems, cost-benefit analyses, and opportunities for stakeholder consultation in regulation development.

## Personal Care Products and Quasi-Drugs

According to the Cosmetic Importers Association of Japan, Japan’s imports of personal care and cosmetics products were valued at approximately \$3.1 billion in 2021, making Japan one of the top five importers for the global industry. These data also show that, with \$414 million in exports in 2021, the United States is consistently among the top five personal care and cosmetics exporters to Japan, representing 13 percent of all imports.

Delays in updates to market authorization requirements for “quasi-drugs,” which include cosmetics products that are generally classified as over-the-counter drugs in the United States, as well as delays in the adoption of an online system, are among the barriers to the continued growth of U.S. exports. Although there have been some improvements in processing time, Japan has not adopted a monograph system, intended to expedite the registration of products as quasi-drugs under Japan’s Pharmaceutical and Medical Devices Act. As a result, products that contain active ingredients that are approved for specific uses in Japan, such as in anti-dandruff shampoos and skin care, may require six months to receive market approval. MHLW has committed to work with industry players and local prefectural governments to develop a monograph system, known as “Quasi-Drug Additives Spec Codex” (*besshi kikakushu*), which lists the approved uses for previously reviewed ingredients and claims. Such a Codex would speed up approval times and bring consistency to the reviews of products by MHLW and local governments, similar to the system used by the U.S. Food and Drug Administration.

As a pilot to assist MHLW in moving towards formalizing a monograph system, U.S. and local industries worked with MHLW to develop product approval guidance for medicated hair products in May 2014 and for anti-bacterial soaps in May 2018. U.S. industry is calling on MHLW to develop similar standards for other quasi-drug cosmetics and consider how it might expand the use of permitted claims, so long as they can be substantiated. The United States will continue to monitor these and other developments, including the development of an online system for registration.

# JORDAN

## TRADE AGREEMENTS

### The United States–Jordan Free Trade Agreement

The United States–Jordan Free Trade Agreement (FTA) entered into force on December 17, 2001. Under the FTA, as of January 1, 2010, Jordan provides duty-free access to nearly all U.S. exports, with exceptions for a few product lines, such as alcoholic beverages. The United States and Jordan meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

## IMPORT POLICIES

### Taxes

Jordan's General Sales Tax law allows the government to impose a special tax at the time of importation in addition to the general sales tax. Over the past five years, Jordan has increased special taxes on certain goods. In July 2018, Jordan doubled to 20 percent a 10 percent tax on carbonated drinks that was imposed just 17 months prior, and then decreased the rate to 15 percent. The United States continues to work with Jordan to promote transparency and predictability by encouraging consultations with the private sector.

### Non-Tariff Barriers

#### *Import Licensing*

Import licenses are required for specific food products by the Ministry of Health and for raw agricultural goods by the Ministry of Agriculture. The approval process can be time consuming and at times lacks transparency. U.S. stakeholders have raised concerns about the difficulty of obtaining import licenses from the Ministry of Agriculture for U.S.-origin chicken leg quarters and live dairy cattle. The United States continues to engage with Jordanian authorities to address this issue.

Jordan requires that importers of commercial goods be registered traders or commercial entities. The Ministry of Industry, Trade, and Supply occasionally issues directives requiring import licenses for certain goods or categories of goods and products in newly emerging or protected sectors. Jordan requires a special import license prior to the importation of telecommunications and security equipment.

#### *Customs Barriers and Trade Facilitation*

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

## TECHNICAL BARRIERS TO TRADE

### *Application of International Standards*

In general, Jordan recognizes and accepts international standards and specifications utilized by U.S. producers. However, Jordan's signing of a twinning program<sup>2</sup> with the European Union (EU) on standards in February 2018 may create obstacles to U.S. exporters in product areas where standards developed by U.S.-domiciled standards organizations differ from those of the EU. For example, Jordan follows EU standards for energy efficiency and labeling under the Jordan Standards and Metrology Organization (JSMO) technical regulations 2089 and 2090. While the Ministry of Industry, Trade, and Supply maintains that exporters of U.S.-origin products can provide documentation that the products meet Jordanian energy efficiency standards, Jordanian importers generally find it simpler to import U.S.-origin products from Europe, where they have been labeled according to EU standards, rather than directly from the United States.

### *Genetically Engineered Food Requirements*

In 2018, the Jordan Food and Drug Administration (JFDA) implemented a rule that restricts the sale and distribution of food products labeled as containing genetically engineered (GE) ingredients. In April 2020, Jordan issued "Instructions for Handling Food and Food Products Originating from Genetically Modified Substances Produced by Modern Biotechnology for 2018," that was based on Article 8.B of the Food Law No. 30/2015 and Article 7.K of the Law of Food and Drug General Administration No. 41/2008. This new regulation addressed U.S. concerns. Under the regulation, Jordan: (1) accepts the importation of products labeled as containing GE ingredients as long as the product is produced and consumed in the country of origin; (2) accepts the importation of such products based on the country of origin's risk assessment system provided the products are registered in advance with JFDA; (3) establishes the labeling threshold for GE ingredient declaration at five percent; and (4) bans restrictions on the import of GE foods and food products. The United States will continue to monitor and engage with Jordan to ensure that the implementation of this regulation does not pose market access challenges for products labeled as containing GE ingredients.

### *Corn Import Sampling Procedures*

Jordan's poor sampling techniques have resulted in the rejection of shipments of U.S.-origin corn, according to U.S. stakeholders. Jordan's Ministry of Agriculture does not publish a foreign matter requirement or provide sampling technique guidance for customs on grain. The United States has worked with Jordan to improve sampling and inspection procedures, but problems persist. U.S. exports of corn to Jordan have essentially stopped as a result. U.S. corn exports to Jordan were valued at approximately \$22 million in 2021. The United States continues to work with Jordan to resolve this issue.

## GOVERNMENT PROCUREMENT

Jordan is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since March 2000. In 2002, Jordan commenced the process of acceding to the GPA, with the submission of its initial offer. Jordan subsequently submitted several revised offers in response to requests by the United States and other GPA Parties for improvements to market access. Negotiations on Jordan's accession have been inactive for more than eight years.

In February 2019, the Jordanian Cabinet passed the Government Procurement Bylaw No. 28, which grants priority to a domestic bid over a foreign bid if the bids are equivalent in terms of requirements,

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<sup>2</sup> Twinning is an EU technical assistance program that provides support for the implementation and enforcement of EU standards.

specifications, and price. Additionally, Jordan offers domestic companies a preferential rate of 15 percent in all government tenders based on a 2013 cabinet decision, which has been renewed annually.

Jordan's Ministry of Industry and Trade (MIT) is the sole purchaser of wheat from international suppliers through a competitive tendering process by the local representatives of international companies. Bidders compete to offer the most competitive price within the MIT-defined quality and grading specifications. MIT often dismisses bids when offered prices exceed prevailing average market prices, and markets bread flour at subsidized prices, accounting for nearly 90 percent of the country's total national wheat consumption.

## **INTELLECTUAL PROPERTY PROTECTION**

Jordan continues to take steps to provide more comprehensive protection of intellectual property (IP) rights. However, challenges regarding IP protection and enforcement persist. As seen throughout the region, online and physical copyright infringement is widespread. For example, the Spider company is listed in the [2021 Notorious Markets List](#) for supplying Spider-branded piracy devices through online and physical stores across the Middle East, North Africa, and Europe. The National Library, the primary IP authority in Jordan, has noted that challenges to combatting this type of piracy include a lack of adequate resources. Despite past efforts by law enforcement officials to crack down on pirated and counterfeit products, enforcement efforts need to be strengthened, particularly with respect to utilizing *ex officio* authority to pursue criminal investigations. The United States continues to engage with the Government of Jordan on these issues.

## **BARRIERS TO DIGITAL TRADE**

Information and communication technology firms operating in Jordan are, in many cases, required to maintain a local presence and to contract with local service suppliers. Local presence requirements can hamper the ability of firms to supply services on a cross-border basis, while requirements to contract with local service suppliers can disrupt the business of foreign firms that operate on a global basis.

## **SUBSIDIES**

Jordan abolished its export subsidy scheme effective January 2019, when the new Income Tax Law Number 38 went into effect. In November 2019, however, Jordan announced a stimulus package to spur the economy and attract investment, which grants the industrial sector a number of incentives, including reduced electricity tariffs and a direct cash payment to exporting industries. In response to U.S. concerns, and pursuant to instructions from the Prime Minister, Jordan terminated the new incentive scheme in December 2021 and installed an alternative stimulus in January 2022 in consultation with the private sector.

In 2018, Jordan reformed its public bread subsidy program as a targeted assistance program that sets bread prices. Through this program, Jordanian officials manage domestic and imported wheat purchases.

## **OTHER BARRIERS**

### **Export Policies**

Jordan imposes a \$50 per ton tax on exports of steel scrap, discouraging its exportation.

# KENYA

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

Kenya's average Most-Favored-Nation (MFN) applied tariff rate was 13.5 percent in 2020 (latest data available). Kenya's average MFN applied tariff rate was 20.3 percent for agricultural products and 12.3 percent for non-agricultural products in 2020 (latest data available). Kenya has bound 16.3 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 93.8 percent.

Kenya applies the Eastern African Community (EAC) Customs Union's Common External Tariff (CET), which includes three tariff bands: (1) zero percent duty for raw materials and inputs; (2) 10 percent duty for processed or manufactured inputs; and, (3) 25 percent duty for finished products. For products and commodities deemed sensitive, Kenya applies *ad valorem* rates above 25 percent. This includes rates of 60 percent for most milk products, 50 percent for corn and corn flour, 75 percent for rice, 60 percent for wheat flour, 100 percent for sugar, and 50 percent for textiles. For some products and commodities, tariffs vary among the five EAC Member States. In June 2021, the EAC granted Kenya a new one-year exception from the rice CET, reducing the applied import tariff rate to 35 percent or \$200 per metric ton (whichever is higher) due to Kenya's status as a net importer.

When deemed necessary, the Kenyan Government has temporarily waived agricultural tariffs to stabilize prices when domestic agricultural prices exceeded certain levels. However, when the Kenyan Government has taken such action, the EAC has granted an exception from the CET.

Under its Exemptions Regime, the EAC had exempted all solar and wind energy products from import duties. In June 2016, the EAC amended its Exemptions Regime to only include products related to the development and generation of solar and wind energy. The duties subsequently imposed on spare parts and accessories to solar equipment have had a negative impact on the business operations of off-grid solar companies. Though Kenya has not uniformly applied the duties, some stakeholders have voiced concern that this amendment does not adequately define the term "spare parts and accessories."

#### *Taxes*

The Value Added Tax (VAT) Act, adopted in 2013, reduced the number of VAT-exempt items from 400 to 27, to simplify tax administration, enhance tax compliance, and eradicate a backlog of refunds. The 2013 Act went into effect with few specific guidelines, resulting in uncertainty surrounding the application of VAT rules. Amendments to Kenya's VAT Act over the last several years clarified some items that are VAT-exempt, including: aircraft engines and aircraft parts, plastic bag biogas digesters, parts for the assembly of primary school laptop tablets, and goods for use by the Kenya Film Commission or in the construction of industrial and recreational parks subject to specified conditions. These amendments also made clear that VAT refund claims must be submitted within 12 months of purchase. VAT Regulations issued in 2017 further clarified the implementation of the 2013 VAT Act, reducing the number of VAT refund claims. VAT-exempt companies, including importers, still experience lengthy wait times in receiving their VAT refunds.

In 2018, the Kenya Revenue Authority (KRA) imposed the VAT on raw materials for the manufacture of garments and leather imported to Export Processing Zones, to protect local livestock keepers and producers

of raw materials used in tanneries. In 2018, the KRA also imposed an eight percent VAT on fuel products including petrol, diesel, jet fuel, and kerosene. In 2020, the KRA rescinded VAT exemptions on helicopters and certain aircraft parts, as well as the hiring, leasing, and chartering of helicopters. At least one U.S. company in Kenya that sells small planes, helicopters, and parts has been negatively impacted by the removal of this exemption.

Kenya requires all importers to pay a 3.5 percent import declaration fee based on the customs value of the imported goods. The 2020 Finance Act increased and changed the basis for the import declaration fee on goods imported under the EAC's Duty Remission Scheme, a program that provides exemption on inputs used to manufacture exported goods. The fee changed from KES 10,000 (approximately \$92.60) per shipment to 1.5 percent of the customs value of the goods in the shipment.

Disputes over tariffs and taxation are resolved through the judicial system, which is subject to delays and uncertainty. Since June 2015, the KRA has offered an alternative dispute resolution mechanism to help taxpayers resolve some tax disputes more quickly.

### **Non-Tariff Barriers**

In 2017, the EAC approved the EAC Elimination of Non-Tariff Barriers Act, which aims to prohibit Member States from engaging in discriminatory trade practices. However, citing Member States' slow implementation and weak enforcement of the Act, companies have complained that non-tariff barriers remain a significant barrier to intra-regional trade.

#### *Quantitative Restrictions*

In instances where domestic agricultural production exceeded projections, the Ministry of Agriculture has imposed quotas to limit imports and stabilize domestic prices.

#### *Import Bans*

Kenya has maintained a ban on genetically engineered (GE) food and feed imports since November 2012.

Kenya's GE ban has blocked both U.S. Government food aid and U.S. agricultural exports derived from agricultural biotechnology. The restriction affects U.S. exports of processed and unprocessed foods and feed ingredients, such as soy, corn, and distiller dried grains with solubles. The GE import ban also affects trans-shipment; as a result, U.S. Government food aid shipments of GE commodities destined for inland East African countries, which would ordinarily enter through the Port of Mombasa, must be diverted to other ports or reformulated with non-GE commodities.

#### *Customs Barriers and Trade Facilitation*

Kenya ratified the WTO Trade Facilitation Agreement in December 2015. In June 2021, Kenya presented its notification on arrangements for the provision of technical assistance support. In January 2022, Kenya also submitted its transparency notification on: (1) the operation of its single window; (2) the use of customs brokers; and, (3) customs cooperation.

U.S. companies have raised concerns about the length of time required for Kenyan Customs to release shipments, as well as the use of excessive formalities. Many U.S. companies have commented that Kenya's one stop customs clearance system does not operate as intended, and that pre-arrival processing of electronic documents is ineffective. Other U.S. companies have raised concerns about the inconsistent application of classification and valuation decisions, as well as unnecessary transit inspections. U.S.

industry has also expressed frustration with inadequate *de minimis* relief from customs duties and taxes for express shipments. Kenya's customs law appears to reward customs officers for aiding in the seizure of goods up to the value of the imports that have been seized.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

#### *Verification of Conformity to Standards Procedures*

In 2019, Kenya issued the *Standards (Verification of Conformity to Standards and Other Applicable Regulations of Imports) Regulations*, which subjects all imports to the Pre-Export Verification of Conformity (PVoC) program, except those meeting certain exemption criteria. The PVoC program requires pre-shipment inspection of most imports, in their country of origin, to ensure compliance with applicable Kenyan standards and regulations. Under the PVoC program, an importer must obtain a Certificate of Conformity (CoC) from a PVoC inspection agent designated by the Kenya Bureau of Standards (KEBS). The PVoC inspection agent assesses what, if any, testing is required to meet Kenyan standards and regulations. Kenya asserts that the program is necessary to address health, environmental, and security concerns, but U.S. industry has raised concerns that the program's testing, certification, and labeling requirements deviate from international standards without providing an additional measure of safety.

Certain products, such as human and veterinary pharmaceutical products, aircraft, marine craft, pesticides, plants, seeds and planting materials and live animals, are exempt from the PVoC program.

Goods arriving at the port of entry without having undergone an inspection through the PVoC program to obtain a CoC, are subject to inspection by KEBS. The cost of this inspection is five percent of the customs value of the shipment, and the goods may be rejected. After obtaining a CoC or undergoing inspection at the port of entry, the importer must also purchase from KEBS an Import Standardization Mark label that must be affixed to each imported article or its retail packaging.

### **Sanitary and Phytosanitary Barriers**

#### *Agricultural Biotechnology*

Kenya is in the process of commercializing Bt cotton, and research continues on other genetically engineered (GE) crops. In September 2017, Kenya approved open field trials for GE cotton (MON 15985) and derived varieties, and for GE corn developed for drought tolerance and insect resistance under the Water Efficient Maize for Africa project. While political bottlenecks have slowed the process for dissemination and use of GE corn, the national performance trials for GE cotton are complete. In December 2019, Kenya approved the first commercial cultivation of Bt cotton beginning in March 2020, as well as import of Bt cottonseeds. In August 2020, the Bt cotton open field trials commenced in western Kenya. Kenya's commercialization of GE *Gypsophila* flower (baby's breath) intended for export, including to the United States, is stalled due to concerns that it could potentially jeopardize Kenya's market access to the European Union. In June 2021, Kenya became the first country in the world to greenlight the environmental release of GE cassava, which will now need to complete National Performance Trials and be registered as a new variety before full commercial release. Following the completion of research field trials, Bt corn is poised to advance to Kenya's Cabinet for exemption from the GE ban and possible final approval in 2022. Kenya's research trials of bio-fortified sorghum, bacteria wilt-resistant bananas, and virus-resistant sweet potato have stalled due to lack of funding. However, Kenya continues to maintain the ban of GE food and feed imports introduced in November 2012.

The U.S. Government continues to engage the Kenyan Government and stakeholders to support the adoption of GE and other emerging technologies.

### *Animal Genetics*

In January 2020, Kenya's Office of the Director of Veterinary Services (DVS) and the U.S. Department of Agriculture Animal and Plant Health Inspection Service agreed on veterinary requirements and certificate attestations for the importation of bovine embryos from the United States. However, in May 2020, DVS proposed additional requirements, beyond those previously agreed by the two agencies. Technical work is ongoing.

### *Meat, Milk, and Poultry Products*

Although Kenya accepts standardized sanitary certifications for meat, dairy, and poultry products, Kenya maintains complex, non-transparent, and costly requirements for the importation of all meat, dairy, and poultry products including a "Letter of No Objection to Import Permit" (no-objection letter) from DVS under the Ministry of Agriculture, Livestock, and Fisheries. Before issuing a no-objection letter, DVS requires an importer to explain the reason for importation through a "Letter of Application to Import" and to specifically address the market need the import would meet. DVS issues the no-objection letter for meat, dairy, and poultry products at its discretion on a case-by-case basis. Importers have reported that DVS has at times provided them with non-sanitary-related grounds for denying permits, such as the local availability of a similar product. DVS does not provide written justification for not issuing the letter.

### *Plants and Plant Products*

In January 2020, Kenya and the United States reached an agreement resolving Kenya's concerns about flag smug fungus, which resulted in an approved certification protocol, enabling the importation of U.S. Pacific Northwest wheat for the first time since 2006.

Kenya subjects imported and domestically produced corn to a total aflatoxin limit of 10 parts per billion (ppb) and a 13.5 percent maximum moisture content. As a result, most U.S. exports are denied permits for importation. Kenya's aflatoxin limit is lower than the U.S. Department of Health and Human Services Food and Drug Administration action level of 20 ppb. Under special circumstances, such as food shortages, Kenya has allowed higher moisture content for imported corn, which must then be dried and milled immediately upon arrival to reduce the risk of aflatoxin contamination. For U.S. corn exports that are permitted under special circumstances, the costs associated with the additional processing requirements make U.S. corn exports largely uncompetitive.

Kenya also restricts popcorn imports to a six percent maximum moisture requirement. The U.S. limit is 12.5 percent to 15 percent.

Kenya does not permit whole pea imports due to concerns about the *Pseudomonas pisi* fungus but permits the import of split peas. Kenya also prohibits bean imports from the United States due to the occurrence of *Corynebacterium flaccumfasciens* bacteria in some parts of the country. Kenya also prohibits lentils from the United States due to the risk of darnel weed; although, this weed already exists in Kenya.

## **GOVERNMENT PROCUREMENT**

Since May 2015, an initiative dubbed "Buy Kenyan Build Kenya" has required Kenyan state ministries, departments, and agencies to procure at least 40 percent of their supplies locally. For example, government

entities are required to give an exclusive procurement preference to motor vehicles and motorcycles produced by companies that have assembly plants in Kenya.

The Public Procurement and Asset Disposal Act (PPADA) of 2016 reserves procurement preferences for Kenyan-owned firms and goods manufactured or mined in Kenya. For tenders funded entirely by the government with a value of less than KES 50 million (approximately \$455,000), the preference for Kenyan firms and goods is exclusive. Where the procuring entity seeks to contract with non-Kenyan firms or procure foreign goods, the PPADA requires a report detailing evidence of an inability to procure locally. The PPADA calls for at least 30 percent of government procurement contracts to go to firms owned by women, youth, and persons with disabilities. The PPADA further reserves 20 percent of county-level procurements for residents of that county. In April 2020, the National Treasury issued implementing regulations for the PPADA, which mandate that tender proposals include skills and knowledge transfer to Kenyan citizens, a 75 percent set-aside of employment opportunities for Kenyans, and a local content plan.

U.S. firms have had very limited success bidding on Kenyan Government tenders. There are widespread reports that corruption often influences the outcome of public tenders, and many of these tenders are challenged in the courts. Foreign firms, some without proven track records, have won government contracts when partnered with well-connected Kenyan firms or individuals. As of January 2019, all tenders and procurements are required to be undertaken through the Kenyan Government's electronic procurement system, the Integrated Financial Management Information System (IFMIS). U.S. companies have expressed concerns about IFMIS due to insufficient connectivity and technical capacity in county government offices, apathy from county government officials, central control shutdowns, and security gaps that render the system vulnerable to manipulation and hacking.

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

## **INTELLECTUAL PROPERTY PROTECTION**

Kenya's Statute Law (Miscellaneous Amendments) Act of 2018, which entered into force in January 2019, includes amendments that improve the protection and enforcement of intellectual property (IP) by updating Kenya's copyright and trademark legislation, including by enabling the recordation of trademarks with customs authorities. However, concerns related to the widespread availability of counterfeit and pirated goods remain. Stakeholders also have raised concerns regarding the widespread distribution of copyright infringing content online and have identified opportunities for increased collaboration with Internet service providers to expeditiously remove or disable access to such content on their networks.

## **SERVICES BARRIERS**

### **Insurance Services**

Kenya requires that a minimum of one-third of the equity of an insurance company be held by Kenyan persons or citizens of another EAC Member State. In addition, Kenya requires that local insurers offer at least 20 percent of their treaty reinsurance contracts to the state-owned Kenya Reinsurance Corporation (Kenya Re). These restrictions prevent U.S. insurers from fully accessing the Kenyan market. Although regulatory approval can be sought, Kenya generally prohibits cross-border Difference-in-Conditions and Difference-in-Limits insurance trade, which is an important type of insurance for facilitating U.S. investment in countries such as Kenya because it covers unique risks faced by U.S. firms.

## **Telecommunications Services**

Licensed telecommunications service providers are required to maintain 20 percent ownership and control by Kenyan persons within four years from the issuance of a license. Additionally, participants in the telecommunications services market report long delays in the licensing process, creating an unpredictable regulatory environment for foreign investors.

## **Other Services**

The 2016 Private Security Regulations Act restricts foreign participation in the private security sector by requiring that at least 25 percent of shares in private security firms be held by Kenyans.

## **BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE**

### **Data Localization Requirements**

Kenya's 2019 Data Protection Act (DPA) includes unclear and potentially restrictive provisions governing the cross-border transfer of personal information. The DPA requires that data controllers provide "proof" that personal data will be secure as a condition for transferring the data outside Kenya, but does not describe what would constitute proof. The DPA also requires consent of the data subject as a condition for the cross-border transfer of any "sensitive personal data," a broad category of information. Such conditions may prove burdensome for firms that supply services on a cross-border basis or depend on data processing systems located abroad. Additionally, the Act empowers the Data Commissioner to prohibit the cross-border transfer of certain categories of data, creating uncertainty for businesses operating in Kenya that depend on cross-border data flows. The Office of the Data Protection Commissioner has not published the implementing regulations for the DPA.

### **Internet Services**

The 2018 Computer Misuse and Cybercrimes Act (CMCA) includes provisions that could limit online access to information and curtail the creation of user-generated content, potentially limiting the ability of some service providers to operate profitably in Kenya. Under the CMCA, service providers can be held liable for the publication of content deemed factually incorrect. Kenya has yet to publish the implementing regulations companies are required to comply with under the CMCA's cybersecurity measures.

In August 2020, Kenya published the November 2019 National Information, Communications, and Technology (ICT) Policy, which updated a 2006 policy. This ICT Policy is intended to facilitate universal access to ICT infrastructure and services. The provisions include a local equity requirement that mandates that firms providing ICT services must have at least 30 percent Kenyan ownership as well as preferences and incentives for Kenyan-owned ICT manufacturers.

The 2015 EAC Electronic Transactions Act provides some liability protection for intermediaries of non-IP-protected content created by third parties; however, it fails to include any counter-notice procedures for a third party to challenge a content takedown request and removes legal protections if the intermediary profits from the content. Lack of a counter-notice provision exposes internet intermediaries to business process disruptions from potentially frivolous takedown notices. Removing legal protection for intermediaries that profit from the content could remove an entire class of intermediaries from the scope of liability protections and could result in a general obligation on these intermediaries to monitor internet traffic.

## *Digital Taxation*

In accordance with the 2021 Finance Act, Kenya applies a 1.5 percent digital services tax (DST) to non-resident businesses. The DST taxes gross revenue accrued through any “digital marketplace,” defined as “an online platform which enables users to sell or provide services, goods, or other property to other users.” Kenya has not expressed support for the OECD/G20 Inclusive Framework’s October 8, 2021 Statement that commits participating governments to provide for the removal of unilateral DSTs for all companies.

## **INVESTMENT BARRIERS**

### **Limitations on Foreign Equity Participation**

Kenya imposes foreign ownership limitations in several sectors, often in combination with local content requirements. For example, the Communications Authority, Kenya’s telecommunications regulator, requires 30 percent Kenyan shareholding within three years of receiving a license. The 2016 Private Security Regulation Act restricts foreign participation in the private security sector by requiring that Kenyans hold at least 25 percent of shares in private security firms. The 2010 Kenya Insurance Act restricts foreign capital investment to two thirds, with no single person controlling more than 25 percent of an insurer’s capital. Additionally, since 2015, Kenya has imposed regulations requiring that Kenyans own at least 15 percent of the share capital of derivatives exchanges. The Nairobi Securities Exchange does not have foreign ownership restrictions and listed companies can be 100 percent foreign owned.

The 2016 Mining Act imposes a variety of restrictions on foreign participation in the mining sector. Among other restrictions, the Mining Act reserves acquisition of mineral rights for Kenyan companies; requires 60 percent Kenyan ownership of both mineral dealerships and artisanal mining companies; and requires large-scale mining operations to offer 20 percent equity on the Nairobi Securities Exchange within three years of commencing operations, while also offering 10 percent “free-carried interest” (free equity stake in capital operations) to the Kenyan Government.

The 2011 National Construction Authority Act (NCAA) imposes local content restrictions on “foreign contractors,” defined as companies incorporated outside Kenya or with more than 50 percent ownership by non-Kenyan citizens. The NCAA also contains provisions requiring foreign contractors to hire from the local labor market, unless the National Construction Authority determines the necessary technical skills are unavailable locally. In addition, the NCAA requires foreign contractors enter into subcontracts or joint ventures assuring that at least 30 percent of the contract work is done by local firms.

### **Local Content Requirements**

When making initial investments, foreign investors with foreign staff are required to submit plans for the gradual phase out of non-Kenyan employees. In considering an application for investment, the Kenya Investment Authority reviews the extent to which such investment or activity will contribute to employment creation, acquisition of new skills or technology, and government revenue.

### **Real Estate Restrictions**

The 2010 Kenyan Constitution prohibits foreigners from holding freehold land title anywhere in the country, permitting only leasehold titles of up to 99 years. While the process for leasing developed land and property is clear and established, the process for obtaining clear title of undeveloped land is opaque and unreliable.

For undeveloped land investors risk receiving fake title deeds or leasing a plot with multiple titles and unauthorized sales.

The 2019 Land Value (Amendment) Act guides compensation for eminent domain land acquisitions. The value of compensation is based on market rates and tax returns for the land in question, however, that data is often non-existent for community land.

## **STATE-OWNED ENTERPRISES**

The Kenyan Government wholly owns the National Oil Corporation and the Kenya Pipeline Corporation, and limits competition with these companies. Other SOEs, including Kenya Electricity Generating Company, Kenya Electricity Transmission Company, Kenya Power (formerly Kenya Power and Lighting Company), and the Geothermal Development Company, dominate the electricity generation, transmission, and distribution segments of the energy sector. Kenya Power's internal procurement rules require that 80 percent of supplies be sourced from Kenyan-registered companies to encourage foreign suppliers to establish manufacturing facilities in the country.

Certain SOEs have enjoyed preferential access to markets. Examples include Kenya Re, which enjoys a guaranteed re-insurance market share; Kenya Seed Company, which has fewer marketing barriers than its U.S. competitors; and the National Oil Corporation, which benefits from retail market outlets developed with government funds. Some SOEs have also benefited from easier access to government loan guarantees, subsidies, and credit at favorable interest rates.

## **OTHER BARRIERS**

### **Bribery and Corruption**

Corruption remains a substantial barrier to doing business in Kenya. U.S. firms continue to report challenges competing against foreign firms that are willing to ignore legal standards or engage in bribery and other forms of corruption. Corruption is widely reported to affect government procurements at the national- and county-levels. Kenya has not effectively implemented its anticorruption laws. U.S. firms routinely report direct requests for bribes from all levels of the Kenyan Government.

In January 2020, Kenya began an anticorruption campaign led by the Ethics and Anticorruption Commission and the Office of the Director of Public Prosecution. While this campaign has resulted in some convictions, none of them involved high-profile individuals.

Despite efforts to increase efficiency and public confidence in the judiciary, the backlog of cases and continued corruption undermine the judicial system's credibility and effectiveness. While judicial reforms are moving forward, bribes, extortion, and political considerations continue to influence court cases. As such, foreign and local investors risk lengthy and costly legal procedures.

### **Export Barriers**

To discourage vandalism of infrastructure and encourage domestic manufacturing that uses scrap metal, the 2014 Scrap Metal Act restricts the export of any form of scrap metal without authorization from the Ministry of Industry, Trade, and Cooperatives (MoITC). A 20 percent export levy on the approved export of copper waste and scrap metal encourages local smelting, enhances the value of local copper waste, and discourages the black-market export of copper cables and wires. The 2013 Agriculture, Fisheries and Food Authority Act prohibits exports of raw agricultural produce such as macadamia nuts, *Bixa orellana*, cashew nuts, and pyrethrum without authorization from the Kenyan Cabinet Secretary for Industry, Trade, and Cooperatives.

# KOREA

## TRADE AGREEMENTS

### United States–Korea Free Trade Agreement

The United States–Korea Free Trade Agreement (KORUS) entered into force on March 15, 2012. Korea immediately eliminated duties on nearly 80 percent of bilateral trade in industrial and consumer goods. Duties on most other such goods were phased out in stages over 10 years and have been eliminated as of January 1, 2021. The United States and Korea reached agreement in 2018 to modifications and amendments to KORUS and a related letter exchange. These modifications and amendments entered into force on January 1, 2019, and include improvements to remove a range of regulatory and non-tariff barriers, including doubling from 25,000 to 50,000 the number of U.S.-origin vehicles per manufacturer per year that may be imported and sold in Korea that meet U.S. safety standards. Progress also was made on outstanding issues relating to the implementation of KORUS, including agreement by Korea to follow certain globally accepted customs-related principles and to establish a working group to address issues related to origin verification. The United States and Korea meet regularly to review the implementation and operation of KORUS and to address outstanding issues.

## IMPORT POLICIES

### Tariffs

Under KORUS, Korea has eliminated tariffs on nearly all U.S. industrial goods exports. Tariffs continue to be phased out for certain seafood products which are scheduled to be eliminated in 2026. Korea has eliminated tariffs on the majority of U.S. agricultural products, while maintaining tariff-rate quotas (TRQs) on a handful of U.S. agricultural exports. To increase the competitiveness of the domestic agricultural and livestock industries, in 2018 Korea voluntarily announced duty-free Most-Favored-Nation (MFN) TRQs for the feed grain complex, made up of 18 commodities including corn, soymeal, barley, and oats.

### *Origin Verification*

The United States has worked closely with Korea to resolve issues surrounding onerous verifications by the Korea Customs Service (KCS) for claims of preferential tariff treatment under KORUS and to ensure that U.S. exporters and producers receive the benefits provided for under KORUS. In the context of the 2018 KORUS amendment discussions, Korea agreed to specific systemic changes to its origin verification procedures. These commitments, confirmed through an exchange of letters, were accompanied by agreement to establish a new KORUS Rules of Origin Verification Working Group as an ongoing forum to address traders' concerns. USTR continues to hold discussions with the Ministry of Trade, Industry and Energy (MOTIE) and KCS to ensure U.S. exporters do not face unreasonable verification challenges. In addition, U.S. Customs and Border Protection and KCS meet regularly to share best practices, exchange views on verification processes, and better align Korean and U.S. customs procedures.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

#### *Chemicals*

The revised Act on the Registration and Evaluation of Chemicals (AREC, also known colloquially as K-REACH) entered into force on January 1, 2019. The amended AREC aims to register all chemical substances, manufactured in or imported to Korea in amounts exceeding one ton in annual volume, with the Ministry of Environment (MOE) by 2030, with a first deadline at the end of 2021 for substances with an annual volume over 1,000 tons. All new substances manufactured in amounts below 100 kg only require a notification to the MOE. The United States has raised a number of concerns on the amended act with regard to: the lack of implementation guidance, the insufficient time for companies to implement the requirements, and the AREC's insufficient protection for confidential business information shared by compliant companies. In addition, companies have raised concerns that the selection process for testing existing chemicals is not transparent, and may in effect require companies to act inconsistently with the principle of minimizing animal testing. The MOE made further changes in April 2021 to the Presidential Decree that narrowed application of low volume exemptions by requiring registration of compounds exceeding 1,000 kg imported country-wide on an aggregate basis.

The revised Korean Occupational Health and Safety Act (K-OSHA) took effect in January 2021. The amended act requires chemical substance manufacturers and importers to submit material safety data sheets to the Ministry of Employment and Labor (MOEL). Chemical firms have expressed concern that the K-OSHA's strict reporting requirements risk exposing confidential business information. Companies that wish to protect confidential business information must submit approvals for non-disclosure to the MOEL. The request, if approved, is valid for five years. The United States will monitor the implementation of the amendments.

The Korea Persistent Organic Pollutants Control Act, as amended in September 2020, prohibits the manufacture, import, and use of perfluorooctanoic acid and its salts. Korea has not clarified when the new restrictions will take effect, or how the relevant products will be tested and the component chemicals measured. Under these circumstances, industry has raised serious concerns that firms cannot adequately prepare for compliance with the law. The United States will monitor the implementation of the amendments.

The Chemical Control Act (K-CCA) aims to regulate the market access, distribution, handling and disposal of chemicals. In 2018, MOE proposed an amendment to the K-CCA that would require disclosure of the full composition of chemical mixtures by importers and manufacturers in line with its new "Universal Chemical Tracking System." However, U.S. exporters contend that full composition disclosure fails to protect confidential business information, and that compliance in declaring the contents of third-party supplied materials would be difficult. If U.S. exporters cannot fulfill the requirements, they may cease exporting these substances to Korea. The proposed amendment has not yet been adopted, however. The United States continues to urge Korean ministries to adopt international standards to support a risk-based approach to regulations, and will continue to engage Korean authorities if implementation progresses.

#### *Packaging Materials and Labeling Regulations*

In December 2018, Korea issued the Act on the Promotion of Saving and Recycling of Resources (Recycling Act). The Recycling Act focuses on consumer products packaging and requires packaging evaluation, gradation, and labeling with respect to recyclability. In January 2019, MOE issued the draft Package Recycle Classification Regulation, which specifies the criteria used to evaluate and label

packaging materials and methods. The regulation requires a wide range of products to have packaging labeled as “difficult” or “easy” to recycle. The regulation did not include guidance on the labeling requirements and industry is concerned that using stickers containing the Korea-specific information over the existing packaging (rather than different packaging for Korea) will not be allowed. Korea subsequently notified the draft regulation to the WTO. The United States submitted comments to the WTO Committee on Technical Barriers to Trade (WTO TBT Committee) in November 2019 and raised the issue in the WTO TBT Committee meetings in 2021. The United States also raised the issue in the KORUS TBT Committee meetings in 2019 and 2021. In response to comments submitted by U.S. industry, Korea modified the draft regulation to address many of the concerns raised by stakeholders. The U.S. Government will continue to monitor this issue.

U.S. firms remain concerned about the lack of clarity relating to the calculation method for packaging space ratios used by Korean Government authorities. Moreover, amendments to the Recycling Act proposed in August 2020 and November 2020 would mandate pre-launch testing of packaging materials and labeling of small electronic products to ensure compliance with specified packaging requirements. Stakeholders have raised concerns that the amendments would delay product releases, particularly when not provided with sufficient time to find alternative solutions to adapt to new requirements. The United States continues to seek clarifications about these rules.

## **Sanitary and Phytosanitary Barriers**

### *Agricultural Biotechnology*

Korea’s regulatory system for agricultural biotechnology continues to present challenges to U.S. agricultural exports. The approval process for new biotechnology crop varieties is onerous and protracted due to inefficiencies that include redundant reviews and excessive data requests. The regulatory approval is managed across five different agencies, each with its own process and data submission requirements. While there is no clear mechanism to address the inefficiencies of Korea's regulatory process, Korea has indicated a willingness to continue discussing potential reforms to its regulatory process. The United States and private industry have provided ideas on how to improve the process and developed pilot projects to test a streamlined process for biotechnology reviews. These initiatives have had little impact however because Korea’s Living Modified Organisms (LMO) Act mandates participation by the five agencies, limiting the potential for streamlining the system without legislative changes. The United States had multiple discussions with MOTIE and other relevant agencies throughout 2020 and 2021 and will continue to engage with Korea on improving its approval process for agricultural biotechnology.

In May 2021, Korea proposed a draft revision of the LMO Act to include a policy on products of innovative biotechnologies (e.g., genome editing). Korea proposed to classify genome edited products as LMOs, but also introduced a pre-review system to exempt certain products from a full risk assessment under certain conditions. Once the LMO Act revision is finalized, Korea will develop regulations to implement the pre-review system and establish approval procedures for products that are not exempted. The United States has engaged extensively with MOTIE on its proposed amendments to the LMO Act, and will continue to work with Korea to develop science-based processes that facilitate access to these technologies and products developed with them.

### *Poultry*

In early 2017, Korea’s Ministry of Food and Drug Safety (MFDS) detected semicarbazide (SEM) residues in a shipment of U.S. poultry products, followed by additional detections in subsequent shipments, resulting in the delisting of multiple establishments from which the products were exported. Although the presence of SEM can be an indicator of the presence of nitrofurazone, a veterinary drug that is banned in both the

United States and Korea, the U.S. Department of Agriculture's Food Safety and Inspection Service maintains that SEM is a poor indicator for the use of nitrofurazone. Work is ongoing to determine the cause of the SEM residues.

### *Beef and Beef Products*

Prior to 2008, Korea restricted the importation of U.S. beef and beef products, citing concerns related to bovine spongiform encephalopathy. In 2008, the United States and Korea reached a bilateral agreement to fully reopen Korea's market to U.S. beef and beef products. However, as a transitional measure, U.S. beef and beef products imported into Korea had to be derived from animals less than 30 months of age. This "transitional measure" has remained in place more than a decade later. In addition, imports of processed beef products, including ground beef patties, beef jerky, and sausage are still prohibited. Despite these barriers, the United States exported approximately \$2.4 billion in beef to Korea, making Korea the largest export market for U.S. beef by value and second largest by volume in 2021.

### *Horticultural Products*

Several U.S. market access requests remain pending with Korea's Ministry of Agriculture, Food and Rural Affairs' (MAFRA) Animal and Plant Quarantine Agency. Among these are expanded access for blueberries from U.S. States other than Oregon; improvement in the cherry import program; and access for apples, pears, Texas grapefruit, and stone fruits. The United States requested that MAFRA expedite the approval process for these products. The United States and Korea continued efforts to establish access for U.S. exports, and discussed these issues during a meeting of the KORUS Sanitary and Phytosanitary Measures (SPS) Committee in December 2020 and at a bilateral plant health technical meeting in October 2021. The United States will continue to press Korea to allow imports of these fruits from the United States.

### *Maximum Residue Limits*

MFDS has been shifting to a new positive list system (PLS) for agrochemical residues and veterinary drugs. Under the new system, Korea will no longer allow imports of food containing agrochemical residues unless the substance has been approved for the commodity in question, and a maximum residue limit (MRL) has been established. Korea began a phased implementation of the PLS for tropical fruits, oilseeds, and tree nuts in December 2016, and for all other plant products in January 2019.

Korea requires the establishment of new import tolerances for agrochemicals that were previously permitted but not officially registered for use in Korea, as well as for new substances that do not have any MRLs in Korea. To minimize disruption to trade, Korea delayed the full elimination of existing MRLs for agrochemicals not registered for use in Korea until the end of 2021. As of January 2022, Korea's temporary MRLs have been cancelled and U.S. agricultural exports are required to comply with Korea's domestic MRLs, import tolerance, or a default of 0.01 parts per million (ppm).

Korea also plans to introduce a PLS for meat, poultry, and other animal products. Like the PLS for agrochemical residues, Korea will begin a phased implementation of the PLS for veterinary drugs starting in January 2022. First, Korea will lower the default limit for antimicrobial residues from 0.03 ppm to 0.01 ppm, in the absence of Korean or Codex Alimentarius Commission MRLs. Under the second phase beginning in January 2024, in the absence of a Korean MRL or import tolerance, Korea will apply a default of 0.01 ppm for veterinary drugs in six major categories of products, including beef, pork, chicken, milk, eggs, and fishery products. The United States will work with Korea to ensure a smooth implementation of the PLS for these products.

## GOVERNMENT PROCUREMENT

Korea is Party to the WTO Agreement on Government Procurement (GPA). Korea has made commitments to open its government procurement to U.S. suppliers under the revised GPA and KORUS. KORUS provides U.S. suppliers significantly expanded access to central government procurements through a substantially lower threshold for eligible central government procurement contracts of goods and services than exists in the WTO GPA (\$100,000 versus the current GPA threshold of \$182,000). While KORUS does not cover procurement by Korean sub-central government entities and government enterprises, the GPA provides U.S. businesses with access to procurement conducted by most Korean provinces, cities, and government enterprises.

Under the GPA, Korea applies a very high threshold for procurement of construction services by sub-central government entities and government enterprises (SDR 15,000,000 or approximately \$21.3 million). This threshold is three times higher than the threshold applied by the United States for similar entities. However, for central government procurements of construction services, Korea and the United States apply equivalent thresholds (SDR 5,000,000 or approximately \$7.1 million).

The Korean Government has instituted a number of policies intended to promote domestic small and medium-sized enterprises (SMEs). Korea does not cover set-asides for SMEs under the WTO GPA or KORUS. The Act on Facilitation of Purchase of Small and Medium Enterprise Manufactured Products and Support for Development of Their Markets categorizes companies by size, with multinationals frequently categorized as “large” (regardless of their actual size) simply because the company is foreign-based or multinational, while local companies are categorized as “small” or “medium.” As such, “large” foreign companies are only able to bid on projects valued more than \$220,000, while most local companies can bid on the majority of projects. Similarly, the Software Industry Promotion Act restricts bids for certain government contracts for software services to “small and medium-sized” entities, again leaving foreign-based and multinational firms out of the government procurement process.

In November 2020, MOTIE announced a “Localized Gas Turbine Competitiveness Plan,” which included a proposal to procure locally-developed technology without competitive bidding procedures. The United States has raised concerns with how this proposal would be implemented and will continue to engage with Korea to ensure that implementation is consistent with Korea’s international procurement obligations.

### *Encryption and Security Requirements for Public Procurement of Information and Communications Technology Equipment*

Korea and the United States are both members of the Common Criteria Recognition Arrangement (CCRA), under which products certified at any CCRA-accredited laboratory in any member country should be accepted as meeting the certification requirements in any other member country. Korea, however, requires network equipment procured by government agencies to undergo additional verification in Korea by government authorities, even if the products received CCRA certification outside Korea. Korea’s National Intelligence Service (NIS), which leads this process, has managed the verification process in a non-transparent fashion, without soliciting public comment, and has broadened these requirements beyond areas of national security to apply to any government entity, including schools, local governments, libraries, and museums. U.S. stakeholders have raised concerns that Korea is also expanding the scope of these requirements (including additional verification) to products not normally considered security products, such as routers, switches, and Internet Protocol private branch exchange devices (IP-PBX).

Korea requires network equipment procured by public sector agencies (*i.e.*, government agencies and quasi-government agencies) to incorporate encryption functionality certified by NIS. NIS certifies encryption modules based only on the Korean-developed ARIA and SEED encryption algorithms (which, although

recognized as ISO standards, are in practice primarily used in Korea), rather than the internationally standardized Advanced Encryption Standard algorithm in widespread use worldwide. Some U.S. suppliers have not been able to sell virtual private network and firewall systems to Korean public sector agencies due to this restriction. The United States has urged Korea to ensure that equipment based on widely used international standards has full access to Korea's public sector market.

#### *Cloud Security Certification for Public Sector Cloud Service Procurement*

Though Korea passed the Cloud Computing Promotion Act (Cloud Act) in 2015, significant barriers still exist to the adoption of public cloud services. In 2016, the Korea Internet and Security Agency created a Cloud Security Assurance Program (CSAP) governing public sector cloud service procurement. The CSAP is a key barrier for U.S. cloud service providers (CSPs) in the Korean public sector market, as U.S. firms are unable to meet some components of the certification program without creating a separate Korea-unique product, including segregating facilities for exclusive use for government-owned customers. It appears unprecedented among developed countries, which, apart from national security applications, have generally embraced a "multi-tenant" architecture, allowing both commercial and public sector customers to share the same computing resources, subject to robust access controls.

Korea's onerous CSAP requirements have created conditions that limit U.S. CSP's ability to participate in Korea's public cloud market, encompassing all central and local government ministries, affiliated public institutions, and educational institutions (from primary schools to universities). In July 2021, the Ministry of the Interior and Safety announced all Korean Government data will be migrated to the cloud by 2025, but only those CSPs that have CSAP certification can participate in the government's digital transformation initiative. The National Assembly is considering a proposed amendment to the 2015 Cloud Act, submitted in July 2021, which would elevate the CSAP from an administrative guideline into a legal requirement. The United States will continue to engage with Korea to align Korea's cloud security certification requirements with other internationally accepted standards.

## **INTELLECTUAL PROPERTY PROTECTION**

In general, Korea has a strong regime of intellectual property (IP) protection and enforcement. Under KORUS, Korea agreed to strong enforcement provisions for various types of IP rights and agreed to join key multilateral IP agreements. Moreover, the Korean Government prioritizes IP protection, as Korea is a significant creator of IP. Nevertheless, some IP-related concerns remain, including with respect to: the transshipment of counterfeit goods, especially via small express-shipped parcels; geographical indications; and a lack of civil and criminal penalties sufficient to deter IP violations. The United States continues to work with Korea to improve these areas.

In addition, in January 2021, amendments to the Copyright Act were introduced in the National Assembly. Stakeholders have expressed concerns over the amendments, including in the areas of collective licensing; a lack of clarity concerning the scope and application of and possible extensions to the digital audio transmission right; the introduction of portrait rights into the Copyright Act; and possible restrictions on the freedom to contract. As of October 2021, Korea's Copyright Act amendments remain under review by the standing committee for Culture, Sports and Tourism. However, the Unfair Competition Prevention and Trade Secret Protection Act was amended in November 2021 to incorporate a form of portrait rights. The United States continues to engage with Korea on these copyright-related amendments and urge Korea to ensure that interested stakeholders have meaningful opportunities to provide input.

## SERVICES BARRIERS

### Audiovisual Services

In Korea, foreign programs may not exceed 20 percent of terrestrial television or radio broadcast time or 50 percent of cable or satellite broadcast time in either the first half or second half of the year. Within those overall quotas, Korea further limits broadcast time for foreign films to 75 percent of all films for terrestrial broadcasts and 80 percent for cable and satellite broadcasts. Foreign animation is limited to 55 percent of all animation content for terrestrial broadcast and 70 percent of all animation content for cable and satellite broadcasts. Foreign-produced popular music is limited to 40 percent of all broadcast music content. Another six-month quota limits content from any one country to 80 percent of the total quota available to foreign films, animation, or music. KORUS protects against quota increases in the allocation to domestic content and ensures that new platforms, such as online video and streaming music, are not subject to these legacy limits. Notwithstanding this commitment, multiple Korean Government agencies and the National Assembly have been discussing ways to incorporate online media streaming platforms into the existing restrictive regulatory framework for legacy media, including potential local content requirements for U.S. over-the-top platforms.

In addition, in the summer of 2021 various legislators introduced bills in the National Assembly seeking to oblige content providers to pay Internet service providers “network usage fees.” Such legislation, if enacted, would raise concerns under Korea’s international trade obligations. The United States will continue to monitor Korea’s legislative efforts in this regard.

Korea also maintains a screen quota for domestic films shown in theaters, requiring local movie screens to show domestic films at least 73 days per year.

The Broadcasting Act contains restrictions on voiceovers (dubbing) and local advertising for channels retransmitting foreign content. These prohibitions continue to be of concern to U.S. stakeholders as they diminish the value of such channels in the Korean market.

### Financial Services and Insurance Services

To implement its commitments related to the transfer of information under KORUS and the Korea–European Union Free Trade Agreement, Korea adopted regulations in 2013 governing the outsourcing of data and information technology (IT) facilities to allow financial institutions located in Korea to transfer data to affiliates outside Korea and to allow affiliates outside Korea to perform certain data processing and other functions. In June 2015, the Financial Services Commission (FSC) revised its regulations to: eliminate the approval process for the outsourcing of IT facilities; lift restrictions on third-party outsourcing or re-outsourcing; establish a broader application of *ex post facto* reporting requirements to process consumer or corporate transaction data; and abolish the Financial Supervisory Service security review in the application process.

U.S. companies continue to express concern over substantial consent requirements, such as consent for both the specific data being transferred and the specific purpose for the transfer. These requirements have been particularly challenging for the reinsurance industry. The United States continued in 2021 to urge Korea to resolve this issue. The FSC has informed the U.S. Government that the FSC has changed its interpretation of relevant rules such that U.S. reinsurance companies now can send personal data of primary insurance policy holders for purposes of data processing and underwriting without additional consent. The U.S. Government will continue to monitor Korea’s overall implementation of its FTA commitments in financial services, including with respect to the transfer of data.

Responding to industry requests, the FSC announced the Plan for the Expansion of Cloud Usage in the Financial Sector in July 2018. The FSC amended the Regulation on Supervision of Electronic Finance and Data Protection Standards for Cloud Computing Services in December 2018, which went into effect on January 1, 2019. The regulation expands the scope of cloud usage in the financial sector, provides procedures and safety standards, and clarifies legal requirements between financial companies and cloud service providers. However, U.S. industry has expressed concerns that implementation of this measure favors local cloud service providers and thus limits opportunities for U.S. cloud service suppliers and data processing firms seeking to offer such services on a cross-border basis, and reduces flexibility of foreign financial services companies. The United States will continue to engage with Korea on these issues.

### *Facilities Localization*

Korea maintains localization requirements on facilities with respect to payment gateway services, preventing suppliers from leveraging investments in facilities located outside Korea. While ostensibly designed to ensure payment data remains in Korea for privacy purposes, such a requirement does not necessarily enhance privacy protection and is at odds with evolving technologies and services, which increasingly rely on globalized networks.

Under the Regulation on Supervision of Credit-Specialized Financial Business, electronic commerce firms operating on a cross-border basis have been prevented from either selling in Korean won or storing domestic consumers' credit card information unless they have registered in Korea as a Payment Gateway (PG) supplier or use a local PG company service for won-denominated transactions. In the absence of a PG registration (which requires firms to develop Korea-specific payment systems and customer interfaces, and to have a local presence in Korea), foreign electronic commerce sites can only process dollar-denominated transactions for which customers enter their credit card information anew each time, which puts them at a competitive disadvantage as compared to local merchants.

### **Professional Services**

Since 2013, Korea has taken steps to open its legal services market, as outlined in KORUS. The amended Foreign Legal Consultants Act now allows foreign law firms to open foreign legal consultant offices in Korea and enter into "cooperative agreements" with Korean firms to handle jointly cases where domestic and foreign legal issues are mixed. Foreign licensed lawyers and firms have been able to establish joint ventures and hire Korean-licensed lawyers since 2017, but several requirements that are unique to Korea discourage U.S. companies from doing so. The Act limits a foreign law firm's ownership of the joint venture to 49 percent and requires the firms composing the joint venture to have been in operation for at least three years. The Act also requires foreign and Korean law firms participating in a joint venture to establish a new separate legal entity under Korean law. In addition, the Act limits the scope of practice of joint ventures. These provisions undermine the legislation's purpose of facilitating trade in legal services between the two countries. The United States continues to urge Korea to review its overall approach to opening the legal services market.

### **Telecommunications Services**

Korea prohibits foreign satellite service providers from selling services (*e.g.*, transmission capacity) directly to end-users without going through a company established in Korea. Given existing investment restrictions, this prohibition significantly restricts the ability of foreign satellite service suppliers to compete in the Korean market. The United States will continue to raise this issue with Korea.

## BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

### Data Localization Requirements

#### *Cross-Border Transfer of Data*

Korea's restrictions on the export of location-based data have led to a competitive disadvantage for international suppliers seeking to incorporate such data into services offered from outside Korea. For example, foreign-based suppliers of interactive services incorporating location-based functions, such as traffic updates and navigation directions, cannot fully compete against their Korean rivals because locally-based competitors typically are not dependent on foreign data processing centers and do not need to export location-based data. Korea is the only significant market in the world that maintains such restrictions on the export of location-based data.

While there is no general legal prohibition on exporting location-based data, exporting such data requires a license. To date, Korea has never approved a license to export cartographic or other location-based data, despite numerous applications by foreign suppliers. U.S. stakeholders have reported that Korean officials, citing security concerns, are linking such approval to a separate issue: a requirement to blur certain integrated satellite imagery of Korea, which is readily viewable on other global mapping sites based outside Korea. Korean officials have expressed an interest in limiting the global availability of high-resolution commercial satellite imagery of Korea but have no ready means of enforcing such a policy, since most imagery is produced and distributed from outside Korea. It is unclear how limiting such availability through specific services (e.g., online mapping) of a particular supplier addresses the general concern, since high-resolution imagery, including for Korea, is widely available as a stand-alone commercial product (and is often available free of charge), and offered by over a dozen different suppliers. The United States is sensitive to Korea's national security concerns, but believes that Korea's restriction on exporting location-based data is a separate issue and will continue to consult with Korea on addressing this market access barrier in the mapping service market.

The 2011 Personal Information Protection Act imposed stringent requirements on service providers seeking to transfer customers' personal data outside Korea. The law requires data exporters to provide customers with extensive information about the data transfer, including the destination of the data, any third party's planned use for the data, and the duration of retention. Less stringent requirements apply to data transfers to third parties within Korea. These restrictions pose barriers to the cross-border provision of Internet-based services that depend on data storage and processing services, provided by a company directly or through third parties, and effectively privilege Korean over foreign suppliers in any data-intensive sector without materially contributing to privacy protection.

In April 2016, Korea amended its IT Network Use and Protection Act, which imposes stringent protections on the personal data collected and handled by telecommunications and online service providers. The amendments impose significant penalties for violating data protection requirements, including heavy fines for telecommunications and online service providers that transfer personal data across borders without consent. Failure to obtain consent results in a fine of up to three percent of the revenue related to the transfer.

In September 2021, the Personal Information Protection Commission submitted a proposed amendment of the Personal Information Protection Act to the National Assembly to increase the fines to three percent of the total global revenue. The proposed amendment would also grant the Personal Information Protection Committee the authority to suspend a company's cross border data transfers in the case of a significant violation, about which U.S. stakeholders have raised concerns. The United States continues to engage with

Korea on the proposed amendment and urge Korea to ensure that interested stakeholders have meaningful opportunities to provide input.

### **Interactive Computer Services**

In May 2020, Korea's National Assembly amended the Telecommunications Business Act to require large content providers to ensure network stability and to appoint local representatives. Industry has voiced concerns that this stability provision obligates content providers to guarantee quality of service on networks they do not control. As of March 2022, several bills introduced in the National Assembly would require foreign content providers to pay network usage fees to Korean Internet service providers (ISPs). Because some Korean ISPs are also themselves content providers, fees paid by U.S. content providers could benefit a Korean competitor. The United States will continue to monitor Korea's legislative efforts in this regard.

In September 2021, Korea became the first country in the world to pass legislation, through an amendment to the Telecommunications Business Act, requiring mobile application marketplaces to permit users to make in-application purchases through payment platforms not controlled by the marketplace itself. The Korea Communications Commission published a draft Presidential Decree in November 2021 providing definitions and other specific implementation and enforcement measures for the law and provided a 40-day public comment period.

As of October 2021, Korea's National Assembly introduced several bills to strengthen local agent requirements for foreign information and communication technology (ICT) firms operating in Korea. The bills seek to designate the Korean offices of foreign ICT firms as the local agents representing their headquarters. Foreign firms generally prefer to set up limited liability companies to avoid the Korea's criminal liability laws that hold CEOs personally liable for all actions of their company and associated infractions.

### **INVESTMENT BARRIERS**

U.S. investors have raised concerns about possible discrimination and lack of transparency in investment-related regulatory decisions in Korea, including decisions by tax authorities and verbal interventions by financial 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 of a company. Since March 2015, Korea has permitted U.S. investors to hold up to 100 percent of the equity interest in a program provider not engaged in news reporting, multi-genre programming, or home shopping, but foreign cable/satellite retransmission channels are limited to 20 percent of the total number of operating channels.

In addition to the restrictions in telecommunications and key services sectors, Korea maintains other restrictions on foreign investment, including a prohibition on foreign investment in rice and barley farming and a 50 percent foreign equity limitation for enterprises engaged in meat wholesaling. Firms that generate, distribute, and sell electric power, as well as those that publish periodicals other than newspapers, are also restricted. Electric power generation and enterprises publishing daily newspapers are subject to a 30 percent foreign equity limitation. News agencies are subject to a 25 percent foreign equity limitation.

## **SUBSIDIES**

### **Industrial Subsidy Policy**

Established under the Korea Development Bank Act of 1953, the Korea Development Bank (KDB) has been one of the government's main sources of policy-directed lending to favored local industries. Although the Government of Korea began privatizing the KDB in 2009 as part of its reform of the financial sector, it subsequently decided that the KDB should be a policy lender to support SMEs and strategic industries. In 2015, the government restored the KDB's role of providing public policy financial support to Korea's industries and companies.

## **ANTICOMPETITIVE PRACTICES**

The Korea Fair Trade Commission (KFTC) has a broad mandate that includes promoting competition, strengthening consumer 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 legal violations and for failure to cooperate with investigators. Decisions by the KFTC are appealable in the Korean court system. As part of KORUS implementation, the KFTC instituted a consent decree process in 2014, which it continues to refine.

A number of U.S. firms have raised concerns that the KFTC has targeted foreign companies with disproportionate enforcement efforts (e.g., remedies with geographic scope that go beyond the harm to competition in Korea). U.S. firms have also expressed concerns under KORUS about KFTC procedures and practices that inhibit the ability of companies to adequately defend themselves during investigatory proceedings and hearings. The United States has had extensive discussions with KFTC regarding the right of companies to reasonably access and rebut evidence used to determine if companies have violated Korea's competition laws. In 2019, the United States requested and held formal consultations with Korea under the Competition Chapter of KORUS to discuss these concerns.

In December 2020, the National Assembly passed revisions to the Monopoly Regulation and Fair Trade Act (MRFTA), which entered into force in December 2021. The revision (among other changes) expands the rights of affected parties to view or copy data related to KFTC administrative decisions. The changes also provide a right to view confidential business information by independent legal counsel of the parties involved, with restrictive conditions designed to prevent improper disclosure. The United States will monitor the implementation of the revised MRFTA.

U.S. companies have also raised concerns that Korean regulatory authorities use their enforcement powers to boost sales for Korean companies at the expense of U.S. competitors, especially in the competitive mobile phone market.

## **OTHER BARRIERS**

### **Motor Vehicles**

Increased access to Korea's automotive market for U.S. automakers remains a key priority for the United States. As one of the outcomes related to the 2018 KORUS amendment negotiations, Korea committed to complete the harmonization of its emission requirements and testing standards for gasoline engine vehicles with EPA requirements and standards, thereby allowing vehicles exported to Korea to comply with Korea's fuel emission standards using the same tests they conduct to show compliance in the United States. U.S.

automobile exports to Korea increased by over 420 percent from 2012 to 2021, from approximately \$617 million in 2012 to approximately \$3.2 billion in 2021.

In February 2021, Korea adopted final regulations for the next tranche of its carbon dioxide emissions and Corporate Average Fuel Economy (CO<sub>2</sub>/CAFE) targets, which cover the years 2021 to 2030. U.S.-owned automobile manufacturers have voiced concerns that the divergence between Korea's CO<sub>2</sub>/CAFE regulations and the corresponding U.S. regulations could create compliance challenges for them. U.S. firms have also raised concerns over the inability of some electrical vehicle producers to participate in Korea's zero-emission vehicle credit trading schemes.

Industry has also raised concerns about the Emission Related Components modifications and enforcement actions taken against vehicle manufacturers by Korean regulatory bodies. Under Korea's Clean Air Conservation Act, vehicle manufacturers and importers are required to obtain MOE modification certifications or prepare modification reports even for insignificant changes. The automobile industry has expressed concern about ambiguity between certification and reporting. Automakers also have noted that violations with respect to imports could be subject to criminal investigation by Korea's customs authorities, which lack authority to investigate domestically manufactured vehicles. Automobile importers have called for MOE to revise the regulations to eliminate these trade barriers.

The U.S. Government will follow these and other issues closely to ensure further increased access of U.S. vehicles to Korea's automobile market.

### **Pharmaceuticals and Medical Devices**

The United States continues to urge Korea to ensure that pharmaceutical reimbursement is conducted in a fair, transparent, and nondiscriminatory manner that recognizes the value of innovation. Nevertheless, the U.S. pharmaceutical and medical device industries continue to report concerns regarding a lack of transparency and predictability in Korea's pricing and reimbursement policies, as well as in Korea's underlying methodology for determining reimbursement rates.

In 2016, Korea enacted provisions for pharmaceutical companies to apply for "premium pricing" for innovative products, although stakeholders raised concerns that the criteria for the program provided more favorable treatment to domestic pharmaceutical companies. As one of the outcomes of the 2018 KORUS amendment negotiations, Korea agreed to revise the program to remove the problematic criteria. Although amendments made in December 2018 did remove these criteria, the revisions to the program's criteria by the Ministry of Health and Welfare also substantially narrowed the program's scope in a manner that may dramatically limit the ability of any company, foreign or domestic, to qualify for premium pricing.

Stakeholders in the U.S. medical devices sector also have concerns about Korea's pricing and reimbursement system, including regarding insufficient transparency, a lack of meaningful input into product valuation decisions, reimbursement decisions that do not appropriately value innovation, and delays in market approval. The United States continues to urge Korea to improve its engagement with this sector in terms of transparency and meaningful opportunities for stakeholder input.

# KUWAIT

## TRADE AGREEMENTS

### The United States–Kuwait Trade and Investment Framework Agreement

The United States and Kuwait signed a Trade and Investment Framework Agreement (TIFA) in 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Kuwait.

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

As a member of the Gulf Cooperation Council (GCC), Kuwait applies the GCC common external *ad valorem* tariff of five percent on the value of most imported products, with several country-specific exceptions. Kuwait's exceptions include 417 basic foodstuffs, agricultural, medical, and pharmaceutical items that are exempt from customs duties.

#### *Taxes*

In 2016, GCC Member States agreed to introduce common GCC excise taxes on carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products (100 percent). U.S. beverage producers report that the current tax structure for carbonated drinks, which also applies to sugar-free carbonated beverages, fails to address public health concerns and also disadvantages U.S. products. Sugary juices, many of which are manufactured domestically within GCC countries, remain exempt from the tax. Kuwait introduced legislation to implement the excise taxes in the National Assembly in 2018, where it remains under debate as of March 2022.

### Non-Tariff Barriers

#### *Import Bans*

Kuwait prohibits the importation of alcohol; pork products; used medical equipment; automobiles more than five years old; books, periodicals, or movies that insult religion or public morals; and, all materials that promote political ideology.

#### *Import Licensing*

Kuwait maintains an import licensing regime for a wide variety of products, ranging from plant products to products of the chemical and allied industries, to ensure that imports are compliant with various laws and regulations. Importers must be citizens of Kuwait, or be Kuwaiti-based brokers, and are required to register with the Ministry of Commerce and Industry. Import license applications must include a standard application form, a certificate from the chamber of commerce, copies of invoices, and certificates of origin (if necessary). There are no fees associated with the application. If approved, licenses are valid for one year.

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. Meat products are routinely tested upon importation into Kuwait.

#### *Customs Barriers and Trade Facilitation*

Kuwait notified its customs valuation legislation to the WTO in December 2017 but has not yet responded to the WTO Checklist of Issues describing how the Customs Valuation Agreement is being implemented.

Kuwait ratified the WTO Trade Facilitation Agreement (TFA) in April 2018. Kuwait was to self-designate the implementation date of each commitment and any technical assistance required by August 2019, but has not done so.

### **TECHNICAL BARRIERS TO TRADE**

#### *Restrictions on Hazardous Substances – Electrical Goods*

In March 2018, GCC Member States notified to the World Trade Organization (WTO) a draft Gulf Standardization Organization (GSO) technical regulation that would, among other things, require pre-market testing by accredited labs for certain hazardous substances in electrical goods. The measure would also require each type of good to be registered annually and includes a requirement to submit sample products prior to receiving approval for use in the GCC. The United States has raised concerns that the proposed regulatory requirements would have a significant negative impact on the imports of U.S. electrical and electronic equipment (such as information and communications technology, medical equipment, machinery, and smart fabrics), especially as the trade restrictive third party certification requirements differ from international best practices, which typically permit a supplier's declaration of conformity, supported by documentation requirements, such as test results and manufacturing specifications, in conjunction with integrated enforcement mechanisms, such as regulatory sanctions, liability in tort law, and mechanisms to monitor or remove nonconforming products from the market.

#### *Halal Regulations*

Although Kuwait authorizes select religious officials in the United States to certify U.S.-produced meat as halal, since 2017, U.S. processed beef and turkey meat have been subjected to additional testing upon arrival in Kuwait for the alleged presence of pork residue, which has led to some rejections of U.S. shipments. U.S. suppliers continue to contest the methodology used by Kuwait to examine these products.

In April 2020, GCC Member States notified to the WTO a draft GSO technical regulation establishing halal requirements and certification for animal feed. The U.S. animal feed, beef, and poultry industries have expressed concerns that the new technical regulation may place additional requirements on U.S. producers without offering additional assurance of meeting Member States' legitimate regulatory objectives. The United States submitted comments to GCC Member States in July 2020 noting the unprecedented and potentially trade-restrictive nature of the measure.

#### *Energy Drinks*

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

Member States notified to the WTO a revision of the draft regulation that failed to resolve many of the questions and concerns raised by the U.S. Government and private sector stakeholders.

## **GOVERNMENT PROCUREMENT**

Public Tenders Law No. 49 of 2016 regulates government procurement and requires that any procurement with a value greater than KD 75,000 (approximately \$250,000) be conducted through the Central Agency for Public Tenders. Certain contracts from Kuwait Petroleum Corporation that exceed KD 5 million (approximately \$16.5 million) are exempt. Ministry of Interior, Defense, National Guard, and core (i.e., drilling and extraction) Kuwait Petroleum Corporation contracts are also exempt. Kuwait provides a 15 percent price preference for domestic and GCC goods and requires foreign contractors to purchase at least 30 percent of their inputs domestically and to subcontract at least 30 percent of the work to domestic contractors where available.

The process that manufacturers must undertake to pre-qualify new technologies by the government is lengthy and burdensome, and lacks transparency.

Kuwait is neither a Party to the WTO Agreement on Government Procurement (GPA) nor an observer to the WTO Committee on Government Procurement.

## **INTELLECTUAL PROPERTY PROTECTION**

Kuwait remained on the Watch List in the [2021 Special 301 Report](#). Kuwait was moved to the Special 301 Watch List in 2020, after being elevated to the Priority Watch List in 2014. The United States and Kuwait created the U.S.-Kuwait TIFA Intellectual Property (IP) Working Group in April 2021 to address concerns noted in the Special 301 Report, particularly with enforcement against counterfeit goods, as well as to discuss other issues regarding IP protection and enforcement in Kuwait. Since the TIFA IP Working Group was created, Kuwait has taken steps to reduce the distribution and sale of counterfeit goods through additional enforcement actions, improved reporting procedures, and increased transparency with stakeholders.

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

## **SERVICES BARRIERS**

### **Financial Services**

Foreign bank members of the Kuwait Banking Association may operate in Kuwait. However, foreign banks are subject to a maximum credit concentration limit equivalent to less than half of the largest local bank. They are prohibited from directing clients to borrow from external branches of their bank. Foreign banks may also open representative offices.

### **Telecommunications Services**

Although Kuwait's telecommunications industry is technically open to private investment, in practice the government maintains extensive ownership in the sector and controls licensing and infrastructure development. Kuwait's telecommunications law gives authorities sweeping power to revoke licenses and block content, with little judicial oversight.

## **INVESTMENT BARRIERS**

### **Limitations on Foreign Equity Participation**

Foreign investment is not allowed in projects involving oil and gas exploration and production. Although Kuwait allows foreign firms to participate in some midstream and downstream activities in the oil and gas sector, investors in this sector continue to face particular challenges.

The Ministry of Commerce and Industry and the Kuwait Direct Investment Promotion Authority (KDIPA) have been working to streamline the process for foreign investors to obtain commercial and investment licenses, improve regulatory transparency, raise awareness of the importance of foreign investment, resolve commercial disputes that foreign companies have with the government, and improve the country's overall investment climate. KDIPA also provides a legal avenue whereby a foreign corporation may establish a wholly-owned foreign enterprise in Kuwait. Notwithstanding these efforts, major barriers to foreign investment persist. These include regulations prohibiting foreigners from investing in real estate and publishing; long delays associated with starting new enterprises; difficulty in identifying a required local sponsor and agent; and obstacles created by a business culture heavily influenced by clan and family relationships.

# LAOS

## TRADE AGREEMENTS

### **The United States–Laos Trade and Investment Framework Agreement**

The United States and Laos signed a Trade and Investment Framework Agreement (TIFA) on February 17, 2016. The Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Laos. The United States signed a bilateral trade agreement with Laos on February 4, 2005.

## IMPORT POLICIES

### **Tariffs and Taxes**

#### *Tariffs*

Laos' average Most-Favored-Nation (MFN) applied tariff rate was 8.6 percent in 2019 (latest data available). Laos' average MFN applied tariff rate was 11.2 percent for agricultural products and 8.2 percent for non-agricultural products in 2019 (latest data available). Laos has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound MFN tariff rate that will be 19.2 percent when all of its WTO accession commitments come into force in 2023. Almost all imports from the Association of Southeast Asian Nations (ASEAN) Member States currently benefit from substantial tariff concessions, with tariff rates of five percent or less.

#### *Taxes*

Laos has implemented a value-added tax (VAT) system since 2010. The standard VAT rate of 10 percent applies to most domestic and imported goods and services, with some limited exemptions. The VAT for exported goods is zero percent except for the export of natural resources that are unfinished goods, which are subject to a 10 percent VAT. However, uniform implementation of the VAT has been slow, and problems related to VAT payments and refunds are a top concern of the foreign business community in Laos. Laos also has begun to implement excise taxes on some goods, such as vehicles and vehicle fuels. Excise tax rates range from 5 percent to 90 percent. U.S. and other foreign businesses have raised concerns with Laos about duplicative, arbitrary, or selectively enforced tax provisions.

### **Non-Tariff Barriers**

#### *Import Licensing and Restrictions*

Laos has gradually removed license requirements for some imports, although certain products, including motor vehicles, refined petroleum fuels and oil, natural gas, and timber products are still subject to import licensing. Laos is in the final stages of updating its import licensing requirements but has yet to notify relevant WTO committees.

#### *Customs Barriers and Trade Facilitation*

Laos notified its customs valuation legislation to the WTO in 2013, but has not yet responded to the Checklist of Issues that describes how the Customs Valuation Agreement is being implemented.

In 2019, the Customs Department at the Ministry of Finance introduced the Lao National Single Window to simplify customs processes and connect Laos to the regional ASEAN Single Window. However, the system only processes applications and issues permits for automobile imports at the Friendship Bridge-1 checkpoint at the Laos-Thailand border, while manual processes are still applied to imports and exports for other commodities at other checkpoints.

## **TECHNICAL BARRIERS TO TRADE**

### *Vehicles*

Laos' Government Decree No. 470 of 2019 on the management of land vehicles requires that imported vehicles registered and used in Laos meet regional and international standards and are in accordance with the treaties and international agreements to which Laos is a Party. Further regulations are anticipated, and the United States will continue to monitor the development of proposed regulations in 2022.

## **GOVERNMENT PROCUREMENT**

Laos is neither a Party to the WTO Agreement on Government Procurement (GPA) nor an observer to the WTO Committee on Government Procurement.

## **INTELLECTUAL PROPERTY PROTECTION**

Laos continues to improve its intellectual property (IP) regime, including by issuing regulations to implement its Law on Intellectual Property, and continues to increase public awareness and media coverage of the harm caused by counterfeit goods and the impact of copyright piracy on local content industries. With U.S. Government assistance, Laos also continues to work to establish an effective system for civil and criminal enforcement of IP. However, counterfeit and pirated goods continue to be available in Lao marketplaces.

The United States will continue to engage with Laos under the TIFA and other dialogues to urge Laos to take steps to further improve IP protection and enforcement, including through joining international IP agreements, developing judicial capacity to adjudicate IP cases, and further increasing public awareness of the importance of IP.

## **SERVICES BARRIERS**

Foreign services suppliers continue to face difficulties in many service sectors in Laos, including financial, medical, postal, and telecommunications services, as well as some leasing, media, and transportation services. Laos opened most other service sectors to U.S. service suppliers through the 2005 United States-Laos Bilateral Trade Agreement.

### **Financial Services**

Laos' National Assembly passed the Law on National Payments in 2017. The law establishes a Payment Systems Department in the Bank of the Lao PDR (BoL). This Department is responsible for developing a series of implementing decrees to regulate and reform payment systems in Laos, including the possible establishment of a national electronic payments gateway. The BoL issued the Decision on Retail Payment Systems No. 293/BoL in April 2019, which imposed licensing and reporting requirements on retail electronic payment providers. The BoL issued the Decision on Payment Services No. 288/BoL in March 2020 to regulate the development of electronic payment systems and relevant services. The U.S. Government continues to closely monitor Laos' development of regulations in the area of electronic

payments, with a view towards ensuring that the measures adopted facilitate competition and a level playing field for U.S. electronic payment service suppliers.

On June 1, 2020, the BoL officially launched its Lao Payment and Settlement System (LaPASS). The BoL claims that LaPASS will be an integrated payment system that will provide a payment platform for commercial banks with the ability to facilitate financial transactions. There are currently 41 members consisting of commercial banks, the Lao Securities Exchange, and the Ministry of Finance.

In September 2021, the BoL issued a Notification on Limits for Electronic Financial Services No. 730/PSD, which identified a threshold (per transaction, per day, and per account) for both individuals and enterprises in making electronic payments. These limits might pose a challenge for large international money transfers.

## **BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE**

In April 2021, Laos issued its Decree on E-Commerce No. 296/GOV, which identifies a regulatory framework for the operation, management, and procedures and requirements for electronic commerce. The decree will provide a clearer path for investors pursuing an online strategy to grow their businesses. However, foreign equity is limited to a 90 percent share of the business, and a minimum registered capital of LAK 10 billion (approximately \$1 million) is required. The United States Agency for International Development is providing technical assistance to the Ministry of Commerce in the implementation of the decree, specifically related to the approval license for businesses operating in electronic commerce.

## **INVESTMENT BARRIERS**

Laos has a challenging investment climate due to concerns about corruption, difficulties in enforcing contracts, an underdeveloped judicial system, overlapping and often contradictory regulations, and limited access to financial services. Domestic ownership and partnership requirements vary by industry, and administrative processes for obtaining investment licenses are often inconsistent or inefficient. Laos requires an annually renewable business license, receipt of which is contingent on a certification that all taxes have been paid. However, Laos often assesses taxes in an unpredictable manner. In February 2018, the Prime Minister issued an order laying out specific steps for various ministries to take in order to improve the business environment, some of which have resulted in measurable improvements including decreasing the time required to obtain a business license. Nonetheless, broad reforms aimed at improving the business environment have so far had only limited success.

## **OTHER BARRIERS**

### **Bribery and Corruption**

Corruption remains a barrier for U.S. businesses seeking to operate in or trade with Laos. Laos' current government leadership has prioritized anticorruption efforts. Laos has improved transparency in its domestic lawmaking process, including with the opening of the Ministry of Justice Electronic Official Gazette in 2013. In accordance with the 2012 Law on Making Legislation, drafts of all new laws and regulations must be published on the Gazette for at least 60 days. In 2018, with the support of the United States, Laos released a "Lao Law" smart phone app, which allows the public to download a free platform to access all the laws and regulations found on the Ministry of Justice's Electronic Official Gazette. This development offers investors, entrepreneurs, and the public a more accessible and user-friendly platform for learning about Laos' laws. However, not all government agencies publish their laws and regulations online, and there remain limited opportunities for shaping draft legislation.

# MALAYSIA

## TRADE AGREEMENTS

### The United States–Malaysia Trade and Investment Framework Agreement

The United States and Malaysia signed a Trade and Investment Framework Agreement (TIFA) on May 10, 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Malaysia.

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

Malaysia's average Most-Favored-Nation (MFN) applied tariff rate was 5.7 percent in 2020 (latest data available). Malaysia's average MFN applied tariff rate was 8.7 percent for agricultural products and 5.2 percent for non-agricultural products in 2020 (latest data available). Malaysia has bound 84.3 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 20.9 percent. Malaysia's maximum WTO bound tariff rate varies significantly by product group, for example, from 5 percent for petroleum to 268 percent for dairy products.

Almost all of Malaysia's tariffs are imposed on an *ad valorem* basis. Duties for tariff lines where there is significant local production are often higher. In general, tariffs are lower for raw materials than for value-added goods. Malaysia charges specific duties on roughly 80 products (mostly agricultural goods) that represent extremely high effective tariff rates. Beverages, alcohol, and wine are subject to an effective tariff of up to 500 percent when import duties and excise taxes are combined.

The Malaysian Government maintains tariff rate quota systems for 17 tariff lines, including live swine and poultry, pork, liquid milk and cream, and eggs. These products face in-quota duties of 10 percent to 25 percent and out-of-quota duties of 40 percent to 168 percent.

#### *Taxes*

Malaysia continues to assess a higher excise tax on imported distilled spirits than on spirits that are predominantly produced domestically. Malaysia maintains very high excise taxes on motor vehicles, ranging from 60 percent to 105 percent, based on vehicle type and engine size. Domestic automobile producers are given credit for local content in excise tax valuation, which imported automobiles and automotive parts in the Malaysian market do not receive.

Due to the economic impact of the COVID-19 pandemic, Malaysia introduced several new tax measures. In the automotive sector, the government extended the exemption of sales tax for passenger cars sold from June 15, 2020, through June 30, 2022, to boost motor sales. The new tax measure includes a 100 percent sales tax exemption on locally assembled cars (also referred to as completely knocked-down cars) and a 50 percent sales tax exemption on fully imported cars (also referred to as completely built-up models).

## **Non-Tariff Barriers**

### *Customs Barriers and Trade Facilitation*

Malaysia ratified the WTO Trade Facilitation Agreement (TFA) on May 26, 2015, and generally meets its advance ruling obligations under the TFA. Although advance rulings on the origin of goods have yet to be implemented fully, in 2020 Malaysia inserted, “the means to apply for an advance ruling with respect to the origin of goods” as new subsection 10A(1)(aa) of the 1967 Customs Act.

### *Import Restrictions on Motor Vehicles*

Malaysia imposes import restrictions on automobiles under the Malaysian National Automotive Policy (NAP), which makes a fundamental distinction between “national” cars (*e.g.*, domestic automakers Proton and Perodua) and “non-national” cars, which include other vehicles produced or assembled in Malaysia, as well as imports. The Malaysian system of “approved permits” (APs) confers on permit holders the right to import and distribute cars and motorcycles. The AP system is administered in a non-transparent manner and is used to implement a cap on the total number of vehicles that can be imported in a given year, currently set at 10 percent of the domestic market. In addition, Malaysia applies high tariffs in the automobile sector and has traffic restrictions and noise standards that affect the usage of large motorcycles.

In August 2019, the Malaysian Government announced that a Malaysian engineering company had been selected to design and build the new national car. Additionally, the Malaysian Government announced a new NAP in 2020 that focuses on domestic production of advanced technology vehicles. The 2020 NAP appears to include incentives and subsidies for domestic manufacturers, which could further limit market access for imported automobiles.

The Malaysian Government proposed in October 2021 to exempt domestic electric vehicles (EV) from excise duties and sales taxes and from import duties on components for locally assembled vehicles. These exemptions are not available for imported EVs.

## **TECHNICAL BARRIERS TO TRADE/ SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

#### *Halal Regulations for Meat and Poultry Products*

Malaysia’s halal requirements are more prescriptive than internationally recognized guidelines on labeling food as halal. Specifically, Malaysia requires slaughter plants to maintain dedicated halal production facilities and to ensure segregated storage and transportation facilities for halal and non-halal products. In contrast, international guidelines allow 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. U.S. industry has expressed concerns regarding the costs of creating new, segregated production facilities to access Malaysia’s market.

Prior to exporting to Malaysia, the halal practices at each individual U.S. meat and poultry plant must be inspected by Malaysia’s Department of Islamic Development (JAKIM) and certified by a JAKIM-accredited Foreign Halal Certification Body (FHCB). Malaysia’s Department of Veterinary Services, in conjunction with JAKIM, has approved only one U.S. beef plant and one U.S. turkey plant to export halal products to Malaysia.

In February 2021, JAKIM released a draft of Malaysia's new Procedure for the Recognition of Foreign Halal Certification Bodies, which sets out the new requirements for recognizing a FHCB and their post-recognition obligations. Malaysia has not notified these requirements to the WTO. The United States continues to engage with Malaysia on the approval of additional U.S. FHCBs and its new draft procedures for accrediting FHCBs, and to urge Malaysia to notify its new draft procedures to the WTO.

## **Sanitary and Phytosanitary Barriers**

### *Agricultural Biotechnology*

Malaysia requires mandatory labeling of food and food ingredients with genetically engineered (GE) content above three percent, although it has not enforced this regulation. Malaysia has approved 50 GE products for market release for use in food, feed, and processing.

## **GOVERNMENT PROCUREMENT**

Malaysia has traditionally used government procurement contracts to support national public policy objectives, including encouraging greater participation of Bumiputera (the majority Malay ethnic group) in the economy, transferring technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local companies in the services sector, and enhancing Malaysia's export capabilities. As a result, it has generally invited international tenders only when domestic goods and services are not available, and in those cases, foreign companies often find they need to take on a local, Bumiputera-qualified partner before their tenders will be considered.

Malaysia is not a Party to the WTO Agreement on Government Procurement but has been an observer of the WTO Committee on Government Procurement since July 2012.

## **INTELLECTUAL PROPERTY PROTECTION**

Malaysia is in the process of reforming its intellectual property (IP) laws, including laws governing copyrights, patents, and trademarks, as part of the country's ratification of the Regional Comprehensive Economic Partnership. Malaysia also continues to take steps to enhance its IP enforcement regime. However, concerns remain in a number of areas. Pirated and counterfeit goods are widely available, as highlighted by the continued inclusion of Petaling Street Market in Kuala Lumpur on the 2021 [Notorious Markets List](#). Other concerns include unauthorized camcording sourced to Malaysian cinemas and online and book piracy. Additionally, the United States urges Malaysia to continue its efforts to improve protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to enhance criminal sanctions for trade secret theft and misappropriation.

## **SERVICES**

### **Audiovisual Services**

Foreign investment in cable and satellite platforms is only permitted through joint ventures, with foreign equity capped at 30 percent, but there are no foreign direct investment restrictions on the wholesale supply of pay television programming. Malaysia prohibits foreign investment in terrestrial broadcast networks.

## **Distribution Services**

Malaysia requires 30 percent Bumiputera equity in hypermarkets and locally incorporated direct selling companies. Malaysia also requires department stores, supermarkets, and hypermarkets to reserve at least 30 percent of shelf space for goods and products manufactured by Bumiputera-owned small and medium-sized enterprises.

## **Financial Services**

### *Best Interest Test*

The Financial Services Act of 2013 removed the previous foreign equity limit of 70 percent for domestic banks, investment banks, insurance companies, Islamic banks, Islamic investment banks, and Islamic insurance companies. Under the Financial Services Act, Bank Negara Malaysia (Malaysia's central bank) evaluates potential investments in these types of financial institutions based, among other criteria, on whether the investment serves the "best interests of Malaysia," including its impact on economic productivity and financial stability and the degree to which it strengthens Malaysians' participation in the financial sector. Bank Negara Malaysia has not released specific criteria for how it evaluates foreign investments using this definition.

A number of companies still have been required to reduce foreign equity to 70 percent to remain in the Malaysian market. Bank Negara Malaysia stated that it intends to be "flexible" as to how companies reduce their foreign ownership stake, although stakeholders remain concerned that there will be a hard 70 percent equity cap to existing companies. The United States continues to raise concerns with Malaysia about foreign equity caps and other investment restrictions, including through the administration of the "best interests of Malaysia" test for foreign investment in financial institutions.

As of February 2020, Bank Negara Malaysia limits foreign banks to eight physical branches in Malaysia and imposes certain other restrictions. For example, foreign banks cannot set up new branches within 1.5 kilometers of an existing local bank. In addition, Bank Negara Malaysia considers ATMs as equivalent to separate branches, and it has conditioned foreign banks' ability to offer some services on commitments to undertake certain back-office activities in Malaysia.

In March 2020, Bank Negara Malaysia published an "Exposure Draft on Licensing Framework for Digital Banks," which proposes a framework for digital banks to pursue entry into the Malaysian market. The draft includes language referencing the "best interests of Malaysia" criterion for license applications, which includes a commitment to "driving financial inclusion" and ensuring access for "underserved or hard-to-reach segments" of the population. In December 2020, Bank Negara Malaysia issued a Policy Document on Licensing Framework for Digital Banks, which adopted the framework.

Malaysia maintains some restrictions on the business of reinsurance, requiring that Malaysian insurers seek reinsurance from local reinsurers, then reinsurers based in the Labuan territory before obtaining cross-border reinsurance, which may negatively impact the business of U.S. reinsurers. Also, primary insurers must offer Malaysian Re, the national reinsurer, up to 15 percent for certain lines of both proportional and non-proportional treaty reinsurance and for facultative and engineering reinsurance up to a certain amount.

### *Electronic Payment Requirements*

In March 2018, Bank Negara Malaysia issued the Interoperable Credit Transfer Framework (ICTF), which requires that financial institutions process certain types of credit transfers in Malaysia via an approved operator of a shared payment infrastructure. The ICTF, which went into effect on July 1, 2018, includes

requirements relating to payment system operators, but no guidelines have been set to define the approval process. In December 2019, Bank Negara Malaysia reversed a policy that would have only allowed a single operator (*i.e.*, local network PayNet, which is partially owned by Bank Negara Malaysia) to process all domestic credit transfer transactions. However, payment providers must still obtain approval from Bank Negara Malaysia and these are subject to meeting conditions such as safeguards to protect and access data located offshore, enabling interoperability, reducing fragmentation of multiple providers, and pricing transparency.

## **Professional Services**

### *Engineering Services*

Foreign engineers are not allowed to operate independently of Malaysian partners or to serve as directors or shareholders of an engineering consulting company. A foreign engineering firm may establish a permanent commercial presence only if all directors are Malaysian.

### *Accounting and Taxation Services*

All accountants seeking to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants before they may apply for a license from the Ministry of Finance. Malaysian citizenship or permanent residency is required for registration with the Malaysian Institute of Accountants.

## **Telecommunications Services**

Despite limited WTO commitments in the telecommunications services sector, Malaysia allows 100 percent foreign equity participation in a license category of particular interest to foreign suppliers called “application service providers” (*i.e.*, suppliers who do not own underlying transmission facilities). However, Malaysia has not allowed equal liberalization of the network facilities provider or network service provider license categories. Only 70 percent foreign participation is permitted in those categories, although in certain instances Malaysia has allowed greater equity participation.

## **DIGITAL TRADE AND ELECTRONIC COMMERCE**

### **Data Localization**

In October 2021, the Minister of Communications and Multimedia announced that the Malaysian Communications and Multimedia Commission (MCMC) would subject cloud service providers and data centers hosting cloud service applications to licensing obligations under the Communications and Multimedia Act 1998 starting January 2022. MCMC subsequently issued a follow-up frequently asked questions document in December 2021 regarding the licensing requirements for cloud service providers. Cloud service providers with a local presence will be required to apply for an “Application Service Provider’s (ASP) license” but can be 100 percent foreign-owned; cross-border suppliers of cloud services without a local presence do not need to register as ASPs.

## **INVESTMENT**

### **Limitations on Foreign Equity Participation**

Foreign investment in sectors such as retail, telecommunications, financial services, professional services, oil and gas, and mining is subject to certain restrictions. These restrictions include limitations or

prohibitions on foreign equity and requirements that foreign firms enter joint ventures with local partners. Pursuant to the National Land Code, foreigners must obtain prior approval from relevant state authorities for any acquisition of land for agricultural, residential, or commercial purposes. These authorities may impose conditions on ownership, including maximum thresholds for foreign equity in companies seeking to acquire land. Malaysia also maintains performance requirements that must be met to receive a customs waiver for manufacturing operations in foreign trade zones.

## **SUBSIDIES**

### **Export Subsidies**

Malaysia maintains several programs relating to exports, distinct from the pioneer status and investment tax allowance programs previously listed in Malaysia's subsidies notifications to the WTO. For example, the NAP provides an income tax exemption for high value-added exports of motor vehicles and parts based on the percentage increase in the value-added of exports. Moreover, other programs appear to provide tax benefits based on export performance, such as the Income Tax Exemption Based on the Value of Increased Exports and the Deduction for the Promotion of Exports programs, which Malaysia has not addressed in its WTO subsidies notifications. The United States continues to raise concerns with Malaysia about these and other policies through the WTO Subsidies Committee and the WTO Trade Policy Review Body.

## **OTHER BARRIERS**

### **Export Policies**

#### *Export taxes*

Malaysia is the world's second largest producer and exporter of palm oil and products made from palm oil. Except when there is overstock, Malaysia imposes export taxes on crude palm oil based on fluctuations in the market price to ensure domestic supply and raise revenue. Taxes are imposed when export prices exceed RM2,250 (approximately \$575) per ton and can range from 4.5 percent to 8.5 percent. In May 2020 Malaysia reduced its export duty on crude palm oil to zero percent from 4.5 percent. Malaysia had exempted all palm oil exports from July to December 2020 due to the economic impact of the COVID-19 pandemic but reinstated the tax in January 2021.

As of March 2022, Malaysia's export tax for crude palm oil is 8 percent. Refined palm oil and refined palm oil products are not generally subject to export taxes. Malaysia also taxes exports of rubber, timber, and metal products to encourage domestic processing.

#### *Export Licensing*

Malaysia imposes non-automatic export licensing requirements on a variety of products, including minerals and ores.

#### *Foreign Exchange Restrictions*

In May 2020, Bank Negara Malaysia updated its foreign exchange policies, permitting transactions for exports of goods up to the equivalent of RM 200,000 (approximately \$48,000) in foreign currency. Previously, exporters had to convert all export proceeds received into Malaysian ringgit. Exporters also were required to receive export proceeds in foreign currency by 24 months (previously six months) from the date of shipment where the amount of export proceeds does not exceed RM 200,000 (approximately

\$48,000) per invoice, if, among other things, the exporter has no control over the delay in the receipt of export proceeds.

In March 2021, Bank Negara Malaysia announced the removal of export conversion rules, which means resident exporters can now manage the conversion of export proceeds according to their foreign currency cash flow needs. Resident exporters can also extend the period of repatriation of export proceeds by more than six months under exceptional circumstances beyond exporters' control. For other purposes, approval from Bank Negara Malaysia is still required. Additionally, resident exporters can now net-off export proceeds against permitted foreign currency obligations without Bank Negara Malaysia's approval to enhance business efficiency and cash flow management.

# MEXICO

## TRADE AGREEMENTS

### The United States–Mexico–Canada Agreement

The United States–Mexico–Canada Agreement (USMCA or Agreement) entered into force on July 1, 2020. The USMCA maintains the zero tariffs among the three countries that were in place under the North American Free Trade Agreement (NAFTA), while also modernizing the agreement to include provisions covering digital trade and small and medium sized enterprises (SMEs). The Agreement importantly recognizes that SMEs are a driving force of economic growth and includes new mechanisms to help SMEs make better use of the Agreement. The USMCA also includes strong, enforceable labor and environmental obligations in the core text of the Agreement. Finally, the USMCA also includes a number of groundbreaking provisions to combat non-market practices that have the potential to disadvantage U.S. workers and businesses, such as currency manipulation and the provision of subsidies to state-owned enterprises.

## IMPORT POLICIES

### Non-Tariff Barriers

#### *Import Licensing*

Since December 2013, Mexico has required importers to obtain a license before certain steel products may be shipped to Mexico. Mexico's stated objectives for the licensing system are to combat customs fraud, improve enforcement of trade remedy measures, and improve statistical monitoring of steel imports. However, administrative delays and complicated procedures for the processing of license applications by the Secretariat of Economy resulted in U.S. steel exporters and their Mexican customers facing disruptions in supply chains and additional shipment or demurrage costs. In order to address these disruptions, Mexico established an alternative scheme with streamlined licensing requirements for certain U.S. exporters and their customers. The United States continues to closely monitor the administration of the alternative scheme, and will continue to engage with Mexico to address stakeholder concerns and press Mexico to ensure that its import requirements do not disrupt trade between U.S. steel exporters and their Mexican customers.

Mexico regulates imports of footwear, apparel, and textile goods through the use of reference prices and import licenses. According to Mexico, these measures are designed to protect Mexico's domestic footwear and apparel industries from the importation of undervalued goods. In addition, U.S. exporters expressed concerns about the lack of transparency in how reference prices are determined and uneven enforcement by Mexico's customs and tax authorities. The United States continues to monitor these issues and encourages the Secretariat of Economy and Mexico's customs authority, the Tax Administration Service (SAT), to clarify how requirements are applied.

#### *Customs Barriers and Trade Facilitation*

The goal of the USMCA's Customs Administration and Trade Facilitation chapter is to reduce costs and bring greater ease and predictability to customs clearance through provisions requiring transparent, predictable, and consistent application of customs procedures. However, Mexico continues to provide insufficient prior notification of procedural changes, inconsistent interpretation of regulatory requirements at different border posts, and uneven border enforcement of Mexican standards and labeling rules. Some imports are still not allowed in all ports of entry. Restricting goods to certain ports has made it difficult for

U.S. exporters to arrange for transportation and logistics, especially for electronic commerce purchases involving SMEs.

The USMCA prohibits arbitrary limits on the number of ports at which a customs broker may operate. Yet, Article 161 of Mexico's Customs law limits a broker to operate at four ports if the broker is not part of a customs agency. The United States continues to urge Mexico to amend the law to allow brokers to operate at any port where the broker is capable of performing his or her duties.

Customs procedures for express packages are burdensome. The combined charge for duties, taxes and fees for express shipments was increased with the entry into force of the USMCA. There is concern that customs-user fees are being applied to some USMCA-originating shipments. Consolidation of express shipments over \$300 is restricted and Mexico continues to limit the number of shipments that may be delivered to a single recipient per month. Express delivery providers must also re-register to operate in Mexico every two years. U.S. companies also express concerns that SAT has not instituted a periodic payment option for express delivery shipments.

On January 1, 2022, Mexico imposed a new requirement for a "Complement" to the existing electronic invoice requirement on transportation services. Any shipment transported within Mexico over federal roads must be accompanied by an electronic invoice "complement" that contains up to 180 data elements about the shipments. The requirement affects most imports once they arrive within Mexico until their destination. Final regulations for this new requirement were not issued until December 24, 2021, so transportation companies and their customers had little time to implement the new requirements; however, Mexico declared it will not enforce the measure until March 31, 2022. The United States continues to monitor Mexico's implementation of this requirement.

The United States chaired the second meeting of the USMCA's trilateral Committee on Trade Facilitation on December 15, 2021, where the Parties discussed new customs regulations, changes in certain customs processes, and other issues under the Agreement.

#### *Medical Devices, Supplies, and Pharmaceuticals*

In the spring of 2021, Mexico's food and health safety regulator, the Federal Commission Against Sanitary Risks (COFEPRIS), confirmed that there was a backlog of over 60,000 sanitary registrations and import permits. The lack of timely approvals by COFEPRIS denies access to the Mexican market for many U.S. products, principally, but not exclusively, pharmaceuticals. While COFEPRIS works through its backlog, companies that try to register FDA-approved products in Mexico report delays of up to more than a year. COFEPRIS is reportedly understaffed and currently does not have sufficient capacity to grant sanitary registrations and conduct factory inspections to issue Good Manufacturing Practices (GMP) certifications within the established timeframes.

On July 31, 2020, Mexico's Institute of Wellbeing (INSABI) signed an agreement to outsource its procurement of medicines and medical supplies to the United Nations Office for Project Services (UNOPS) for 2021 through 2024. Industry has expressed concerns regarding the new procurement process, including: no visibility of the end-to-end process, lack of information and formal guidelines from INSABI and UNOPS for logistics operators, late deliveries to healthcare providers despite timely procurement fulfillment, and late payments to suppliers.

#### *Refined Fuels*

Since June 2021, Mexican authorities have closed at least nine fuel terminals near the U.S. border and impounded rail cars carrying U.S. refined fuels (gasoline and diesel), claiming concerns with fuels allegedly

imported with incorrect documentation to avoid certain internal taxes. Industry has indicated that terminal operators, importers, or exporters have not been provided an opportunity to demonstrate that their fuels meet importation and tax requirements in order for their shipments to be released. As a result, U.S. companies have been unable to fulfill their contracts with Mexican customers. The United States is monitoring this situation and continues to press Mexico to address the issue of tax circumvention with due process.

### *Glyphosate*

Mexico's Secretariat of the Environment and Natural Resources (SEMARNAT) has rejected import permits for glyphosate-containing chemical products. Mexico has not provided an opportunity for public comment, submitted notifications to the World Trade Organization (WTO), or provided scientific evidence for the rejections.

Separately, on January 1, 2021, a decree that calls for the phase-out of the use of glyphosate and glyphosate-containing products by January 31, 2024, entered into force. During the phase-out period, Mexico's National Council of Science and Technology (CONACYT) is tasked with studying, developing, and promoting alternatives to glyphosate. Furthermore, the decree would prohibit Mexico from using glyphosate in any government-sponsored programs during the phase-out period. Mexico's regulatory improvement agency, CONAMER, exempted Mexico's Secretariat of Agriculture and Rural Development (SADER) from conducting a regulatory impact analysis of the proposed decree. Mexico is implementing import quotas for glyphosate and glyphosate-containing products.

The United States continues to press Mexico to grant import permits for glyphosate and glyphosate-containing products, following a science-based and risk-based regulatory approach.

### *Pesticides and Agricultural Chemicals*

U.S. companies continue to report significant delays in receiving the necessary registration/marketing approvals from COFEPRIS for certain pesticides and agricultural chemicals. These delays appear to be impacting both applications for registration and applications for re-registration, sometimes involving only administrative updates such as changing the company's address.

### *Ethanol*

On January 15, 2020, Mexico's Supreme Court invalidated on procedural grounds a national ethanol regulation allowing a blend of up to 10 percent ethanol (E10) into Mexico's gasoline supply in all but the three largest cities of Mexico. E10 blending was allowed to continue as Mexico's Energy Regulatory Commission (CRE) considered revisions to the regulation. As the CRE's determination has extended beyond the original timeframe provided by Mexico's Supreme Court, as of June 1, 2021, ethanol fuel blends can no longer exceed 5.8 percent.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

#### *Implementation of USMCA Technical Barriers to Trade Obligations*

In 2020, Mexico enacted the Quality Infrastructure Law, replacing its Federal Law on Standardization and Metrology. The new law covered requirements for Mexico's standardization, conformity assessment, accreditation, metrology, technical regulations, and post-market surveillance systems. In 2022, Mexico is

expected to publish draft implementing regulations for this law. The United States intends to review the draft regulations.

### *Alcoholic Beverages*

On February 25, 2021, Mexico published in its Federal Registry the cancellation of Mexican Official Standard NOM-199-SCFI-2017. The cancellation notes that the commercial and sanitary information requirements that alcoholic beverages marketed in Mexico must comply with are already established in Mexican Official Standard NOM-142-SSA1/SCFI-2014, relating to alcoholic beverages. The same official standard establishes product denominations for products such as Tequila, Mezcal, and Bacanora, among others. Mexico will also consider any new products and address the commercial information and any regulatory issues arising for such products under the same standard.

All distillates imported into or manufactured in Mexico for which there is not an already established standard must meet the requirements of NOM-142-SSA1/SCFI-2014 until an official standard for such alcoholic beverages is proposed and finalized. The United States will continue to monitor Mexico's WTO notifications for changes to requirements for alcoholic beverages.

### *General Law on Health*

In July 2020, Mexico notified to the WTO draft amendments to the Regulation of Sanitary Control of Products and Services and Implementing Regulations to the General Law on Health with Respect to Advertising. These amendments set out additional details about the implementation of Mexico's Front of Package Nutritional Label (FOPNL) regulations, including prohibitions on the use of voluntary fortification labels, stamps, or legends of recommendation by organizations or professional organizations, or certain marketing and advertising if a product is required to display a front-of-package symbol or warning statement on sweeteners or caffeine. The United States raised concerns regarding Mexico's FOPNL measures at the November 2020 meeting of the WTO Council for Trade in Goods.

The Ministry of Health submitted proposed amendments to the General Law on Health with Respect to Advertising to CONAMER on June 3, 2021, and again on September 10, 2021. The amendments would modify certain provisions of the Regulation of Sanitary Control of Products and Services, as well as existing advertising regulations. The amendments will take effect after final evaluation by CONAMER and through publication in the Federal Registry. As of March 2022, the timeline for final approval and publication has not been announced.

### *State Level Measures Prohibiting Sales to Minors*

Twenty-five of Mexico's 32 states are considering measures that would prohibit the sale of packaged foods and non-alcoholic beverages to minors under the age of 18. State regulators in Oaxaca and Tabasco adopted such measures in August 2020, defining packaged foods and beverages as those products sold with added sugar, saturated fats, trans fats, or sodium exceeding nutrient thresholds, in accordance with the relevant Mexican Official Standard NOM-051 SCFI/SSA1-2010. The prohibitions in those states appear to apply broadly to all sales in markets, grocery and convenience stores, and schools. The measures have been put into effect in the state of Tabasco, but as of March 2022, have not been put into effect in Oaxaca. U.S. industry estimates that the measures will impact a large number of products including some common groceries such as cheese, bread, and some meats. The United States raised questions about Mexico's state-level measures at the October 2020 meeting of the WTO Committee on Technical Barriers to Trade (WTO TBT Committee). The United States has requested that Mexico notify these measures to the WTO.

### *Conformity Assessment Requirements for Cheese*

In May 2020, Mexico notified to the WTO draft conformity assessment procedures for cheese under the relevant Mexican Official Standard NOM-223-SCFI/SAGARPA-2018. The United States raised concerns with the proposed conformity assessment procedures, which include first-of-its-kind certification, inspection, and post-market surveillance requirements for cheese, at all three 2021 meetings of the WTO TBT Committee and the Council for Trade in Goods. In August 2021, Mexico published a final draft measure on CONAMER's website, which would require: (1) third-party certification with an annual production facility inspection, traceability and post-market surveillance performed by a third-party certification body, or (2) batch-by-batch testing, with results verified at points of entry, and (3) a scope of products that includes cheese intended for retail, to be used as an ingredient, or sold in bulk, citing NOM-051. In 2021, the United States engaged in a Mexican working group reviewing the standards and conformity assessment procedures for cheese to advocate for the use of relevant international standards and eased conformity assessment procedures.

### *Organic Standards*

In December 2020, Mexico published a measure to require that imports of organic agricultural products from countries without an organic equivalence arrangement meet the standards in Mexico's Organic Products Law. Mexico's organics regulator, the National Service for Animal and Plant Health, Food Safety and Quality (SENASICA), notified the measure to the WTO at the request of the United States and extended the effective date of implementation to December 31, 2021, which allowed U.S. producers additional time to comply with Mexico's organic standards. Both SENASICA and PROFECO began enforcing the organic standards at the border and at the retail level effective January 2022. The United States will continue to monitor this measure as it is implemented. In 2021 U.S. exports of organic products to Mexico were \$202 million, while U.S. imports of organic products from Mexico were \$612 million.

### *Local Specific Absorption Testing Requirements*

In February 2020, Mexico's telecommunications regulator, the Federal Telecommunications Institute (IFT) published new guidelines pursuant to Technical Provision IFT-012-2019 that pose a barrier to trade for mobile telecommunications products by requiring in-country testing for Specific Absorption Rates (SAR). Throughout 2021, Mexico had only two accredited facilities able to perform the required tests. In addition, the testing requirements refer to out-of-date standards instead of recent guidance from the International Electrochemical Commission/Institute of Electrical and Electronics Engineers (IEC/IEEE) and the International Commission on Non-Ionizing Radiation Protection (ICNIRP). These new requirements were notified to the WTO in February 2021. The United States has pressed Mexico to use the latest testing standards (IEC/IEEE 62209-1528:2020) and the 2020 version of ICNIRP guidelines and to include testing to these standards in scope of the [Mutual Recognition Agreement between the Government of the United States of America and the Government of the United Mexican States for Conformity Assessment of Telecommunications Equipment](#). In 2021, the United States and Mexico continued to discuss this issue bilaterally on the margins of WTO TBT Committee meetings.

### *Proposed Motor Vehicle Safety Standards*

In September 2021, Mexico notified to the WTO its draft Mexican Official Standard PROY-NOM-194-SE-2021, which would establish new safety standards for new light-duty vehicles and would cancel Mexican Official Standard NOM-194-SCFI-2015, published in May 2016. The U.S. Government and industry provided comments on the draft regulation in November 2021, which included raising concerns with certain voluntary standards required in the measure, and expressing interest in Mexico continuing to accept self-certification to the U.S. Federal Motor Vehicle Safety Standards (FMVSS). The United States raised

questions about the measure in bilateral meetings with Mexico on the margins of all three WTO TBT Committee meetings in 2021, and U.S. Government representatives participated in a Mexican working group reviewing the draft vehicle safety regulations. The working group has since concluded its work and the United States will continue to monitor the issue as Mexico is expected to publish final regulations in 2022.

## **Sanitary and Phytosanitary Barriers**

### *Fresh Potatoes*

Since 2003, the United States has sought access for fresh potatoes to all of Mexico, beyond a 26-kilometer zone along the U.S.-Mexico border. In 2021, Mexico completed the regulatory steps necessary for access for U.S. fresh potatoes to cities with population over 100,000 people in Mexico. The United States is monitoring the situation to ensure that there is transparent and predictable access for U.S. exporters.

On July 15, 2016, Mexico issued decrees to provide U.S. fresh potatoes access to areas beyond the 26-kilometer border zone. However, the Mexican Potato Industry Association (CONPAPA) obtained injunctions from Mexican courts blocking implementation of these decrees. In August 2017 and again in June 2018, a Mexican court issued rulings that prohibited imports of U.S. fresh potatoes beyond the 26-kilometer border zone. In late October 2018, the Supreme Court of Mexico agreed to address the appeal of the June 2018 ruling, and an April 2021 decision affirmed the authority of Mexico's regulatory agency to expand access for U.S. fresh potatoes.

### *Biotechnology Products*

Mexico's Biosafety Law requires COFEPRIS to make a decision on a complete application for authorization of agricultural biotechnology products for use in food and feed within six months of receipt. The United States has concerns with the basis for decisions on applications and delays in processing applications.

On January 1, 2021, a decree entered into force under which existing authorizations "for the use of genetically modified corn grain in the diet of Mexican women and men" will be revoked and new authorizations are prohibited until genetically modified corn grain is completely replaced by January 31, 2024.

The United States is pressing Mexico to revoke the decree and ensure COFEPRIS makes decisions on applications based on science, and undertakes and completes its approval procedure for agricultural biotechnology products without undue delay while maintaining a transparent process.

### *Biotechnology Cotton*

Mexico rejected applications for cultivation of biotechnology cotton in 2019 and 2020. No applications were submitted in 2021. Biotechnology cotton has been cultivated in Mexico for 25 years with no evidence of adverse impact on the environment, biodiversity, or animal or plant health. The United States continues to press Mexico to reconsider these applications and complete its approval procedure without undue delay, and to use a science and risk-based approach.

## **GOVERNMENT PROCUREMENT**

On December 1, 2018, Mexico announced plans to centralize almost all federal government procurement under the Secretariat of Finance, with the objective of curbing corruption, reducing bureaucratic

inefficiencies, and achieving lower prices through consolidated purchasing. The state-operated oil company, Pemex, and the Federal Electricity Commission (CFE) were exempted from the centralization due to their designations as “productive companies of the state.” The Mexican armed forces were also exempted on national security grounds. U.S. exporters expressed concern the procurement process was less transparent than in previous years and did not provide adequate preparation time. U.S. companies have since expressed similar concerns that procurements did not have adequate preparation time and there were multiple uncoordinated tenders announced. In addition, for certain construction projects there has been an increase in direct awards for government contracts.

Since October 2020, U.S. exporters have also expressed concerns that CFE subsidiary *CFE Telecom and Internet Para Todos* (CFE TEIT) is conducting a series of procurements in an unfair and non-transparent way to deliver Internet-related infrastructure across Mexico. The United States has pressed Mexico to ensure that it conducts all of its procurements, including for CFE TEIT’s project, in accordance with Mexico’s obligations under Chapter 13 (Government Procurement) of the USMCA.

INSABI and UNOPS reported making some improvements to the Government of Mexico’s consolidated procurement process for pharmaceutical products and medical devices in 2021. Still, patients relying on public assistance for medicines continue to report a lack of supply across government health facilities, especially of cancer treatments, followed closely by medicines for diabetes, transplants, hypertension, and mental health. The NGO-funded study “Cero Desabasto” tracks reports of pharmaceutical shortages and reported a 23 percent increase in reports during the first half of 2021 compared to the first half of 2020.

The Government of Mexico’s consolidated procurement mechanism for pharmaceuticals and medical devices will be in place until 2024. Through the program, UNOPS is mandated to issue a tender for pharmaceutical sales and secure the best value for the Government of Mexico. Due to a mix of lack of interest from bidders and unacceptable offers, many of these tenders have fallen through, leaving Mexico’s public health institutions and even the Mexican military to purchase pharmaceuticals and medical devices directly.

Mexico is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement. Mexico has obligations on government procurement under the USMCA.

## **INTELLECTUAL PROPERTY PROTECTION**

Mexico was listed on the Watch List in the [2021 Special 301 Report](#). Obstacles to U.S. trade in intellectual property (IP) intensive goods and services include the wide availability of pirated and counterfeit goods, via both physical and virtual markets. As broadband access increases, online piracy has been increasing. Overall criminal enforcement of IP rights, including online, continues to be characterized by weak coordination among federal, state, and municipal officials; limited resources for prosecutions; the lack of long-term sustained investigations targeting suppliers of counterfeit and pirated goods and services; and the lack of sufficient penalties to deter violations. Brand owners also face bad-faith trademark registrations, making it important for companies to register their trademarks early. Moreover, rights holders have expressed concern about the length of administrative and judicial patent and trademark infringement proceedings and the persistence of continuing infringement while cases remain pending. The United States has identified the Tepito market in Mexico City, the San Juan de Dios market in Guadalajara, and the La Pulga Rio market in Monterrey in the [2021 Notorious Markets List](#) for selling pirated and counterfeit goods.

With respect to geographical indications (GIs), in 2020, Mexico and the European Union (EU) concluded negotiations on a free trade agreement in which Mexico agreed to protect 340 names for foodstuffs, wines, and beers. The United States remains concerned about the EU practice of negotiating product-specific IP

outcomes as a condition of market access, and reiterates the importance of each individual IP right being evaluated on its individual merit in Mexico. In a USMCA side letter, Mexico confirmed that market access of U.S. products is not restricted in Mexico due to the mere use of certain individual cheese terms. Mexico has a *sui generis* system of protection for GIs that includes certain elements aimed at improving and respecting due process and transparency.

In July 2020, Mexico enacted a new law for the protection of industrial property and amendments to the Federal Copyright Law and Federal Criminal Code intended to implement a variety of IP commitments under the USMCA, including provisions on enforcement against counterfeiting and piracy, protection of pharmaceutical-related IP, protection against circumvention of technological protection measures and rights management information, unauthorized camcording of movies, satellite and cable signal theft, and transparency with respect to new GIs. Mexico is in the process of drafting implementing regulations for these revised laws. When these laws are fully implemented, these commitments should substantially improve the IP environment in Mexico and help to modernize Mexico's IP system. The United States continues to work closely with Mexico to make progress in addressing trade-related IP issues.

## **SERVICES BARRIERS**

### **Audiovisual Services**

Pay television is an important outlet for foreign programmers and continues to be subject to more stringent advertising restrictions than free-to-air broadcast television, which is supplied by domestic operators. Television programmers have long been allowed to follow the industry practice of inserting up to 12 minutes per hour for advertising without exceeding 144 minutes per day, a practice upheld by Mexico's Supreme Court in 2015 as consistent with Mexico's statutes. In February 2020, IFT published an opinion at odds with the 2015 court decision and long-standing practice. As IFT did not go through standard regulatory rulemaking, the intent and legal effect of the opinion is unclear, and it has created uncertainty in the market that affects U.S. stakeholders. IFT could resolve this issue by affirming the legality of existing practices, consistent with the 2015 court decision.

Mexico prohibited foreign investment in its broadcasting sector until the 2014 telecommunications reform allowed for up to 49 percent foreign equity in Mexican broadcasting enterprises. However, actual investment is limited to the share permitted for Mexican broadcasting investment in the company's country of origin. To enhance competition, Televisa was declared a "preponderant economic agent" in the free-to-air television broadcasting market and is therefore subject to tougher regulation, including the requirement to share its broadcasting infrastructure with competitors.

The United States actively monitors telecommunications and audiovisual reform proposals, which include local content quotas, and related legislative initiatives, for consistency with the USMCA. In 2019 and 2020, Mexican Senate leaders introduced bills calling for local content quotas on digital streaming platforms and raising the cinema screen quota for national films.

### **Electronic Payments Services**

The United States continues to closely monitor developments with respect to Mexico's evolving policy framework for electronic payment service suppliers. Aspects of the existing policy framework have the effect of limiting the ability of U.S. electronic payment service suppliers to supply their complete suite of value-added services, including fraud protection, and differentiate themselves in the marketplace. The United States anticipates improvements to facilitate a competitive market and level playing field for U.S. electronic payment service suppliers, aligned with Mexico's USMCA obligations.

On January 28, 2021, Mexico issued a final regulation on electronic payment fund institutions, which includes certain requirements relating to use of cloud service suppliers by electronic payment fund institutions. The United States will closely monitor implementation of this measure and continues to be concerned that the requirements relating to use of cloud service suppliers by electronic payment fund institutions may have a negative competitive impact on the business of U.S. service suppliers.

### **Telecommunications Services**

Notwithstanding the sweeping reforms of the telecommunications sector in 2013 and 2014, new market entrants must still compete with the traditional dominant supplier, which has maintained a market share well above 60 percent and was designated as a “preponderant economic agent” by IFT. The entrenched position maintained by this dominant supplier, particularly with regards to the mobile services market, demonstrates the continued need for vigilant enforcement by IFT of the regulations it adopted to address that supplier’s status as a preponderant economic agent. The United States urges Mexico to investigate and resolve all pending complaints concerning failures of the dominant supplier to fully comply with all preponderant economic agent regulations.

In addition, statements by the Mexican President concerning the intention to eliminate IFT or to absorb it into the Secretariat of Communications and Transportation (SCT), raise significant concerns regarding Mexico’s continued compliance with its USMCA obligations.

## **BARRIERS TO DIGITAL TRADE**

### **Digital Taxation**

The Revenue Law for 2022, like the Revenue Law for 2021, includes a provision which gives the Mexican Government the authority to order Internet service providers in Mexico to block access in Mexico to electronically delivered services from non-resident service suppliers that are found out of compliance with Mexican VAT registration. Although Mexico has yet to use this “kill switch” provision since it went into effect in 2021, its use could be an extreme penalty under the circumstances.

## **INVESTMENT BARRIERS**

### **Energy Sector**

Throughout 2021, U.S. energy companies complained of government-wide efforts to promote Mexico’s state-owned oil company PEMEX and electrical utility (CFE) at the expense of private foreign investors. These efforts include significant new legislation and a proposed constitutional reform, as well as significant permitting delays, discriminatory enforcement of regulations, and lack of notice regarding regulatory and policy changes. The United States has raised concerns with Mexico regarding the deteriorating climate for U.S. energy investors in Mexico, emphasizing that the U.S. Government is committed to ensuring that U.S. investors are treated fairly and that Mexico adheres to its USMCA commitments, including those related to investment and state-owned enterprises. The United States has also emphasized that, contrary to the statements of certain Mexican officials, the USMCA applies to Mexico’s energy sector.

In a July 2020 memo, the Mexican President outlined a “new energy policy” that introduced several proposals that later became the focus of new legislation, and urged energy regulators to restore state control over the energy sector and prevent state-owned energy companies from losing market share to private companies. The memo instructs regulators to use existing authority to block permits for private sector energy projects and to favor PEMEX and CFE and protect their market share, consistent with the concerns U.S. energy investors have reported.

On March 9, 2021, the Mexican President signed into law the fast-tracked electricity reform, which quickly passed both legislative chambers. The law prioritizes CFE generation in the electricity dispatch order over cleaner and cheaper private options, including from U.S. renewable energy companies that have made substantial investments in Mexico. The law also provides broad governmental discretion to revoke permits for power purchase agreements between private entities, and authorizes CFE to renegotiate its independent power purchase agreements with private generators. The Mexican Supreme Court subsequently enjoined the law for constitutional review based upon challenges from the Mexican competition authority and opposition political parties. Although the law remains under constitutional review, the proposed constitutional amendment, discussed below, would supersede this review if approved.

The Mexican President signed into law a reform to the hydrocarbons law on April 29, 2021, to give the state-owned oil company PEMEX more control over Mexico's fuel market. The law gives the government the power to revoke existing permits held by private sector competitors when national security, energy security, or the economy are at risk. Like the electricity sector reform, the Mexican Congress passed the bill with little modification. Affected investors subsequently filed injunctions and federal courts enjoined the law for review.

On September 30, 2021, the Mexican Government sent to the Chamber of Deputies a constitutional amendment to retake state control of the electricity sector and significantly roll back Mexico's historic 2013 through 2014 energy reforms. If approved, the amendment would transform CFE into a vertically integrated monopoly that controls access to Mexico's grid, abolish independent regulators, and guarantee that CFE generates at least 54 percent of the energy required by Mexico. The amendment would also cancel all private power generation permits and power purchase contracts selling to CFE, as well as self-supply power purchase agreements granted since 2014.

In addition, since June 2021, Mexican authorities have closed numerous fuel terminals near the U.S. border, many of which are owned by U.S. investors, and impounded rail cars carrying U.S. refined fuels (gasoline and diesel), claiming concerns with fuel imported illegally to avoid certain internal taxes. Terminal operators, importers, and exporters have reported that they have not been given recourse to demonstrate that their fuels meet importation and tax requirements.

The U.S. Government is seriously concerned with these developments and the Office of the United States Trade Representative continues to analyze these actions and measures for consistency with Mexico's USMCA obligations.

### **Restricted Sectors**

Certain other sectors or activities, such as ground transportation services and transportation infrastructure (including airport management), are closed to foreign participation. Under the Foreign Investment Law, foreigners may wholly own a Mexican freight motor carrier company, but are restricted to carrying only international cargo; foreign ownership is capped at 49 percent for express delivery companies. Mexico also prohibits foreign ownership of residential real estate within 50 kilometers of the nation's coasts and 100 kilometers of its land borders (although foreigners may acquire use of residential property in these zones through trusts administered by Mexican banks). Under the Foreign Investment Law, foreigners can invest up to 49 percent in land for agricultural, livestock, and forestry purposes if they are not in the previously mentioned excluded areas. An interagency National Foreign Investment Commission reviews foreign investment in Mexico's restricted sectors, as well as investments in unrestricted sectors in which foreign equity exceeds 49 percent and for which the value exceeds \$165 million (adjusted annually).

## **ENVIRONMENT**

Mexico faces challenges with implementation and enforcement of certain USMCA Environment Chapter commitments, in particular enforcing certain aspects of its domestic regime with respect to fisheries management. U.S. fishing industry representatives have expressed concern that inadequate enforcement by Mexico of environmental laws meant to regulate fishing activities puts law-abiding U.S. fishers at a competitive disadvantage compared to Mexican fishers who do not comply with environmental laws.

# MOROCCO

## TRADE AGREEMENTS

### The United States–Morocco Free Trade Agreement

The United States–Morocco Free Trade Agreement (USMFTA) entered into force on January 1, 2006. Morocco immediately eliminated duties on 95 percent of industrial and consumer goods. Morocco implemented phased tariff reductions culminating in the complete elimination of duties on most other such goods by January 2015. Some sensitive agricultural products have longer periods for duty elimination and may be subject to other provisions, such as tariff-rate quotas (TRQs). Goods from key U.S. export sectors, such as information technology, machinery, construction equipment, chemicals, and textiles, enjoy either duty-free or other preferential duty treatment when entering Morocco. The United States and Morocco consult regularly to review the implementation and functioning of the Agreement and to address outstanding issues. The United States–Morocco Joint Committee (JC) is the central oversight body for the FTA.

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

Pursuant to the USMFTA, Morocco maintains a number of TRQs, including for U.S. durum and common wheat, beef, and poultry exports. In response to underperforming wheat exports, for many years the United States pressed Morocco for reforms to its wheat tender system. In 2019, Morocco agreed to resolve a longstanding U.S. complaint regarding the infrequency of Moroccan wheat auctions and implemented a schedule that requires auctions when the tariff rate is changed.

In October 2017, Morocco committed to honoring its commitments under the USMFTA to accelerate tariff phase-outs on approximately 40 tariff lines of wheat, beef, and poultry products in the event Morocco applies a lower duty to European Union (EU) products. Under the USMFTA, tariffs on these products are to be completely eliminated or reduced by 2024. On January 1, 2020, Morocco issued a customs circular that enforced Morocco’s accelerated tariff phase-out for several U.S. products subject to the FTA’s ‘preference clause’ (Annex IV, General Notes of Morocco, Annex 1, paras. 2 and 3). The circular also contained the 2020 TRQ amounts and updated tariff rates for U.S. poultry, beef, and wheat.

On January 1, 2021, as prescribed in the USMFTA, Morocco eliminated all tariffs on almonds imported from the United States and removed its TRQ for almonds. U.S. exports of almonds in 2021 increased approximately 47 percent, to \$120.3 million from \$81.8 million in 2020. In addition, tariffs on certain dairy lines were fully phased out at the start of 2021. U.S. dairy exports in 2021 increased approximately 16 percent, to \$17 million compared to 2020, though still below the 2018 high of \$18 million.

#### *Taxes*

Under its General Code of Taxes, Morocco levies a 20 percent value-added tax (VAT) on imported meat, poultry, seafood, olive oil, and dates. Exceptions exist for specific imported meat, seafood, and poultry patties. In comparison, all domestic meat, poultry, seafood, olive oil, and dates are exempt from VAT payment. In 2019, prospective importers of U.S. seafood, beef, and poultry stated that the VAT put U.S.

exports at a cost disadvantage. The United States raised this issue at the USMFTA JC meeting in July 2019 and continues to closely monitor Morocco's application of VAT to U.S. products.

## **Non-Tariff Barriers**

### *Customs Barriers and Trade Facilitation*

Though U.S. firms remain generally satisfied with Moroccan customs procedures, some companies have raised concerns with a lack of efficiency and transparency in certain instances. For example, some U.S. companies have cited Morocco's approach to customs valuation and Morocco's requirement of a certificate of non-manipulation for goods in transit as impediments to the clearance or movement of their shipments, and as incompatible with USMFTA commitments. During the July 2019 USMFTA JC meeting, Morocco cited a customs circular issued in June 2019, that waived the certificate of non-manipulation for shipments in containers that remained sealed during transit.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

In July 2016, the Moroccan Government issued an implementation decree (Decree No. 2-15-89 of Ramadan 3, 1437) that allows for the importation of automobiles that meet the U.S. Federal Motor Vehicle Safety Standards (FMVSS). Morocco has not notified this measure to the WTO. Previously, Morocco only allowed the import of automobiles meeting the United Nations Economic Commission for Europe vehicle standards, effectively barring many automobiles produced in the United States from entering the Moroccan market. Although issuance of the implementation decree should have enabled importers to clear customs using self-certification documents to demonstrate compliance with U.S. FMVSS, Moroccan customs has still not adopted a procedure to regularize this process.

### **Sanitary and Phytosanitary Barriers**

In October 2017, Morocco committed to finalize export certificates for U.S. beef and poultry products. By December 2018, export certificates were completed and the market was opened to U.S. exports. In 2019, Morocco finalized sanitary certificates to allow imports of U.S. processed egg products and bovine semen. Morocco also upheld its commitment to keep import tolerances for deoxynivalenol in wheat at levels consistent with Codex Alimentarius Commission standards. In January 2020, Morocco finalized a sanitary certificate for U.S. live cattle. The Moroccan Government continues to work through its pest risk assessment for seed potatoes, and to process registrations for new seed potato varieties. Additional work is needed to expand the list of eligible beef breed sires for bovine semen.

Morocco has not authorized biotechnology products for domestic cultivation.

## **GOVERNMENT PROCUREMENT**

The USMFTA requires the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for covered procurements. Morocco permits U.S. suppliers to bid on procurements by all Moroccan central government entities, as well as procurements by the vast majority of Moroccan regional and municipal governments, on the same basis as Moroccan suppliers.

Morocco is neither a Party to the World Trade Organization (WTO) Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

## **INTELLECTUAL PROPERTY PROTECTION**

Inadequate intellectual property protection and enforcement in Morocco continues to be an area of concern. Although the United States acknowledges the efforts of Morocco to combat piracy and trade in counterfeit goods, Morocco continues to be a thriving market for illicit counterfeit products and faces challenges with digital piracy.

The United States and Morocco continue to engage on matters related to Morocco's policy toward geographical indications (GIs). The United States remains highly concerned that the EU has pursued negotiations with Morocco and other countries that would require partner countries to adopt overly broad protection of EU GIs as a condition of market access into the EU. The EU's approach adversely impacts access for U.S. and other producers and prevents all producers, other than in certain EU regions, from using certain product names. The United States continues to reiterate to Morocco the importance of each GI being independently evaluated on its individual merits, with adequate due process requirements.

U.S. companies remain concerned about Morocco's lack of protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, particularly for new indications of innovative drugs.

## **SERVICES BARRIERS**

Although Morocco's insurance regulations do not appear to make formal distinctions based on national origin, U.S. insurance suppliers have reported that, in practice, the Moroccan regulatory body (part of the Ministry of Economy and Finance) applies an authorization process that has impeded U.S. insurance companies from introducing products that compete with Moroccan firms.

## **SUBSIDIES**

Morocco last notified its levels of agricultural domestic support to the WTO for the year 2007, and last notified its agricultural export subsidies for the year 2017. Morocco appears to provide high levels of domestic support for its wheat production. Morocco also appears to subsidize agricultural exports to the United States.

## **OTHER BARRIERS**

U.S. firms have cited irregularities in various Moroccan government procedures, including a lack of clear and accessible information about new regulations and certifications relating to imports into the country, as among the greatest obstacles to trade and investment with Morocco. In particular, U.S. companies have pointed to difficulties they encounter in processes for obtaining permits, land use approvals, and other government permissions. U.S. companies also have noted the challenges created by rigid protocols and excessive bureaucracy, which can lead to long wait times for decisions and permissions, particularly when dealing with public sector entities. Morocco's cumbersome tax and employment regimes and property registration procedures also continue to impede business.

In an effort to avoid an excessive drain on foreign exchange, Moroccan authorities allow Moroccan companies to prepay only up to 30 percent of a shipment's total value in advance of importation. These restrictions on purchasers are often problematic for U.S. exporters that require 100 percent advance payment. Some U.S. exporters use letters of credit to mitigate the effect of these limitations, but these are costly and many U.S. exporters report payment delays. Additionally, some Moroccan banks are only willing to conduct business with certain U.S. banks—regardless of the preferences of U.S. exporters—

which can cause further transactional delays. While Moroccan officials had indicated in 2019 that the 30 percent limit would be phased out over an indefinite timeline, it remained in effect as of March 2022. The United States will continue to press for removal of the limitation.

# NEW ZEALAND

## TRADE AGREEMENTS

### **The United States–New Zealand Trade and Investment Framework Agreement**

The United States and New Zealand signed a Trade and Investment Framework Agreement on October 2, 1992. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and New Zealand.

## IMPORT POLICIES

### **Tariffs and Taxes**

#### *Tariffs*

New Zealand's average Most-Favored-Nation (MFN) applied tariff rate was 1.9 percent in 2020 (latest data available). New Zealand's average MFN applied tariff rate was 1.4 percent for agricultural products and 2.0 percent for non-agricultural products in 2020 (latest data available). New Zealand has bound 100 percent of its tariff lines in the WTO, with an average WTO bound tariff rate of 9.4 percent.

As of 2020, New Zealand applied a zero percent duty on an MFN basis on 72.4 percent of its tariff lines in agricultural goods and on 65.1 percent of its tariff lines in non-agricultural goods.

## SANITARY AND PHYTOSANITARY BARRIERS

### **Animal Health**

New Zealand maintains restrictions on imports of pork from the United States related to porcine respiratory and reproductive syndrome. Imports of U.S. frozen or chilled pork products weighing more than three kilograms must be cooked, canned, or undergo further processing within New Zealand.

### **Industrial Goods**

In August 2020, Biosecurity New Zealand released new rules requiring treatment of all imported vehicles, machinery, and parts to prevent entry of the brown marmorated stink bug (BMSB). The regulations apply during the BMSB season, from September 1 to April 30. Under the new rules, the Ministry of Primary Industries increased the number of “risk countries” requiring off-shore treatment of imported vehicles, machinery, and parts from 17 to 37 countries, including the United States. Prior to the new rules, only uncontainerized vehicle cargo from risk countries required treatment before arriving in New Zealand.

## INTELLECTUAL PROPERTY PROTECTION

New Zealand generally provides strong intellectual property (IP) protection and enforcement. From November 2018 to April 2019, New Zealand sought public feedback on the efficacy of the current copyright regime by consulting on an Issues Paper. In November 2019, the Ministry of Business, Innovation, and Employment (MBIE) issued a second paper entitled “Review of the Copyright Act 1994: MBIE's approach to policy development” that amended the initial objectives of the review. However, in July 2020, the MBIE withdrew the paper to further consult the public on potential changes to the objectives. The timing of the

consultation process is unclear. The United States continues to monitor the outcome of this review, including with respect to technological protection measures and copyright term.

The United States continues to monitor New Zealand's IP-related legislation, including implementation of the World Intellectual Property Organization Internet Treaties and proposed amendments to the Patents Act 2013, the Trade Marks Act 2002, and the Designs Act 1953. The United States also continues to monitor developments to amend the Medicines Act 1981 through the Therapeutic Products Bill. The United States will continue to work with New Zealand to address any IP issues.

## **INVESTMENT BARRIERS**

### **Limitations on Foreign Equity Participation**

Foreign investment into New Zealand is regulated by the Overseas Investment Act 2005 (OIA), which requires overseas persons to obtain government consent to invest in certain sensitive assets, including significant business assets, fishing quotas, and sensitive land. New Zealand defines an "overseas person" as someone who is not a New Zealand citizen, and who does not maintain annual residency in New Zealand of more than six months in each year, or an entity that is incorporated overseas and/or more than 25 percent owned or controlled by an overseas person, or a New Zealand individual, or entity investing on behalf of an overseas person.

New Zealand requires consent from the Overseas Investment Office (OIO) for foreign investments 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 \$71 million). This threshold is higher (NZ\$200 million, approximately \$142 million) for some countries that have entered into trade agreements with New Zealand. Additionally, the OIO screens any foreign investment that would result in the acquisition of 25 percent or more of a fishing quota either directly or through the acquisition of a company that already possesses a quota. The OIO also reviews the acquisition of land defined as "sensitive" by the OIA. Sensitive land includes farmland greater than five hectares, land adjoining the shoreline, conservation land, and existing residential real estate.

Investments by overseas persons in significant business assets, fishing quotas, and sensitive land, are subject to the national interest test or "Benefit to New Zealand test." The test considers, among other things, the benefits that a proposed investment in sensitive land will (or is likely to) bring in seven different categories, including the benefit to the economy and the environment.

## **OTHER BARRIERS**

The Pharmaceutical Management Agency (PHARMAC) determines which medicines to fund for use in community and public hospitals, negotiates prices with pharmaceutical companies, and sets subsidy levels and reimbursement criteria. In 2013, PHARMAC's role was expanded to include the management of community medicines, pharmaceutical cancer treatments, the National Immunization Schedule, management of all medicines used in District Health Board hospitals, and the national contracting of hospital medical devices.

Some U.S. stakeholders have expressed concern about aspects of PHARMAC's regulatory process, including lack of transparency, timeliness, and predictability in the funding process and lengthy delays in reimbursing new products.

# NICARAGUA

## TRADE AGREEMENTS

### **Dominican Republic–Central America–United States Free Trade Agreement**

The Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006, for the Dominican Republic in 2007, and for Costa Rica in 2009. The United States and the other CAFTA–DR countries meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

## IMPORT POLICIES

### **Tariffs and Taxes**

#### *Tariffs*

As a member of the Central American Common Market, Nicaragua applies a harmonized external tariff on most items at a maximum of 15 percent, with some exceptions. Approximately 95 percent of Nicaragua’s tariff lines are at 15 percent or less. In 2007, in response to rising prices, Nicaragua’s Ministry of Industry Commerce and Development issued a series of ministerial regulations (073-2008) to eliminate or reduce to five percent the tariffs on many basic foodstuffs and consumer goods. These regulations have been extended every six months since 2007 and in December 2021, the Nicaraguan Government renewed the regulations through June 30, 2022.

Under the CAFTA–DR, as of January 1, 2015, U.S. originating consumer and industrial goods enter Nicaragua duty free. Textile and apparel goods that meet the Agreement’s rules of origin also enter Nicaragua duty free and quota free.

Nicaragua has eliminated its tariffs on substantially all U.S. agricultural products under the CAFTA–DR. In accordance with its obligations, Nicaragua eliminated its remaining tariff-rate quota (TRQ) on yellow corn and pork meat on January 1, 2020, and will eliminate its remaining tariffs on rice and chicken leg quarters by 2023, and on dairy products (cheese, butter, powdered milk, and ice cream) by 2025. For certain agricultural products, TRQs permit immediate duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Nicaragua will liberalize trade in white corn through continual expansion of a TRQ rather than the reduction of the out-of-quota tariff. Nicaragua is required under the CAFTA–DR to make TRQs available on January 1 of each year. Nicaragua monitors its TRQs through an import licensing system, which the United States carefully tracks to ensure the timely issuance of these permits.

#### *Taxes*

The Nicaraguan Government levies a consumption tax of 15 percent to 42 percent on some luxury items, with some exceptions, such as for yachts and helicopters, for which there is no tax. Domestic goods are taxed on the manufacturer’s price, while imports were previously taxed on the cost, insurance, and freight (CIF) value. However, after fiscal reforms in 2019, customs officials began basing this tax on a unilaterally devised purchase price that often seems to be inflated and does not reflect original procurement conditions. Multiple importers report that customs officials simply triple the CIF value to provide a baseline for the tax, which businesses say far exceeds the actual purchase price. The selective consumption tax therefore

may disadvantage foreign suppliers because domestic products pay the tax only on the actual purchase price. The Nicaraguan Government allows businesses to seek refunds for any overpaid tax once the product is sold and the final purchase price is established, but in practice, businesses report being unable to secure tax refunds, with some stating that filing for a refund has resulted in audits, additional taxes, and penalties. Some businesses report abandoning the legal appeal process and paying the tax as initially calculated, while others have reduced their tax burden only after lengthy legal processes. Alcoholic beverages and tobacco products were previously taxed on the price billed to the retailer, but are now also based on the calculation of a presumed purchase price. The National Institute of Information and Development (INIDE) has provided a schedule of retail prices that is supposed to serve as a baseline for this tax, but businesses report that customs authorities often do not use the schedule.

In February 2019, the Nicaraguan Government implemented tax reforms. It extended its standard 15 percent value added tax to basic goods that were previously exempt. The newly taxed goods include most meats, dairy products, imported onions and potatoes, and refined sugar. Between January 2021 and September 2021, value added tax collected at the border increased by 38 percent year-on-year (latest data available), and value added tax on domestically produced goods increased by 29 percent during the same time period. When the Nicaraguan Government announced these reforms, it also announced it would revise the reforms within 90 days based on public comment. As of March 2022, the Nicaraguan Government had not announced any revisions.

## **Non-Tariff Barriers**

### *Customs Barriers and Trade Facilitation*

Businesses report that Nicaraguan customs officials routinely delay customs inspections and levy arbitrary fines for minor paperwork problems such as typographical errors. These fines reportedly often represent up to three times the value of the shipment. Businesses also report a significant increase in the number of incoming shipments subject to further inspections, with a majority of shipments now subject to such inspection. Some businesses express concern that customs officials might target shipments for further scrutiny for political reasons.

In addition, six government institutions are involved in processing import paperwork. Many services, such as lab testing for food safety, are available only in the capital city of Managua, meaning importers often experience delays and additional costs if goods must be stored in Managua while testing is completed. Some businesses report that customs officials arbitrarily hold or open containers that contain perishable items, such as refrigerated or frozen goods.

Starting in 2019, Nicaragua's Customs Authority (DGA) began systematically seeking proof of country of origin of products that had previously been established to originate in the United States, including through a comprehensive questionnaire to importers seeking detailed information about the products. Multiple businesses have reported that the requested information includes proprietary business data or trade secrets. Businesses have sought to make arrangements with DGA to establish proof of origin without publishing trade secrets in questionnaires, such as, through site visits to production plants and staff interviews. However, DGA has rejected those proposals and in multiple cases has initiated administrative processes to remove preferential treatment and also seek retroactive tariffs for the time that the product was imported with preferential treatment. DGA's increased scrutiny of the proof of origin of imports has led to delays at customs and arbitrary fines for businesses. In multiple cases, DGA has also levied a separate fine that doubles the amount owed.

U.S. exporters report that DGA has ignored certifications provided by U.S. or local Government agencies as proof of origin for agricultural commodities and that submission of additional documents requested by

customs, such as questionnaires, has not guaranteed approval and does not appear to be part of a good-faith process.

Businesses also complain that DGA arbitrarily questions the declared value of goods. Businesses that choose to contest DGA's reportedly inflated valuations face increased storage fees and supply chain delays, and so sometimes choose to pay tariffs and taxes on these higher values. Businesses contend that this behavior by DGA is intended to artificially inflate taxes assessed on businesses. They also allege that the Nicaraguan Tax Authority (DGI) inflates revenue by conducting audits and unfairly levying tax penalties and fines on local businesses. The judicial authorities may authorize arrest warrants and property seizures based on those tax actions.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

U.S. industry has raised concerns that food product registration in Nicaragua can be complicated and arbitrary. The Ministry of Health requires a Certificate of Free Sale for product registration. In some cases, U.S. companies have satisfied the requirement by submitting documents from state or local government authorities or trade organizations. However, U.S. manufacturers cannot gain approval to sell into the Nicaraguan market if they are unable to obtain such documents.

U.S. food companies have expressed concern regarding Law 842 (2013), which requires that all processed food products be marked with an expiration date. Nicaraguan officials have at times interpreted "Best By" dates, which indicate food quality or freshness, not food safety and have destroyed products exceeding those dates.. Nicaraguan importers of U.S. products have complained that the law imposes costs on food importers, especially for products that do not typically have expiration dates. Nicaraguan importers continue to work with suppliers to include expiration dates in the translated Spanish label as required by Central American Technical Regulation on General Labeling of Prepackaged Food Products (RTCA 67.01.07.10).

### **Sanitary and Phytosanitary Barriers**

The Nicaraguan Institute of Agricultural Protection and Health (IPSA) denied the entry of four containers of pork and chicken meat during the first half of 2021, claiming unacceptable presence of *Salmonella*. Nicaragua applies the Central American Technical Regulation RCTA 67.04.50: 17 Foods, Microbiological Criteria for Food Safety. It has been adopted by Guatemala, El Salvador, Nicaragua, and Costa Rica, and is a different microbiological criteria for raw meats than the one used in the United States. The United States Department of Agriculture's Foreign Agricultural Service, Animal and Plant Health Inspection Service, and Food Safety Inspection Service have facilitated the re-export of the containers and engages IPSA to ensure compliance with applicable protocols.

## **GOVERNMENT PROCUREMENT**

Significant hurdles inhibit the ability of U.S. suppliers to compete for sales to Nicaraguan Government entities. Existing law provides that all government purchases must be planned and approved by procurement committees within each public entity, and published in Annual Procurement Plans. The law also requires a minimum of 30 days from publication of a bid to the due date for submissions. However, these requirements are not always followed. Industry reports that the Nicaraguan Government limits transparency on public procurement, publishes public procurements too late to ensure fair competition, creates terms of reference and technical specifications that are frequently unclear, and includes requirements for financial guarantees and local legal representation that create significant challenges for

U.S. firms without a local presence or partner. Moreover, industry complains that rule of law is weak and that outside actors can influence the judicial process and hamper due process. The Government of Nicaragua is not reliably responsive to foreign governments raising these concerns.

Nicaragua is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement. However, the CAFTA–DR contains provisions on government procurement. The United States will continue to monitor Nicaragua’s government procurement practices for consistency with the CAFTA–DR’s disciplines on government procurement.

## **INTELLECTUAL PROPERTY PROTECTION**

Despite a strong legal framework to implement CAFTA–DR commitments on intellectual property (IP) protection and enforcement, the United States continues to be concerned with several issues in Nicaragua, including optical disc and broadcast media piracy. The use of unlicensed software also remains a concern. Further, the sale of counterfeit and pirated goods is reportedly on the rise throughout Nicaragua. The United States has expressed concern to the Nicaraguan Government about inadequate IP enforcement, as well as the need to ensure transparency in procedures relating to the protections for geographical indications. The United States will continue to monitor Nicaragua’s implementation of its IP obligations under the CAFTA–DR.

## **INVESTMENT BARRIERS**

Weak governmental institutions, deficiencies in the rule of law, and extensive central government control of judicial and economic institutions creates significant challenges for those looking to invest in Nicaragua, particularly smaller foreign investors. Reports indicate that the Nicaraguan Government has disregarded rule of law, suspended constitutionally guaranteed civil rights, and fostered rampant corruption. Potential investors report that local connections with the government are necessary for investments to succeed. Investors have raised concerns that regulatory authorities act arbitrarily and often favor one competitor over another. There are also significant delays in receiving residency permits, requiring frequent travel out of the country to renew visas, made more difficult by the lack of commercial international flights. Many individuals and entities raise concerns about the progressive increase in energy tariffs and arbitrary changes in taxes and customs in particular.

Reports also indicate that property rights and enforcement are unreliable in Nicaragua. The United States continues to hear allegations that Nicaraguan Government entities are not responsive, and in some cases may be complicit in urging property rights violations against legitimate property owners for political reasons. Some property owners say they have had to pay violators to regain possession. In addition, investors continue to raise concerns with Law 840 (2013), which specifies that property holders whose land is expropriated or nationalized will receive compensation based on cadastral value (the tax-assessed value of a property established by the national government) rather than on the value determined by the market. The United States will continue to monitor the situation to ensure that the Nicaraguan Government fulfills its CAFTA–DR obligations.

In 2020, the National Assembly passed a series of repressive laws that raise concerns for investors.

### *Foreign Agents Law*

In 2020, the Nicaraguan Government approved the Law on the Regulation of Foreign Agents (RFA). The RFA requires foreign agents to register with the Nicaraguan Government and file reports on all funds and donations received from foreign entities and how they are used. The RFA also prevents agents from “intervening ... in affairs related to internal or external politics” or running for public office. The law

defines “foreign agents” as any person who: “performs or works as an agent, representative, employee, service provider or any other activity subject to the orders, requirement, instruction, direction, supervision, control from a foreign entity or, from an individual or legal entity whose activities are, directly or indirectly, supervised, directed, controlled, financed or subsidized, in whole or in part, by foreign individuals, Governments, capital, businesses or funds, directly or through a third party, be it an individual or legal entities.”

The RFA specifically applies to public relations and marketing professionals, and “[g]overnments, foundations, businesses, corporations or associations, who ... receive ... or disburse funds ... or in the interest of foreign individuals and ... businesses or organizations.” While the RFA also exempts certain categories, including organizations solely involved in commerce, legal experts expressed concern that the RFA is written so broadly that the government could apply it to any entity.

## **SUBSIDIES**

All exporters receive tax benefit certificates equivalent to 1.5 percent of the free-on-board value of exported goods.

Under the CAFTA–DR, Nicaragua may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, Nicaragua may maintain such duty waiver measures for such time as it remains an Annex VII country developing country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures. The United States will continue to work to ensure the Nicaraguan Government’s compliance with its CAFTA–DR obligations.

## **STATE-OWNED ENTERPRISES**

Albanisa, the joint venture of the Venezuelan and Nicaraguan state oil companies, which previously imported and distributed Venezuelan petroleum, has provided in recent years preferential financing to parties that agreed to export their products to Venezuela. Albanisa’s business practices are reported to have enriched corrupt officials of the Nicaraguan Government, and the related firms were blocked by operation of law following the January 28, 2019 U.S. designation of *Petroleos de Venezuela, S.A.*, for sanctions. The United States designated Albanisa’s subsidiary, *Banco Corporativo SA*, for sanctions on April 17, 2019. The United States designated *CARUNA*, the savings and credit cooperative that held Albanisa funds, for sanctions on October 9, 2020. Albanisa is reportedly involved with many other businesses in Nicaragua, including in the energy sector. Fuel distributor *Distribuidor Nicaraguense de Petroleo S.A. (DNP)* was designated for sanctions on December 12, 2019, because members of the Ortega family had used it to enrich themselves through non-competitive contracts with Nicaraguan Government institutions. Power plants owned by Albanisa receive the most generous guaranteed “installed capacity” payments from the Nicaraguan Government, which is paid regardless of whether the plants generate electricity. Despite two of three Albanisa plants not producing electricity following U.S. sanctions, Albanisa nonetheless receives payments from *DISNORTE-DISSUR*, the national electricity distribution company, for their installed capacity at \$14,470 per megawatt per month – the highest rate in Central America. Nicaragua’s National Assembly passed legislation to nationalize the national electricity distribution company *DISNORTE-DISSUR* on December 21, 2020.

## **OTHER BARRIERS**

### **Barriers to Digital Trade**

On October 30, 2020, the National Assembly passed the Special Cybercrimes Law, which criminalizes the publication and amplification of false information. Experts express concern that the law gives broad leeway to authorities to determine what consists of false information and therefore endangers the free press. In September 2021, the Nicaraguan Prosecutor General used the law to prosecute an environmental protection advocate for allegedly spreading fake news on social media platforms about a massacre of indigenous community members.

### **Medication Pricing**

The Nicaraguan Government unilaterally sets the price for all medications sold in Nicaragua. However, despite increases in taxes and changes in other market conditions, businesses report that the government has ignored all applications for price adjustments for the past four years.

### **Bribery and Corruption**

The CAFTA–DR contains strong public sector anti-bribery commitments and anticorruption measures in government contracting, and U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of government entities.

However, U.S. stakeholders have expressed concerns that corruption in the Nicaraguan Government, including in the judiciary, continues to constrain successful investment in Nicaragua. Administrative and judicial decision-making is widely believed to be inconsistent, nontransparent, and time-consuming. Reports indicate that extra-judicial interests, in particular political interests, influence administrative and judicial processes. Courts frequently grant orders, called *amparos*, that suspend official investigatory and enforcement actions indefinitely, delays that in some cases appear intended to protect individuals suspected of white-collar crime. At least one U.S. firm has reported a lack of legal due process, alleging the ruling authority in a trial had intentions of benefitting a family member.

Nicaragua has improperly issued arrests and seizure warrants based on reportedly groundless government tax infractions. In 2021, reports suggest that arbitrary arrests and seizures significantly increased in the runup to the country's November 7 elections. The Government of Nicaragua arrested 39 political opposition members and private sector leaders for alleged money laundering and violating Law 1055 (which criminalizes "illegal" acts that "undermine" Nicaragua's independence and sovereignty). The Nicaraguan Government similarly used customs fraud and money laundering charges to close the nation's last independent print newspaper.

Investors have raised concerns that regulatory authorities are slow to apply existing laws, act arbitrarily, and often favor one competitor over another. Foreign investors report that government officials significantly delay issuance of residency permits, as a means to elicit bribes, requiring frequent travel out of the country for investors to renew visas. U.S. traders have reported cases of customs officials reviewing social media posts and other information for evidence of anti-government rhetoric. Investors continue to express concern about arbitrariness in taxation procedures, as well as the frequency and duration of tax audits of foreign investors. In addition to tax-related seizures, multiple companies and individuals have reported attempts by others to seize or occupy their land. These reports assert that government institutions, such as police, the court system, and attorney general's office, have either been nonresponsive to attempts to seek redress or actively assisted the seizures. The Nicaraguan Government has historically been unresponsive to U.S. Government efforts to address these problems.

### **Reforms to the Consumer Protection Law**

On February 3, 2021, the National Assembly approved an amendment to the Consumer Protection Law. The amendment prohibits banks from refusing financial services to customers, including suspected money launderers and individuals designated for sanctions by the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC). Nicaragua's banking association warned that once implemented the law would contradict banks' international anti-money laundering obligations and jeopardize Nicaragua's participation in the world financial system. The Nicaraguan Government has yet to fully implement this law.

### **Tax Reforms**

In February 2019, the Nicaraguan Government implemented tax reforms, including tripling income taxes on businesses with gross annual income exceeding \$5 million. When the Nicaraguan Government announced these reforms, it also announced it would revise the reforms within 90 days based on public comment. As of March 2022, the Nicaraguan Government had not announced any revisions.

# NIGERIA

## IMPORT POLICIES

### Tariffs

Nigeria's average Most-Favored-Nation (MFN) applied tariff rate was 12.1 percent in 2020 (latest data available). Nigeria's average MFN applied tariff rate was 15.8 percent for agricultural products and 11.5 percent for non-agricultural products in 2020 (latest data available). Nigeria has bound 19.7 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 120.5 percent.

Consistent with the Economic Community of West African States (ECOWAS) common external tariff (CET), Nigeria applies five tariff bands: (1) zero percent duty on essential social goods (*e.g.*, medicine); (2) 5 percent duty on essential commodities, raw materials, and capital goods; (3) 10 percent duty on intermediate goods; (4) 20 percent duty on consumer goods; and, (5) 35 percent duty on certain goods that the Nigerian Government elected to afford greater protection. The CET was slated to be fully harmonized by 2020, but some ECOWAS Member States have maintained deviations from the CET beyond the January 1, 2020 deadline.

Nigeria maintains a number of supplemental levies and duties on imports of certain goods, which significantly raises the effective tariff rate paid by importers. For example, Nigeria maintains a combined effective duty (tariff plus levy) of 50 percent or more on 156 tariff lines. These include 15 tariff lines on which the combined effective duty exceeds the 70 percent limit set by ECOWAS, covering tobacco (135 percent for cigars and cigarettes and 85 percent for tobacco and other tobacco products), rice (120 percent), wheat flour (100 percent), and sugar (80 percent).

In 2013, the Nigerian Government announced an Automotive Industry Development Plan (NAIDP) to incentivize domestic vehicle manufacturing. The NAIDP imposes a 35 percent levy on automobile imports, which applies in addition to the pre-existing 35 percent tariff, for an effective total *ad valorem* duty of 70 percent. The NAIDP allows companies that manufacture or assemble cars in Nigeria to continue to import two vehicles at the old rate (35 percent tariff only) for every one vehicle produced in Nigeria. Despite the NAIDP, Nigeria's automobile industry production capacity remains significantly lower than government projections.

### Non-Tariff Barriers

#### *Quantitative Restrictions*

In 2014, Nigeria introduced a frozen fish import quota regime that was expected to significantly reduce total fish imports. The Nigerian Government also banned imports of catfish and tilapia species as part of the quota system. The ban does not officially cover Pacific hake (*Merluccius productus*), and the Ministry of Agriculture entered into an agreement for a U.S. firm to export Pacific hake to Nigeria. However, the Central Bank of Nigeria's (CBN) foreign exchange restrictions include fish and, therefore, impact U.S. exports of Pacific hake to Nigeria.

#### *Import Bans*

The Nigeria Customs Service continues to ban the import of 46 different product categories, citing the need to protect local industries or promote health and safety. The list of prohibited imports currently includes:

bird eggs; 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; tomatoes, tomato ketchup, and tomato sauces; nonalcoholic beverages (excluding energy drinks); bagged cement; beer and stout; all medicaments falling under Harmonized System headings 3003 and 3004; soaps and detergents; mosquito repellent coils; paper board; telephone recharge cards and vouchers; used motor vehicles more than 15 years old; ball point pens; pistols and air pistols; cartridge reloading implements; used clothing; and certain spirits and alcohols. The import ban lists can be found at the Nigeria Customs Service website: “[Import Prohibition List](#)” (26 categories) and “[Goods: The Importation of Which is Absolutely Prohibited](#)” (20 categories).

### *Customs Barriers and Trade Facilitation*

The Nigeria Customs Service’s practices continue to present major obstacles to trade. Importers report inconsistent application of customs regulations; lengthy clearance procedures, often due to outdated manual processing systems; and, corruption. These factors sometimes contribute to product deterioration and result in significant losses for importers of perishable goods. Disputes among Nigerian Government agencies over the interpretation of regulations often cause delays, and frequent changes in customs guidelines slow the movement of goods through Nigerian ports. The customs authority has attempted to automate its processes, but many basic customs procedures are still paper-based and require an unreasonably long time to complete. In September 2020, the Nigerian Government approved a \$3.1 billion customs modernization project that would include the automation of paper-based customs processes. The project was to be completed in 36 months and executed via a public-private partnership through a 20-year concession. This project has experienced implementation delays.

While the Nigerian Government has undertaken efforts to implement access road improvement projects, traders continue to report that infrastructural limitations in and around Nigeria’s ports contribute to long queues of both trucks and ships, resulting in delays and increased costs.

Nigeria ratified the WTO Trade Facilitation Agreement (TFA) in January 2017. Nigeria has not yet submitted a transparency notification related to the use of customs brokers. This notification was due to the WTO in December 2020, according to Nigeria’s self-designated TFA implementation schedule.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

#### *Labeling*

In 2020, Nigeria held a domestic consultation regarding its proposed measure on “Formulated Caffeinated Beverage (Labelling) Regulations.” This measure would establish caffeine levels and warning statements for caffeinated beverages, where international standards do not exist. In October 2020, the United States submitted comments and requested Nigeria to notify this measure to the WTO Committee on Technical Barriers to Trade. As of March 2022, Nigeria had not done so. The United States will continue to urge Nigeria to notify this and any future measures that may have a significant effect on trade to the WTO.

#### *Transparency*

Transparency of the regulatory system in Nigeria is a concern, as U.S. companies complain that regulations are issued only as final measures without a clear process or period for public comment on draft regulations. Nigeria has not consistently notified draft technical regulations to the WTO Committee on Technical

Barriers to Trade. Implementation of such measures also raise concerns as Nigeria can implement measures inconsistently or opaquely.

## **Sanitary and Phytosanitary Barriers**

### *Import bans*

Nigeria continues to ban imports of beef, pork, sheep, goat meat, and edible offal. Nigeria has indicated that the reason for the ban is the prevention of bovine spongiform encephalopathy (BSE), but the bans apply to meats from all countries, even those without reported BSE cases. Nigeria also bans the import of live and processed poultry (with the exception of day-old chicks) and poultry meat, including fresh, frozen, and cooked poultry meat, due to alleged concerns about avian influenza.

### *Import Certificates*

Nigeria requires that all food, drug, cosmetic, and pesticide imports be accompanied by certificates from manufacturers, third party certifiers, and/or exporters' national authorities, depending on the product. These certificates must attest that the product is safe for human consumption (*e.g.*, does not contain aflatoxin). However, Nigeria's limited capacity to review certificates, carry out inspections, and conduct testing has resulted in delays in the clearance of food imports in particular; and has contributed to the diversion of imports into informal channels.

## **GOVERNMENT PROCUREMENT**

U.S. companies have expressed concerns about corruption and a lack of transparency in procurement processes in Nigeria.

The Public Procurement Act of 2007 established the Bureau of Public Procurement (BPP) as the regulatory authority responsible for the monitoring and oversight of public procurement in Nigeria. Nigeria only requires government entities to engage in competitive bidding for any procurement worth more than ₦2.5 million (approximately \$6,093). Only majority Nigerian-owned companies may bid on procurements above ₦2.5 million, and up to ₦100 million (approximately \$243,718) for goods and up to ₦1 billion (approximately \$2.4 million) for services and works. Above those thresholds, both majority foreign-owned and majority Nigerian-owned companies may engage in competitive bidding. Nigerian Government agencies do not always follow procurement guidelines, despite the requirement that no procurement proceedings are to be formalized until the procuring entity has ensured that funds are available to meet the obligations and has obtained a "Certificate of 'No Objection' to Contract Award" from the BPP.

Executive Order 5 of 2018 added restrictions and obligations for public procurement related to science, engineering, and technology. The order is designed to bolster the Public Procurement Act of 2007 and directs government offices to grant preference to Nigerian professionals. Upon the release of the order, U.S.-based firms raised concerns that it specifies that the Ministry of Interior "shall desist from giving visa[s] to foreign workers whose skills are readily available in Nigeria."

There is a local content margin of preference, which varies from project to project, but does not exceed 15 percent. In addition, Nigeria offers a preference to majority Nigerian-owned companies as long as their price is within 15 percent of a majority foreign-owned company. Foreign companies may also be subject to a local content or other localization requirement (*e.g.*, partnership with a local partner firm or joining a consortium). In 2013, the National Information Technology Development Agency (NITDA), an agency of the Federal Ministry of Communication Technology, issued the "Guidelines for Nigerian Content Development in Information and Communications Technology" (NITDA Guidelines). The NITDA

Guidelines require ministries and development agencies to source and procure all computer hardware only from NITDA-approved original equipment manufacturers (OEMs). The Nigerian Oil and Gas Industry Content Development Act also mandates a maximum quota of five percent of all positions that can be allotted to foreign nationals and specifies minimum requirements intended to benefit host communities (*i.e.*, communities where oil and gas operations are located) among other local content stipulations.

Nigeria has made modest progress on its pledge to conduct open and competitive bidding processes for government procurement. The BPP has made a variety of procurement procedures and bidding information publicly available on its website. However, Nigeria's National Assembly operates its own procurement process that is not subject to BPP oversight and lacks transparency. Moreover, although U.S. companies have won contracts in a number of sectors, difficulties in receiving payment are common and can discourage firms from bidding. Supplier or foreign government subsidized financing arrangements appear in some cases to be a crucial factor in the award of government procurements.

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

## **INTELLECTUAL PROPERTY PROTECTION**

Nigeria has taken steps to improve its legal framework for intellectual property (IP) protection. In 2021, the National Assembly enacted the Plant Variety Protection Act, which creates a legal framework and administrative structure for the protection of plant varieties in Nigeria. In 2017, Nigeria submitted its instruments of accession and ratification in connection with four World Intellectual Property Organization (WIPO) treaties: the WIPO Copyright Treaty; the WIPO Performances and Phonograms Treaty; the Beijing Treaty on Audiovisual Performances; and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. Nigeria has not yet amended its national laws to implement the treaties. In 2019, the President signed into law the Federal Competition and Consumer Protection Act which, among other things, contains provisions designed to combat trademark counterfeiting. However, pirated and counterfeit goods remain widely available in Nigeria and often threaten the health and safety of consumers. Counterfeit pharmaceuticals, automotive parts, software, music and video recordings, and other consumer goods are prevalent. IP enforcement remains inadequate due to chronically insufficient resources for enforcement agencies, porous borders, entrenched trafficking systems that make enforcement difficult, and corruption. Public awareness is low regarding the importance of IP as a key driver of Nigeria's economic diversification and of its attractiveness as an investment destination. However, leadership at the Nigerian Copyright Commission and the Federal Competition and Consumer Protection Commission have taken steps to raise awareness about IP.

## **SERVICES BARRIERS**

Nigeria prohibits foreign firms from participating in reinsurance of risks in the oil and gas sector. Although the regulator may waive this prohibition, all local reinsurance capacity must be fully exhausted. Nigeria also imposes five percent mandatory reinsurance cession requirements in favor of the Africa Reinsurance Corporation and the WAICA Reinsurance Corporation.

## **BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE**

The NITDA Guidelines require all foreign and domestic businesses to store all data concerning Nigerian citizens within Nigeria. The NITDA Guidelines further require that businesses host all government data locally unless officially exempted. These requirements create a significant barrier to market entry for firms that distribute their data storage and processing globally. Further, such data localization requirements

prevent Nigerian businesses from taking advantage of cloud computing services supplied on a cross-border basis.

The NITDA Guidelines also require information and communications technology (ICT) companies to use Nigerian businesses for the provision of at least 80 percent of all value-added services on their network. The NITDA Guidelines define “value-added service” vaguely, creating uncertainty for businesses seeking to comply with the measure. Though Nigeria has largely declined to enforce the NITDA Guidelines to date, periodic threats of repercussions for non-compliance remain a concern.

The 2020 Finance Act subjects non-resident companies (NRCs) with significant economic presence in Nigeria to consumption and corporate taxes. An Executive Order accompanying the Act defined NRCs as companies that are not registered in Nigeria and do not have a physical presence in Nigeria but that derive revenue or income from Nigeria. NRCs are divided into two categories. The first group consists of digital firms: companies offering streaming, downloading, or data transmission services; electronic commerce platforms; websites with a Nigerian domain name; and digital platforms with prices and/or payment options in naira, the Nigerian currency. These firms are subject to corporate income tax (CIT) and value-add tax (VAT) if they generate revenues exceeding ₦25 million (approximately \$66,000) from their Nigerian operations in a given fiscal year. The second group consists of technical or professional services firms which will be deemed to have significant economic presence if the firms generate any income or receive payment from Nigeria in a given year. There is no sales threshold. Such firms are subject to the 7.5 percent VAT and the CIT, with a withholding rate of 10 percent. Due to implementation challenges, the Nigerian Government has focused on collecting the VAT only and delayed the collection of corporate taxes.

## **INVESTMENT BARRIERS**

Nigeria’s investment climate continues to be characterized by significant market potential, but also by weak government institutions, corruption, regulatory uncertainty, inadequate infrastructure (especially electricity), security challenges, inadequate health care, poor education systems, and inadequate access to finance for small- and medium-sized enterprises and consumers. These barriers impede potential U.S. investment in Nigeria. Investors also must contend with complex tax procedures, confusing land ownership laws, arbitrary application of regulations, and crime. Companies report that contracts are often violated and that Nigeria’s system for settling commercial disputes is weak and often biased. Frequent power outages, as well as poor road, port, rail, and aviation transportation infrastructure, pose a major challenge to doing business in Nigeria. These factors hinder Nigeria’s ability to compete in regional and international markets.

## **OTHER BARRIERS**

### **Bribery and Corruption**

Corruption remains a substantial barrier to trade and investment in Nigeria. Corruption and lack of transparency in tender processes have been great concerns to U.S. companies. U.S. firms experience difficulties in day-to-day operations due to inappropriate demands from officials for “facilitative” payments. Efforts to strengthen anticorruption measures have been hampered by inter-ministry infighting and partisan politics. Questions also remain regarding the Nigerian justice system’s capacity to achieve convictions and appropriate sentencing for corruption-related crimes.

### **Foreign Exchange Controls**

Foreign exchange limitations have negatively impacted investment as well as trade. Restrictive measures have hampered some U.S. companies’ abilities to import finished or semi-finished goods for use in their

Nigerian operations. Moreover, Nigeria's policies have increased challenges for projects developed with international financing that include U.S. dollar denominated debt obligations, as borrowers have struggled to secure the necessary foreign exchange to meet those obligations.

In 2015, the 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. Since 2015, additional products have been restricted, although the CBN has not issued a revised consolidated list of product categories. The CBN indicated that this action was intended to protect and support domestic production, and not solely to maintain the value of its currency or preserve foreign exchange reserves. These measures have made it difficult for U.S. businesses to export the covered items to Nigeria and for Nigerian companies to source inputs needed for production. In December 2018, the CBN added fertilizer to the list of covered products and announced that the list could expand to as many as 50 products. In February 2020, the CBN implemented a ban on foreign exchange for milk and dairy products without clarifying guidance regarding implementation. In July 2020, the CBN added maize to the foreign exchange restriction list. The CBN issued waivers for both milk/dairy and maize to a limited number of importers. In July 2021, the CBN restricted access to foreign exchange through official sources to three sugar importers. In April 2021, the CBN announced plans to add wheat to the foreign exchange restriction list with the overall goal of ending wheat imports by 2023. As of March 2022, the CBN has not yet added wheat to the list. The United States has repeatedly raised concerns regarding the foreign exchange restrictions in both bilateral and multilateral engagements.

### **Local Content Requirements**

The NITDA Guidelines require OEMs operating in Nigeria to assemble all hardware products locally and multinational companies operating in Nigeria to source all ICT hardware locally. In addition, the NITDA Guidelines require companies to use only locally manufactured subscriber identification module (SIM) cards and to use indigenous companies to build cell towers and base stations. It is frequently not feasible for companies to comply with the Guidelines, and the Nigerian Government appears to not be enforcing them as it lacks the capacity and resources to monitor hiring practices, technological compliance, and data flows. The United States has encouraged Nigeria to review the Guidelines and to avoid such restrictive policies.

The Nigerian Government periodically broadcasts these localization requirements and presses ICT companies to establish local capacity building programs. These companies have explained to the Nigerian Government why it is not feasible to meet some of the Guidelines. In 2017, the Office of Nigerian Content Development in Information and Communications Technology distributed a letter threatening OEMs with "criminal offense" if they did not demonstrate compliance with local content guidelines on after-sales support and warranty support. To date, there are no known criminal charges filed against a firm for non-compliance.

### **Port Congestion, Inefficiency, and Maritime Crime**

Delays caused by congestion and the poor condition of access roads, combined with corruption issues and an insufficient number of digital cargo scanners, make operations at Nigerian ports among the most expensive in the world. According to shipping industry reports, Apapa in Lagos is among the most expensive ports in the world for shipments from the United States, due to an average delay of 30 days to clear a container ship. Lagos ports also lack adequate space, and ships often wait for days, and in some cases weeks and months, before being able to berth and discharge their contents. Nigeria estimates that it loses \$55.6 million daily because of traffic gridlock at the main port in Lagos. In addition, maritime crime in the Gulf of Guinea, much of it emanating from Nigeria, has a deleterious effect on maritime trade.

## **Oil and Gas Sector**

The highly trade restrictive Oil and Gas Content Development Act (the Act) of 2010 has imposed broad-ranging local content requirements on projects in Nigeria’s oil and gas sector. Under the Act, all companies operating in this sector must give preferential treatment to Nigerian goods and services and prioritize Nigerian nationals when hiring. The Act’s scope is broad, covering any activity or transaction carried out in, or connected with, the oil and gas industry. The Act’s local sourcing mandate, which applies to an extensive list of goods and services supplied to the oil and gas industry, has been a particular concern of U.S. oil and gas service suppliers. Companies must also create and seek approval for a “Nigerian Content Plan” to demonstrate how they will increase local content in their oil and gas operations. Companies that do not follow a Nigerian Content Plan face large fines or cancellation of contracts. Majority foreign-owned companies operating in the sector must also deposit 10 percent of their annual profit in a Nigerian bank.

Restrictions also apply to personnel matters. While Nigeria imposes general quotas on foreign personnel, the quotas are especially strict in the oil and gas sectors. Oil and gas companies must hire Nigerian workers, unless they can demonstrate that particular positions require expertise not found in the local workforce. Positions in finance and human resources are almost exclusively reserved for Nigerians.

Certain geosciences and management positions may be filled by foreign workers with the approval of the National Petroleum Investment and Management Services (NAPIMS). Each oil company must negotiate its foreign worker allotment with NAPIMS. Significant delays in this process, and in approvals of visas for foreign personnel, present serious challenges to the oil and gas industry.

According to stakeholders, the Act continues to adversely affect a diverse range of companies, including operators, contractors, subcontractors, and service suppliers. Majority foreign-owned companies continue to observe that the Act significantly adds to the cost of doing business in Nigeria.

In August 2021, Nigeria enacted the Petroleum Industry Act (PIA). The PIA represents the culmination of nearly two decades of attempts to overhaul the regulation and governance of Nigeria’s energy sector. While the law provides a new fiscal framework that is generally assessed to be more investor-friendly than the previous framework, it also contains a number of provisions that are expected to create additional hardships for operators in the oil and gas sector. One of the most contentious provisions regards the Host Community Development Trust Fund, which requires all oil producers to allocate three percent of the preceding year’s operating expenditures into the fund for the benefit of host communities. However, the PIA places the onus entirely on oil producers to determine which communities qualify as host communities and to set up and designate a board to oversee the fund. Additionally, both international and domestic oil producers have complained about other ambiguous language in the PIA that may increase other costs to producers, subject to the interpretation of Nigerian authorities.

## **Export Ban**

Nigeria Customs Service’s export prohibition list includes ferrous scrap metals in order to protect the local steel industry.

# NORWAY

## TRADE AGREEMENTS

Norway as a member of the European Free Trade Association (EFTA) participates in the European Union (EU) single market through the European Economic Area (EEA) Accord. As an EEA Accord signatory, Norway assumes most of the rights and obligations of EU Member States, except in the agricultural and fishery sectors. Norway has implemented or is in the process of implementing most EU trade policies and regulations. Norway grants preferential tariff rates to EEA Members.

## IMPORT POLICIES

### Tariffs

Norway's average Most-Favored-Nation (MFN) applied tariff rate was 5.9 percent in 2020 (latest data available). Norway's average MFN applied tariff rate was 40.1 percent for agricultural products and 0.5 percent for non-agricultural products in 2020 (latest data available). Norway has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 22.2 percent.

Norway has continued to reduce tariffs on industrial products on a unilateral basis.

Although the EEA Accord does not generally apply to agricultural products, it includes provisions on raw material price compensation that are meant to increase trade in processed food. Norway has a special agreement within the EEA Accord that results in Norway applying a preferential duty on EU processed food products. The special agreement provides preferential access for EU suppliers for a wide range of products, including bread and baked goods, breakfast cereals, chocolate and other candies, ice cream, pasta, pizza, soups, and sauces. This preferential access for EU suppliers disadvantages U.S. exporters of these processed foods.

Although Norway is less than 50 percent self-sufficient in agricultural production, it maintains tariff rates on agricultural products as high as several hundred percent to protect domestic agricultural interests. Domestic agricultural shortages and price surges are offset by temporary tariff reductions. However, a lack of predictability in tariff adjustments and insufficient advance notification of these adjustments – generally only two to five days before implementation – favor nearby European suppliers and make export of products from the United States, especially fruits, vegetables, and other perishable horticultural products, very difficult. For a number of processed food products, tariffs are applied based on a product's ingredients, requiring the Norwegian importer to provide a detailed disclosure of product contents. Many exporters to the Norwegian market refuse to provide all requested details and, as a result, their products are subject to maximum tariffs.

### Non-Tariff Barriers

#### *Agricultural Support*

Although agriculture accounts for only 0.5 percent of Norway's gross domestic product, support provided by Norway to its agricultural producers was 56 percent of total farm receipts between 2018 and 2020 (latest data available), the second highest among Organization for Economic Cooperation and Development (OECD) Member States and more than three times the OECD average. Norway justifies this high level of domestic support based on "nontrade concerns," including food security, environmental protection, rural employment, and the maintenance of human settlement in sparsely populated areas. In light of its

commitments from the 2015 Nairobi WTO Ministerial Conference, Norway eliminated its last export subsidies on cheese and processed agricultural products as of the end of 2020.

In response to the COVID-19 pandemic, Norway implemented several temporary measures relevant to the agricultural sector, including financial support to farmers who were unable to harvest in 2020 due to a lack of seasonal workers and a temporary lifting of maximum ceilings for investment assistance for rural development.

Norway maintains a price reduction regime that includes subsidies for using certain domestically-produced raw materials in processed foods. Products for which such subsidies are paid include chocolate, ice cream (for milk and glucose), pizza (for cheese and meat), and sweets. The purpose of the system is to help compensate the domestic food processing industry for the high costs of domestically-produced raw materials.

### *Government Monopolies*

Although U.S. market shares for wine have increased in recent years, it continues to be difficult for U.S. wine exporters to sell in the Norwegian market. The wine and spirits retail market in Norway is controlled by the government monopoly, “Vinmonopolet.” Obtaining approval to include wines and other alcoholic beverages on Vinmonopolet’s retail list is cumbersome, and Vinmonopolet’s six-month marketing and product plans for selecting and purchasing wines significantly constrain competitive supply. Products chosen for sale through Vinmonopolet must meet annual minimum sales quotas; otherwise, they are dropped from the basic inventory list. Existing wine suppliers benefit from exposure in Vinmonopolet stores, and the market entry challenges for U.S. wines are exacerbated by the strict ban on advertising alcoholic beverages.

## **SANITARY AND PHYTOSANITARY BARRIERS**

### **Transparency**

Under the EEA Agreement, Norway applies certain EU sanitary and phytosanitary (SPS) regulations, with the exception of regulations relating to plant health. On plant health, the Norwegian Food Safety Authority provides measures to eradicate, prevent, or limit the spread of regulated pests independent of the EU. However, Norway’s maximum residue levels for pesticides were adopted under the EEA Agreement and are updated when new EU regulations are adopted into Annex 1 of the EEA, which is focused on veterinary and phytosanitary measures. As a Member of the WTO, Norway is obligated to notify proposed SPS measures to the WTO and take comments into consideration prior to finalizing its SPS measures.

### **Agricultural Biotechnology**

Norway has implemented extremely restrictive policies for crops derived from agricultural biotechnology, with limited exceptions. The restrictions include prohibiting farmers from cultivating biotechnology crops and using biotechnology feed for farm animals. The United States continues to press Norway to recognize the applicable science on the safety of such products, and accordingly to open its market to U.S. exports of such products. The advent of innovative biotechnology research approaches, such as genome editing, has led Norway to reconsider its stance on agricultural biotechnology.

In December 2018, the Norwegian Biotechnology Advisory Board published its proposal: “A forward looking regulatory framework for GMOs.” The proposal has been developed in close dialogue with the public. It recommended basing the requirements for risk assessment and approval for new breeding techniques on a tiered system based on the genetic change(s) that have been made, from level 1 to level 3

based on contribution to societal benefit, sustainability, and ethics. A new expert committee on biotechnology was appointed by the government in 2020 to gather updated scientific information on new biotechnologies, including CRISPR and synthetic biology, for use in formulating new policies. The committee will also assess whether to adjust the current legal framework to ensure that technological advancements benefit society without harming health or the environment. The committee's findings are expected to be published by June 2022.

## **Beef and Beef Products**

Norway applies regulations developed by the EU that ban imports of beef from animals treated with hormones, despite the absence of scientific evidence demonstrating that this practice poses any risk to human health.

## **GOVERNMENT PROCUREMENT**

Norway is a Party to the WTO Agreement on Government Procurement (GPA). U.S.-based companies are allowed to bid on public tenders covered by the GPA. U.S. pharmaceutical companies active in Norway have raised concerns regarding government procurement procedures for pharmaceuticals, including a lack of detailed information on the selection process for winning bidders. Tenders in Norway can be unpredictable and non-transparent, and companies would like more direct communication with the body responsible for final procurement decisions on behalf of regional health authorities (the Norwegian Decision Forum).

## **INTELLECTUAL PROPERTY PROTECTION**

Norway passed a modernized Copyright Act in 2018. Although recent legislative developments, enforcement actions, and the increased availability of authorized copyright-protected works online have had a positive effect on reducing online piracy, some private sector stakeholders have suggested that Norway needs to continue its efforts to combat online piracy and illegal file sharing, such as by clarifying the circumstances under which Internet service providers are required to provide information to authorities or to right holders about the identity of subscribers that can be linked to infringements.

## **BARRIERS TO DIGITAL TRADE**

### **Data Localization**

Data protection in Norway is governed by the Norwegian Personal Data Act, which implements the European Union General Data Protection Regulation (GDPR) and became effective on July 10, 2018. The GDPR was incorporated into the EEA Agreement on July 6, 2018. The Norwegian Personal Data Act restricts the transfer of the personal data outside of the EEA, except to specific countries deemed to provide adequate data protection by the EU Commission or when other specific requirements are met, such as the use of standard contract clauses (SCCs) or binding corporate rules. Restrictions on the flow of data have a significant effect on the conditions for the cross-border supply of numerous services and for enabling the functionality embedded in intelligent goods (*i.e.*, smart devices), among other effects.

## **INVESTMENT BARRIERS**

Foreign companies wishing to own or use various kinds of real property must seek prior approval from the government. Direct foreign ownership of hydropower resources is prohibited in Norway, except in rare instances in which the government allows foreign investment up to 20 percent equity.

# OMAN

## TRADE AGREEMENTS

### The United States–Oman Free Trade Agreement

The United States–Oman Free Trade Agreement (FTA) entered into force on January 1, 2009. Under this Agreement, as of January 1, 2019, Oman provides duty-free access to all U.S. exports. Officials from the United States and Oman meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

## IMPORT POLICIES

### Taxes

In 2016, the Gulf Cooperation Council (GCC) Member States agreed to introduce common GCC excise taxes on carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products (100 percent). U.S. beverage producers report that the current tax structure for carbonated drinks, which also applies to sugar-free carbonated beverages, fails to address public health concerns and disadvantages U.S. products. Sugary juices, many of which are manufactured domestically within GCC countries, remain exempt from the tax.

### Non-Tariff Barriers

#### *Customs Barriers and Trade Facilitation*

Companies importing U.S. goods occasionally report difficulties in demonstrating eligibility for preferential tariff treatment under the FTA for goods that enter Oman over land via the United Arab Emirates. The Royal Oman Police Customs Directorate sometimes applies requirements for origin-marking, segregation and other documentation inconsistently.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

#### *Restrictions on Hazardous Substances – Electrical Goods*

In March 2018, GCC Member States notified to the World Trade Organization (WTO) a draft Gulf Standardization Organization (GSO) technical regulation that would, among other things, require pre-market testing by accredited labs for certain hazardous substances in electrical goods. The measure would also require each type of good to be registered annually and includes a requirement to submit sample products prior to receiving approval for use in the GCC. The United States has raised concerns that the proposed regulatory requirements would have a significant negative impact on the imports of U.S. electrical and electronic equipment (such as information and communications technology, medical equipment, machinery, and smart fabrics), especially as the trade restrictive third party certification requirements differ from international best practices, which typically permit a supplier's declaration of conformity, supported by documentation requirements, such as test results and manufacturing specifications, in conjunction with integrated enforcement mechanisms, such as regulatory sanctions, liability in tort law, and mechanisms to monitor or remove nonconforming products from the market.

### *Halal Regulations*

In April 2020, GCC Member States notified to the WTO a draft GSO technical regulation establishing halal requirements and certification for animal feed. The U.S. animal feed, beef, and poultry industries have expressed concerns that the new technical regulation may place additional requirements on U.S. producers without offering additional assurance of meeting Member States' legitimate regulatory objectives. The United States submitted comments to GCC Member States in July 2020 noting the unprecedented and potentially trade-restrictive nature of the measure.

### *Energy Drinks*

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

### **Sanitary and Phytosanitary Barriers**

Agricultural stakeholders have raised concerns regarding Oman's import requirements involving certification for pesticide residues, as well as radiation attestations for agricultural products. These regulations provide restrictive controls that do not necessarily further the goal of protecting human and animal health. The United States is continuing to work with Oman to resolve these concerns.

### **GOVERNMENT PROCUREMENT**

The FTA requires covered government entities in Oman to conduct procurements covered by the Agreement in a fair, transparent, and nondiscriminatory manner. Oman provides a 10 percent price preference to tenders that contain a high content of local goods or services, including direct employment of Omani nationals, as per its in-country value requirements. However, Oman may not apply such price preferences to bids offering goods and services from the United States in procurement covered by the FTA.

For most major tenders, Oman invites bids from international firms or firms pre-selected by project consultants, but stakeholders report that in recent years Oman has favored local community contractors and Omani small to medium-sized enterprises. Suppliers are requested to be present at the opening of tenders and interested persons may view the process on Oman's Tender Board website. Some U.S. companies report that award decisions are delayed, sometimes for years, or that the tendering is reopened with modified specifications and short deadlines.

Oman is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since May 2001. In accordance with the commitment in its WTO accession, Oman began negotiations to accede to the WTO GPA in 2001, but it has not completed the accession process.

### **INTELLECTUAL PROPERTY PROTECTION**

Oman committed in the FTA to provide strong intellectual property (IP) protection and enforcement. Oman revised its IP laws and regulations to implement its FTA commitments and acceded to several international IP treaties. While IP laws in Oman are strong, the lack of IP enforcement capacity effectively places a

burden on right holders to perform their own monitoring and enforcement through legal actions in the courts.

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

## **SERVICES BARRIERS**

In August 2021, Oman banned network marketing, direct selling, and multi-level marketing.

### **Financial Services**

Oman limits customs brokerage activities to Omani nationals. The United States has raised concerns about the consistency of this limitation with provisions of the FTA.

Oman does not permit representative banking offices or offshore banking.

### **Professional Services**

Non-Omani attorneys, including U.S. attorneys practicing in Oman, are prohibited from appearing in courts of first instance. The United States has raised concerns about the consistency of this limitation with provisions of the FTA. U.S. ownership in a legal services firm is limited to no more than 70 percent. In January 2021, Oman barred non-Omani attorneys from appearing or pleading in higher courts in Oman.

## **BARRIERS TO DIGITAL TRADE**

Oman, operating through its government majority-owned telecommunications service providers and through its telecommunications regulator, periodically slows or blocks access to certain over-the-top services such as Voice over Internet Protocol (VoIP) services. Oman has temporarily lifted a ban on most VoIP services since the start of the COVID-19 pandemic.

## **INVESTMENT BARRIERS**

### **Limitations on Foreign Equity Participation**

In 2019, Oman banned foreign ownership of real estate and land in certain governorates and areas that the government deems necessary to restrict under Royal Decree 29/2018. In 2020, Oman extended the deadline for the sale and handover of land and real estate owned by non-Omanis in prohibited areas until October 31, 2021. However, Oman has allowed the establishment of real estate investment funds (REIF) to encourage new inflows of capital into Oman's property sector. The regulations permit foreign investors, as well as expatriates in Oman, to own shares in REIFs.

In September 2021, Oman's Ministry of Housing and Urban Planning issued regulations for an October 2020 Ministerial Decision that permit non-Omanis to purchase residential units in multi-storied commercial and residential buildings in certain areas of the Muscat Governorate under usufruct rights (*i.e.*, the right to lease one's property to another person), with certain restrictions. The restrictions include that the percentage of units sold to non-Omanis should not exceed 40 percent of the total number of units in a multi-story commercial or residential building; that members of any particular nationality should not acquire more than 20 percent of units sold to non-Omanis; and that any foreign buyer must have been a resident of Oman for over two years at the time of application. Foreign investors are also permitted to purchase freehold

property in designated residential developments. Businesses must adhere to more restrictive guidelines when acquiring real estate for commercial purposes.

# PAKISTAN

## TRADE AGREEMENTS

### United States–Pakistan Trade and Investment Framework Agreement

The United States and Pakistan signed a Trade and Investment Framework Agreement (TIFA) in June 2003. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Pakistan.

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

Pakistan's average applied Most-Favored-Nation (MFN) tariff rate was 12.1 percent in 2019 (latest data available). Pakistan's average MFN applied tariff rate was 13.5 percent for agricultural products and 11.9 percent for non-agricultural products in 2019 (latest data available). Pakistan has bound 98.7 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 60.9 percent. For agricultural products, the average WTO bound rate is 96.2 percent. Tariffs are lower for non-agricultural products, with an average WTO bound rate of 55.1 percent.

Pakistan groups tariff rates into categories by levels of domestic market protection. Between 2013 and 2017, Pakistan gradually reduced the number of tariff categories from 7 to 4 and reduced the maximum tariff category rate from 30 percent to 20 percent. The current general tariff categories are 3 percent, 11 percent, 16 percent, and 20 percent. However, individual tariff rates within each category may vary. The weighted average basis of all applied tariffs within a category is equal to the category rate, and some individual tariff rates may still be significantly higher than the category rate listed. Most individual tariff rates range from zero percent to 20 percent. However, there are higher tariffs on beverages (90 percent) and transport equipment (30 and 50 percent on different tariff lines). In the Pakistani Fiscal Year (FY) 2022 budget (July 1, 2021 to June 30, 2022), Pakistan lowered tariffs on more than 600 tariff lines. The reductions focused primarily on raw materials and intermediate goods to support import substitution for consumer industries and promote exports from traditional textile and non-traditional sectors.

Despite the reduction of tariff rates since 2013, concerns exist that Pakistan is protecting several local industries, including automobiles and finished goods, by imposing high tariff rates and, in some cases, additional customs and regulatory duties. In the FY 2022 federal budget that went into effect on July 1, 2021, Pakistan continued to levy additional customs duties of 4 percent and 7 percent on applied tariff categories of 16 percent and 20 percent, respectively, focused primarily on finished goods. Additionally, Pakistan imposes a higher tariff rate (35 percent) on imported automotive parts that compete with domestically manufactured products, whereas imported automotive parts with no domestic competition receive a 20 percent rate.

With regard to the importation of all goods, Pakistan also grants sector- and product-specific duty exemptions, concessions, and protections through the promulgation of statutory regulatory orders (SROs). SROs may be issued without providing for stakeholder consultations or allowing importers time for implementation and compliance. A list of SROs along with other trade policy and regulatory documents is available from Pakistan's [Federal Board of Revenue \(FBR\)](#).

Pakistan previously pledged to eliminate the use of SROs through an International Monetary Fund (IMF) funding program carried out between 2013 and 2016. Under the current program initiated in July 2019, Pakistan has pledged to limit the use of SROs to genuine emergencies. However, SROs continue to be issued, and Pakistan has not provided a timeline for their removal. In January 2016, Pakistan eliminated the FBR’s authority to issue new SROs and transferred approval authority to the Economic Coordination Committee (ECC), a cabinet-level body in the Prime Minister’s office.

SRO 1265, issued in October 2018, imposed a “regulatory duty” on the import of 570 items and was intended to slow import growth. In July 2021, Pakistan amended SRO 1265 by issuing a new SRO 840(I)/2021 to impose a “regulatory duty” on 80 luxury products, including chocolates, drinks, sanitary items, stationary items, and coffee of foreign brands –bringing the total number of products covered by these duties to 650. Pakistan also imposed an “additional customs duty” on non-essential imports through SRO 845(I)/2021. Although this SRO focused on “luxury goods” and consumables, and the overall impact on U.S. exporters has been limited, a number of U.S. companies have raised concerns about duty increases on inputs included in the SRO that would raise production costs and the price of finished goods manufactured in Pakistan. On September 30, 2021, Pakistan also decided to impose a 100 percent cash margin requirement on the import of 114 items (cash margins are the amount of money an importer must deposit with its bank for initiating an import transaction).

Concerns exist over potential efforts to protect two key agricultural commodities, wheat and sugar, through the imposition of regulatory duties announced in SROs.

Importers of U.S. brands have raised concerns about SRO 420, issued in 2014, which raised the sales tax on imported “finished footwear and apparel” from 5 percent to 17 percent, while domestically produced products continue to be taxed at 5 percent. FBR officials have pledged since 2015 to increase the GST on domestically produced products to 17 percent but have not yet done so as of March 2022.

#### *Customs and Regulatory Duty Waivers*

On January 22, 2021, the ECC approved a proposal, recommended by the Ministry of Commerce (MOC), to withdraw customs duties and regulatory duties, as well as additional customs duties, on a total of 174 tariff lines – mostly concerning raw materials for textiles including cotton for yarn and fabric.

#### **Non-Tariff Barriers**

All importers must have a National Tax Number certificate (issued by the FBR on filing of an application and one attested copy of the importer’s National Identity Card), a Pakistani bank account, sales tax registration, and membership in a sanctioned chamber of commerce and industry or relevant Pakistani trade association.

#### *Import Restrictions*

Pakistan permits the importation of certain goods only by the public sector or industrial consumers (*e.g.*, active ingredients for the formulation or manufacturing of pesticides). Imports of waste, parings, and scrap of polyethylene and polypropylene must receive official certification by the exporting country or by a specialized pre-shipment inspection company.

Pakistan restricts imports of second-hand vehicles, watercraft, trawlers, aircraft, and related parts and equipment unless they meet specified conditions, such as prior approval or clearance, certain testing arrangements, or other procedural requirements.

### *Import Licensing*

Pakistan does not require import licenses, except for sensitive goods. The MOC makes available online the list of goods for which licenses are required. However, Pakistan has issued no clear, transparent, and predictable procedure for how to apply for the required import licenses. This has resulted in arbitrary government issuance or non-issuance of import licenses and to sudden changes to the MOC's list of sensitive goods.

### *Customs Barriers and Trade Facilitation*

U.S. food and consumer product exporters have expressed concerns regarding a lack of uniformity in customs valuation in Pakistan that negatively affects both U.S. and other foreign companies. Similarly, in the machinery and materials sectors, there are reports that customs officials have erroneously assessed goods based on a set of minimum values rather than the declared transaction value.

Some U.S. companies have reported being adversely affected by Customs Rules 389 and 391. Rule 389 requires the placement of a physical invoice and packing list in the shipping container, while Rule 391 places the responsibility of including such documents, and liability for failure to comply, on the owner of the goods and the carrier. Such rules can pose compliance challenges for companies whose global supply chains require the use of intermediaries, re-invoicing, or the storage of goods at various points during transit in order to insert paper documents into the shipping container. They also create additional burdens for shippers who are required by other countries' customs requirements to provide this information only through electronic filings. Many companies' invoicing, accounting, and shipping systems do not permit the generation of invoices and packing lists prior to the departure of the goods from the company's production or storage facilities. FBR officials have said customs officials have the discretion to impose penalties, while recognizing the variety in invoicing systems from different companies. While Pakistan has shown openness to addressing the issue and U.S. authorities have worked with the FBR to that end, the rules remain formally in place and customs officials can implement them at any time.

Pakistan notified its customs valuation legislation to the WTO in May 2001, but has not yet responded to the WTO Checklist of Issues that describes how the Customs Valuation Agreement is being implemented.

### *Consumer Financing*

In September 2021, Pakistan's central bank revised prudential regulations to effectively prohibit bank financing for imported vehicles – further protecting the domestic automobile industry. In March 2016, the Ministry of Industries and Production adopted Pakistan's Automotive Development Policy 2016–2021, which offered various incentives, including tax holidays to new entrants, aimed at attracting U.S. and European automakers to establish automotive manufacturing plants in Pakistan. However, in 2019, Pakistan eliminated incentives for new entrants, and firms such as Hyundai and Kia, which had entered the market in 2017 and 2018 respectively, were not able to take advantage of those incentives. Chinese producer DFSK Glory and Malaysian producer Proton entered the Pakistani market initially with completely built units (CBU) and plan to launch assembly lines during 2021, whereas other foreign manufacturers interested in Pakistan's automotive market have backed away.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

Pakistan's food packaging requirements normally follow Codex Alimentarius Commission standards. Pakistan generally accepts packaging material if allowed in the exporting country. A notable exception,

however, is food packaging for vegetable oil. Pakistan requires refined vegetable oil to be imported in bulk for re-packaging, a requirement aimed at encouraging local packaging and saving foreign exchange.

In July 2019, Pakistan imposed additional requirements for food product labels, requiring information on ingredients as well as usage and expiration dates in Urdu and English in accordance with SRO 237 and subsequent amendments. The new requirements in SRO 237 also mandated that each food and beverage related shipment include a halal certificate and prohibited the use of stickering, overprinting, or stamping to meet the new requirements, even on an interim basis. Although Pakistan resolved the issue for bulk food items by permitting the use of labels, the issue remains for retail sales. SRO 237 also requires all products to have 50 percent shelf-life remaining from the date of filing of the Import General Manifest, and 66 percent shelf-life remaining from the date of manufacture.

### **Sanitary and Phytosanitary Barriers**

Pakistan has not fully recognized the United States' negligible risk status for bovine spongiform encephalopathy (BSE). In 2013, the United States received a negligible risk status for BSE in accordance with World Animal Health Organization (OIE) guidelines. In February 2015, Pakistan established import requirements for the import of live cattle from the United States. In March 2016, more than 300 Holstein heifers arrived in Punjab Province from the United States, the first such shipment since 1999. Since then, Pakistan has imported additional U.S. live cattle, bringing the total to over 11,500 head since March 2016. However, Pakistan continues to impose cattle age and origin requirements for U.S. beef and beef products, ostensibly over BSE concerns, despite OIE's consideration of these factors in its negligible risk status determination. The United States continues to work with the MOC and the Ministry of National Food Security and Research to fully open the market for U.S. beef.

The government of Punjab has established trait-based semen import requirements that would limit market access to imported semen for dairy and beef producers. The federal and provincial governments are reviewing the matter, but no timeframe has been set for its resolution.

In 2005, Pakistan enacted a biosafety law establishing biosafety committees that govern the manufacture, research, import, export, and sales of genetically modified plants, animals, microorganisms, and cells. As of March 2022, Pakistan has yet to establish rules and administrative protocols to implement the 2005 rules, and, as a result, the requirements for certification and importation of genetically engineered (GE) food and agricultural products remain unclear. National regulatory bodies are in different stages of promulgating rules and administrative procedures governing agricultural biotechnology. Once complete, the updated rules and administrative procedures will need to be harmonized to operate effectively and enable companies to legally register genetically engineered products for food, feed, and processing purposes (FFP). In October 2020, the Ministry of Climate Change established a sub-committee to formulate policy and procedure to regulate or ban the import of GE grains for food, feed, and processing. In February 2022, the technical sub-committee completed a draft policy on imports of GE commodities for FFP and submitted it to the National Biosafety Committee (NBC) for approval. However, as of March 2022, the NBC had not set a date to convene to review this proposed regulatory regime on FFP imports.

### **GOVERNMENT PROCUREMENT**

The Public Procurement Regulatory Authority is an autonomous body responsible for prescribing and monitoring public sector procurement regulations and procedures in Pakistan. International tender notices must be publicly advertised, and sole-source contracting tailored to company-specific qualifications is prohibited. There are no formal "buy national" policies in Pakistan. However, political influence on procurement awards, allegations of public corruption, lack of transparency, judicial intervention, and long

delays in bureaucratic decision-making are commonly cited as impediments to government procurement. *(For further information, see the Other Barriers section.)*

Since 2014, Pakistan has relied more on technical qualifications in its procurements, though U.S. suppliers continue to struggle with pricing issues. Some U.S. companies report instances in which the procuring agency used a U.S. bid as a basis for further negotiations with other competitors, rather than accepting the lowest-priced and technically superior bid as outlined in bidding guidelines. For example, this has occurred with competing Chinese firms. Other companies believe Pakistan uses lower bids in an effort to negotiate lower prices from U.S. and European Union companies, thereby procuring higher quality goods at lower, and in some cases, below-market pricing.

Pakistan is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since February 2015.

## **INTELLECTUAL PROPERTY PROTECTION**

Pakistan remained on the Special 301 Watch List in 2021. Intellectual property (IP) concerns in Pakistan were raised in June and December 2020 during TIFA intersessional meetings. However, serious concerns remain, particularly in the area of IP enforcement.

In recent years, Pakistan has undertaken efforts to implement key provisions of the Intellectual Property Organization of Pakistan (IPO-Pakistan) Act of 2012 and has devoted increased attention and resources to IP issues, including with respect to (1) U.S.-Pakistan bilateral engagement, especially under the TIFA; (2) the establishment of IP tribunals; (3) public awareness campaigns on IP protection and enforcement; (4) IPO participation with the U.S. Patent and Trademark Office in a series of video conferences devoted to reviewing IP legislation; and, (5) ongoing engagement with stakeholders.

Despite these improvements, as the [2021 Special 301 Report](#) noted, Pakistan must do significantly more to improve IP protection and enforcement. For example, with respect to the establishment of IP tribunals, litigants with experience in these courts have raised concerns over the lack of capacity, consistency, and insufficient penalties assessed by tribunal judges. Pakistan's ongoing but unfinished efforts to align its patent, trademark, and copyright laws, and IP regulations and enforcement regimes with international standards continues to be an area for further progress. Moreover, counterfeiting and piracy in Pakistan remain high, particularly in the areas of pharmaceuticals, printed materials, optical media, digital content, and software. The United States also maintains longstanding concerns related to customs enforcement, as well as protection against the unfair commercial use and disclosure of test and other data generated to obtain marketing approval for pharmaceutical products.

## **SERVICES BARRIERS**

### **Financial Services**

Foreign banks that do not have global Tier-1 paid-up capital (*i.e.*, equity and retained earnings of \$5 billion or more), or are not from countries that are part of regional groups and associations of which Pakistan is a member, (*e.g.*, the Economic Cooperation Organization and the South Asian Association for Regional Cooperation) must incorporate as a local company to conduct banking business in Pakistan. Foreign direct investment is limited to 49 percent in each bank. Foreign and local banks must submit an annual branch expansion plan to the State Bank of Pakistan (SBP) for approval based on financial factors and the needs of the local population. All banks are required to open 20 percent of their new branches in small cities, towns, and villages.

## **Insurance Services**

The National Insurance Company, a majority state-owned enterprise, has the exclusive authority to underwrite and insure public sector firms, assets, and properties. Pakistan has discretion to grant exemptions to this requirement. Private sector firms may use foreign reinsurance companies to meet only up to 65 percent of their treaty re-insurance needs, but the remainder of reinsurance must be ceded locally. In the case of facultative reinsurance, there is a system of mandatory cession: business must be offered to the state-owned Pakistan Reinsurance Co, which may choose to accept the business or not.

## **BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE**

### **Data Localization**

As of March 2022, Pakistan is finalizing the “Personal Data Protection Bill.” The draft legislation would require platforms to store all personal data on servers within the territory of Pakistan and prohibit the cross-border transfer of “critical” personal data. The scope of “critical” personal data is not clearly defined. Such data localization requirements are ineffective at enhancing the protection of personal data, and would significantly increase costs for U.S. firms, particularly small firms, potentially deterring market entry.

### **Internet Services**

In October 2021, Pakistan adopted the Removal and Blocking of Unlawful Online Content (Procedure, Oversight, and Safeguards) Rules, 2021. The Rules apply to the removal and/or blocking of online content that is deemed unlawful on a “social media or social network service.” Several provisions would pose significant barriers to foreign and domestic firms operating in Pakistan, including burdensome registration and licensing requirements, content restrictions, requirements that companies maintain a physical presence in Pakistan, and possible data localization requirements. The Ministry of Information Technology and Telecommunication and the Pakistan Telecommunications Authority (PTA) consulted with foreign and domestic firms and other stakeholders, but did not circulate a revised version of the rules for further public consultation before sending it to the Pakistani cabinet for final approval.

Pakistan periodically blocks access to Internet services for hosting content deemed to be “blasphemous” or “immoral” or on grounds that such services can be used to “undermine national security.” In September 2020, PTA blocked five “dating” websites, including a U.S. company website, citing alleged circulation of “immoral” content. PTA has also sent notices to U.S. based social media platforms, threatening adverse action if those platforms did not remove objectionable content. Pakistan has repeatedly suspended access to mobile data and certain online services in major cities in response to perceived unrest, but has recently refrained from blocking online services for the entire country, as it did 11 times in 2018.

Pakistan is considering adoption of an E-commerce Policy Framework. In January 2020, the government made the draft available for public comment. U.S. industry expressed concerns regarding some aspects of the Framework, such as customs duties on digital goods imported into Pakistan, the requirement to disclose the facility where data is stored, the obligation for businesses to maintain a physical address in Pakistan, and the restriction on payments to unauthorized or unregistered sites and apps.

## **INVESTMENT BARRIERS**

Pakistan generally permits foreign investment, subject to equity caps in key sectors including agriculture, aviation, banking, defense, media, insurance, and railways. To combat tax evasion, in which companies report operating losses but remit royalties, Pakistan has limited foreign investors’ remittance of royalty

payments to a maximum of \$100,000 for the first payment, with subsequent payments capped at 5 percent of net sales for the following 5 years.

Foreign investors are allowed to invest in all sectors except sectors related to the production of arms, ammunition, high explosives, radioactive substances, securities, currency, and consumable alcohol. There are no restrictions or mechanisms that explicitly exclude U.S. investors.

As envisioned by the 2013 Investment Policy, the 2017 Companies Act eliminated minimum initial capital investment requirements across sectors so that no minimum investment requirement or upper limit on the share of foreign equity is allowed, except for the airline, banking, agriculture, and media sectors. Foreign investors in the services sector may retain 100 percent equity, subject to obtaining permission (*i.e.*, a “no objection” certificate or license) from the concerned agency and fulfilling the requirements of any applicable sectoral policy. In the education, health, and infrastructure sectors, 100 percent foreign ownership is allowed. In the agricultural sector, the threshold is 60 percent, with an exception for corporate agriculture farming, where 100 percent ownership is allowed. Small-scale mining valued at less than PKR 300 million (approximately \$1.8 million) is restricted to Pakistani investors.

Royalties and technical payments are subject to a 15 percent income tax and subject to remittance restrictions listed in Chapter 14, section 12 of the SBP Foreign Exchange Manual. The tourism, housing, construction, and information and communications technology sectors have been granted “industry status,” making them eligible for lower tax and utility rates compared to “commercial sector” enterprises, including banks and insurance companies.

Although Pakistani law allows 100 percent repatriation of profits, subject to restrictions listed in Chapter 14, section 15 of the SBP Foreign Exchange Manual, there have been reports of U.S. and other companies facing bureaucratic hurdles repatriating profits and assets from Pakistan, generally coinciding with the government’s focus on maintaining foreign currency reserves. Local franchises of U.S. brands report limitations and extended delays in remitting funds to their U.S. principals as a result of State Bank of Pakistan policies including a 5 percent cap on royalty fees. For example, a U.S. financial services provider has attempted to repatriate assets from the sale of a local subsidiary for more than five years, and finally received the funds in early February 2022, following years of U.S. Government advocacy.

Reports indicate that contract enforcement can be difficult for U.S. and other foreign investors in Pakistan. Parties pursuing legal remedies in the Pakistani civil judicial system may face significant delays and unpredictable outcomes in the country’s overloaded courts. Lack of enforcement of court rulings is also reported to be a significant problem.

### *Taxes*

The 18th Amendment to Pakistan’s constitution, adopted in 2010, gives the country’s provinces the authority to levy taxes and regulate some sectors of the economy. While intended to give provinces greater autonomy, the move has also complicated Pakistan’s investment climate, as the delineation of federal and provincial responsibilities is often unclear.

In April 2018, the MOF announced a plan to reduce the corporate tax rate from 30 percent to 25 percent by 2023. Pakistan reduced the corporate tax rate by 1 percentage point to 29 percent for fiscal year (FY) 2019 but did not reduce the rate further for FY 2020, FY2021, or FY 2022.

Pakistan has one of the lowest tax-to-Gross Domestic Product (GDP) ratios in the world, approximately 11.1 percent in FY2021. This metric has improved largely due to shrinking GDP. Pakistan relies heavily on multinational corporations for the revenue generated by tax collection. Foreign investors in Pakistan

regularly report that both federal and provincial tax regulations are difficult to navigate. In addition, companies frequently cite the lack of transparency in the assessment of taxes.

Improving tax collection is a key focus of the IMF's Extended Fund Facility (EFF) program for Pakistan, agreed in July 2019. Under the program, Pakistan will increase its Federal Board of Revenues tax revenues to PKRs 6.1 trillion (approximately \$34.3 billion) in FY 2022, up by PKR 1.3 trillion (approximately \$7.5 billion) from the collections made during FY2021. However, the authorities have long delayed key tax reforms under the program and have recently signaled they intend to backslide on some of their tax commitments. Although Pakistan is taking steps to broaden the country's tax base, the government has continued to lean on large companies, especially international firms, to increase revenues. U.S. companies have experienced increased pressure from the FBR to prepay anticipated tax liabilities. While small and medium-sized U.S. companies have not seen their tax burden increase as substantially as larger multinational corporations, they have expressed concern that many of their local competitors still do not pay taxes at all. The U.S. Government has repeatedly engaged Pakistani officials on issues involving unfair and disproportionate taxation and continues to reinforce the importance of Pakistan broadening its tax base.

In 2015, Pakistan imposed a "super tax" for the rehabilitation of internally displaced persons, on top of other taxes. The super tax was initially 4 percent for banking companies and 3 percent for non-banking companies with income exceeding PKR 500 million (approximately \$3.1 million). In April 2018, the MOF announced the government would reduce the super tax by 1 percentage point every year until eliminating it for non-bank companies in 2020 and for banks in 2021. The government carried out the first step in this process by reducing the tax by 1 percent for both banks and non-banks in the September 2019 mini-budget. However, neither the FY 2020, FY2021, nor FY 2022 budgets contains any further reduction.

## **SUBSIDIES**

Export oriented industries, such as the textile, leather, surgical instrument, sporting goods, and carpet industries, had enjoyed exemptions from import duties as well as domestic taxation for decades. The current government abolished this regime for these industries in July 2019. However, to please influential business interests, Pakistan announced in March 2020 a PKR 20 billion (approximately \$123 million) subsidy package for payment of energy tariffs to benefit export-oriented industries.

## **OTHER BARRIERS**

### **Corruption**

Companies cite corruption and a weak judicial system as substantial disincentives to foreign investment in Pakistan. The country's federal anticorruption agency, the National Accountability Bureau (NAB), was established in 1999, but subsequently the 18th Amendment to Pakistan's Constitution declared all acts and laws made by the President, implicitly including creation of the NAB, to be without lawful authority. While the NAB continues to function, there is still a legislative gap in its authority: in 2009, Pakistan's Supreme Court directed the National Assembly to pass new legislation to establish it formally. In addition, NAB's broad exercise of its remit to investigate government operations and business dealings have led to a number of cases where it reopened established policies and targeted reputable businesses, potentially dissuading foreign investors and making officials reticent to exercise authority.

# PANAMA

## TRADE AGREEMENTS

### The United States–Panama Trade Promotion Agreement

The United States–Panama Trade Promotion Agreement (the Agreement) entered into force on October 31, 2012. The United States and Panama continue to work closely together to review the implementation and functioning of the Agreement and to address outstanding issues.

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

The first tariff reduction under the Agreement took place upon entry into force on October 31, 2012, and subsequent tariff reductions have occurred on January 1 of each year. All U.S. consumer and industrial products have been duty free since January 1, 2021. Remaining duties on some U.S. agricultural goods will be phased out within 12 years following the entry into force of the Agreement, (2023), with duties on the most sensitive products phased out between 15 years to 20 years after entry into force of the Agreement (2026 to 2031). The Agreement created expanded market access opportunities for some of the most sensitive agricultural products through tariff-rate quotas (TRQs), which provided immediate duty-free access for specific quantities of certain agricultural products.

Since 2020, Panama has imposed volume restrictions on U.S. onion imports outside of the Agreement quota quantities. Panamanian authorities have also designated approved importers and specified volumes per importer. The United States is discussing these issues with Panamanian authorities, in light of the Agreement commitments.

The Agreement provides both milled and rough rice TRQ volumes each year, and the TRQ is administered through an auction system. On November 30, 2021, Panama held the auction for rough rice TRQ volumes after notifying the United States that the volume of the 2022 milled rice quota allocation would be converted to rough rice and added to the rough rice quota allocation. The United States is discussing this issue with Panamanian authorities, in light of Panama’s Agreement commitments.

#### *Taxes*

All goods and most services sold in Panama, except for foods and feeds, are subject to a seven percent value-added tax (ITBMS). In the case of imported goods, the ITBMS is levied on the cost, insurance, and freight value, as well as on import duties and other handling charges. The ITBMS is higher for cigarettes and alcohol. Pharmaceuticals, foods, school supplies, goods that will be re-exported, and all products related to transactions occurring in any free zone when using appropriate documents are exempt from the ITBMS.

#### *Customs Barriers and Trade Facilitation*

Panama ratified the World Trade Organization (WTO) Trade Facilitation Agreement (TFA) in November 2015. Panama has not yet submitted its transparency notifications related to the operation of its single

window. This notification was due to the WTO on January 1, 2022, according to Panama's self-designated implementation schedule.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

Since 2017, the United States has raised concerns with Panama's quality requirements for fresh onions, and since 2019, its quality requirements for fresh potatoes, which Panama notified to the WTO. Both measures establish mandatory harvest date requirements, sprouting limits, and temperature and storage criteria, raising concerns regarding their scientific basis, consistency with international standards, and burden on trade. Since October 2020, the United States has raised these issues at the WTO Committee on Technical Barriers to Trade (TBT) and elevated the concerns to the Council for Trade in Goods in November 2021. The United States raised these concerns again at the March 2022 WTO TBT Committee meeting. U.S. concerns regarding the measure continue to go unaddressed and U.S. onion producers continue to be negatively affected. Panama began implementing the onion measure in January 2020 and U.S. onion exports to Panama decreased by 54 percent (from approximately \$7.7 million to approximately \$3.6 million) over the past two years, due in part to Panama's measure. After a number of delays, in December 2021 Panama issued Resolution 235, which finalized the proposed measure on fresh potatoes; Panama began implementing the measure on February 19, 2022. The United States will continue to raise concerns regarding these regulations.

On January 22, 2020, Draft Bill 265 was presented in Panama's National Assembly. If passed, the bill would establish a front-of-package nutritional warning labeling scheme modeled after the Mexican example, which includes octagonal stop sign-shaped labels for foods and beverages that contain non-caloric sweeteners, caffeine, sodium, fats, and sugars. The scheme's stated objective is to help reduce obesity and diet-related non-communicable diseases. The United States has shared its concerns that this bill may be more trade restrictive than necessary to meet Panama's legitimate objective of reducing obesity and diet-related non-communicable diseases. The United States provided its formal comments to Panama in October 2021, and requested that it notify the proposed implementing measure to the WTO TBT Committee. The United States will continue to monitor the draft bill and engage with the Panamanian Government.

### **Sanitary and Phytosanitary Barriers**

On August 12, 2020, the Panamanian Food Safety Authority (AUPSA), the agency responsible for issuing science-based sanitary and phytosanitary import policies for agricultural and food products, began implementing Ministry of Health Decree 255, which requires registration of establishments involved in the storage, display, distribution, and sale of raw meat and raw meat products. Stakeholders have expressed concerns that the decree may adversely affect U.S. beef, pork, and poultry exports that supply the hotel, restaurant, and institutional market, as well as products destined for supermarkets. These products were previously only subject to routine AUPSA registration, a process that could be completed in 24 hours. The process under the new decree takes 180 days, resulting in delays of U.S. exports. The United States has raised concerns with the registration requirements for raw meat, which appear to deviate from the basic product information requirements that were agreed upon in the 2006 United States–Panama Agreement Regarding Certain Sanitary and Phytosanitary Measures and Technical Standards Affecting Trade in Agricultural Products. Following the May 2021 Agreement Agriculture, SPS, and TBT bilateral committee meetings, Panama agreed to revise Decree 225 to align with bilateral commitments. The United States will continue to monitor developments and will await the revised version of the decree prior to final publication.

In March 2021, Panama passed a law to eliminate AUPSA, replacing it with the Panamanian Food Agency (APA). APA began operations on October 1, 2021, and has responsibility for both imports and exports.

APA has continued the implementation of Decree 255. The United States will continue to monitor the implementation of the decree by this new agency to ensure that U.S. products are treated in accordance with Panama's international commitments.

## **GOVERNMENT PROCUREMENT**

Panama is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since September 1997. However, the United States–Panama Trade Promotion Agreement contains disciplines on government procurement.

Historically, government procurement procedures have presented barriers to trade in Panama, because of a lack of transparency. The Panamanian President has publicly committed to ensuring greater transparency in the award of government tenders. Law 153, passed in May 2020, provides greater transparency in public procurement by mandating that all public entities use an electronic-procurement system. During 2021, the government awarded 117,218 public contracts using this procurement system.

## **INTELLECTUAL PROPERTY PROTECTION**

Panama has made efforts to improve its intellectual property (IP) regime, including by updating its legislative framework and improving enforcement against piracy and counterfeiting, but concerns remain. Panama still must develop a system for Internet Service Provider notice-and-takedown procedures and pre-established damages for copyright infringement and trademark counterfeiting. An interagency committee, which is led by the Panama Customs Authority and includes the Ministry of Commerce and Industry, the Ministry of Economy and Finance, the District Attorney for IPR, and the Ministry of Health, has held discussions on providing for pre-established damages. The committee last met in April 2020 to discuss customs-related fines. While challenges remain, for example in the areas of trademarks as well as pirated and counterfeit goods, the United States continues to engage closely with Panama to ensure its effective implementation of all Agreement obligations.

## **INVESTMENT BARRIERS**

Although Panama maintains an open investment regime, U.S. investors and individual property holders have raised concerns about a weak judiciary, property disputes, and land titles. Many of these disputes appear to stem from the general lack of titled land in Panama and inadequate administration of real property. Although Panama enacted Law 80 in 2009, which attempted to address the lack of titled land in certain parts of the country, some of the decisions taken by the National Land Authority have reinforced investors' concerns regarding government administration, corruption, and the ability of the judicial system to resolve these types of disputes. U.S. stakeholders also report that late payments on government contracts are a serious problem and could discourage future investment in Panama.

## **OTHER BARRIERS**

### **Bribery and Corruption**

U.S. stakeholders report that corruption continues to be a systemic challenge in Panama at all levels of government, including in the judicial system. Allegations of corruption surrounded purchases made during Panama's State of Emergency due to the COVID-19 pandemic, when procurement procedures were abbreviated to permit rapid responses. The United States continues to stress the need to increase transparency and accountability in both government procurement and judicial processes.

# PARAGUAY

## TRADE AGREEMENTS

The United States and Paraguay signed a Trade and Investment Framework Agreement on January 13, 2017. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Paraguay.

## IMPORT POLICIES

### Tariffs

Paraguay's average Most-Favored-Nation (MFN) applied tariff rate was 9.6 percent in 2020 (latest data available). Paraguay's average MFN applied tariff rate was 10 percent for agricultural products and 9.5 percent for non-agricultural products in 2020 (latest data available). Paraguay has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 33.5 percent.

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

MERCOSUR provisions allow its members to maintain a limited number of national and sectoral list exceptions to the CET for an established period. Paraguay is permitted to maintain a list of 649 exceptions to the CET until December 31, 2023. Modifications to MERCOSUR tariff rates are made through resolutions and are published on the MERCOSUR website.

According to MERCOSUR procedures, any good imported into any member country (not including free trade zones) is subject to the payment of the CET to that country's customs authorities. If the product is then re-exported to any other MERCOSUR country, the CET must be paid again to the second country. Thus, for any U.S. good imported into landlocked Paraguay via any other MERCOSUR country, all of which have ocean ports, the CET is effectively doubled.

In 2010, MERCOSUR took a step toward the establishment of a customs union by approving a Common Customs Code (CCC) and launching a plan to eliminate the double application of the CET within MERCOSUR. All MERCOSUR members must ratify the CCC for it to take effect, but only Argentina has done so.

### Non-Tariff Barriers

#### *Import Bans*

Paraguayan law prohibits the importation of used clothing, as well as imports of automobiles older than 10 years. With respect to automobiles, from 2011 to 2018 the Supreme Court ruled in 84 instances that the law banning used automobiles was unconstitutional, and allowed the 84 importers that filed cases to continue importing automobiles older than 10 years. Other potential importers were not covered by these cases, and no new importers have been included since 2018. Recent commitments by Paraguay regarding the automotive trade within MERCOSUR may affect trade in used automobiles older than 10 years.

### *Import Restrictions*

Seasonal restrictions on some agricultural products (*e.g.*, tomatoes, bell peppers, and onions) are sometimes implemented to protect local producers.

### *Import Licensing*

Paraguay requires import licenses on personal hygiene products, cosmetics, perfumes and toiletries, textiles and clothing, shoes, insecticides, agrochemicals, soy grains, wheat flour, yerba mate, beef, chicken, alkaline batteries, cell phones (including spare parts and accessories), fire extinguishers, barbed wire, wire rods, cement, and steel and iron bars. Licensing is non-automatic or automatic, depending on the product, and in both cases 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 health certification process can take up to 60 days to 90 days depending on the product's risk category as determined by the Ministry's Directorate for Health Surveillance. Once a health certification is issued, it is valid for five years. The import licensing process usually takes 24 hours to 48 hours, but can take up to 10 days in some cases. For goods that require a health certification, it can take up to 30 days. Some U.S. companies have reported license issuance delays for these goods of up to 12 months. Once issued, an import license is valid for only 30 days, and imports must therefore be made within this 30-day window. This can be difficult if there are shipment delays, which are fairly common in Paraguay, a landlocked country largely dependent on riverine shipment that can slow during dry seasons. Due to those delays, importers may need to reapply for an import license.

### *Customs Barriers and Trade Facilitation*

Paraguay requires that specific documentation for each import shipment (*e.g.*, commercial invoice, certificate of origin, and cargo manifest) be certified either through Paraguay's single window system or at a Paraguayan consulate in the country of origin. Those consularization requirements are burdensome for U.S. exporters and impose an additional cost for each set of commercial documents. Fines may also be assessed for non-compliance.

Paraguay also requires all companies operating within its borders to contract the services of a customs broker. Customs broker fees are standardized by Paraguayan law.

## **GOVERNMENT PROCUREMENT**

Paraguay's Public Contracting Law allows government institutions at the national and local levels to procure directly from vendors of their choosing via the National Directorate for Public Contracts if the stipulated contract value is less than approximately \$25,500 and the institution has received at least three valid offers. Foreign firms can bid directly on tenders deemed "international", but bids on "national" tenders can only occur through the foreign firms' local legal agents or representatives. Paraguayan law gives preference to locally produced goods and services (defined as a good with at least 40 percent of inputs from Paraguay or a service produced using Paraguayan labor at a threshold of 70 percent) in national public procurements open to foreign suppliers, even if the domestic good is up to 40 percent more expensive than the imported good. For international tenders, Paraguayan law gives a maximum 10 percent price preference to domestic goods and services. The law also requires 25 percent minimum Paraguayan labor for construction projects. Paraguay's public procurements historically have been associated with corruption allegations, although Paraguay is making efforts to enhance transparency and accountability through the government's online procurement system and more user-friendly modules.

Paraguay is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since February 2019.

## **INTELLECTUAL PROPERTY PROTECTION**

Paraguay remained on the Watch List in the [2021 Special 301 Report](#).

Over the past several years, the National Directorate of Intellectual Property has made efforts to improve administrative activities and some enforcement efforts, including establishing an interagency coordination center to provide a unified government response to intellectual property (IP) violations. However, several concerns remain, including the lack of deterrent-level penalties for IP crimes and government use of unlicensed software. The United States also remains concerned with the lack of enforcement action in Ciudad del Este, one of the main destinations for illicit goods in the region, which continues to be named in the [2021 Notorious Markets List](#). In addition, the United States encourages Paraguay to provide transparency and procedural fairness to all interested parties in connection with potential recognition or protection of geographical indications, including in connection with trade agreement negotiations.

The United States and Paraguay signed a Memorandum of Understanding (MOU) on IP Rights in June 2015, which expired at the end of 2020. The United States continues to work with Paraguay to address outstanding IP issues through bilateral engagement, including through an IP work plan.

## **INVESTMENT BARRIERS**

Under Paraguayan law, foreign companies must demonstrate “just cause” to terminate, modify, or decide not to renew contracts with Paraguayan distributors. Severe penalties and fines may result if a court determines that the foreign company ended the relationship with its distributor without first having established that such “just cause” exists. This requirement often leads to expensive out-of-court settlements. The law has impeded foreign investment because of concerns that Paraguayan companies may unreasonably threaten expensive litigation.

Judicial uncertainty and corruption mar Paraguay’s investment climate. Many investors find it difficult to adequately enforce contracts and are frustrated by lengthy bureaucratic procedures. The Government of Paraguay has taken steps to increase transparency and accountability, including the passage of its Access to Information Law, but corruption and impunity continue to hamper the investment climate.

Although Paraguay offers unlimited repatriation of capital, it levies a 15 percent tax on that capital. Paraguay’s Investment Incentive Law lays out a government approval mechanism exempting foreign investors investing over \$5 million from paying taxes on repatriation of capital for up to 10 years from initiation of the project.

Law 6380/19 reformed Paraguay’s tax regime, introducing a new 15 percent tax for non-residents on profits received from economic and financial activities carried out in Paraguay, including earnings from rights and assets exploited in the country.

# PERU

## TRADE AGREEMENTS

### The United States–Peru Trade Promotion Agreement

The United States–Peru Trade Promotion Agreement (the Agreement) entered into force on February 1, 2009. Under the Agreement, Peru currently provides duty-free access to nearly all U.S. exports. The United States and Peru meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

All duties for Agreement-originating U.S. consumer and industrial goods exported to Peru have been eliminated, while a small number of Peruvian tariffs apply to select U.S. agricultural products. These are scheduled to be phased out by 2026. In accordance with the Agreement commitments, Peru has ceased applying its price band system to U.S. agricultural products.

#### *Taxes*

A 40 percent excise tax applies to imports of all used cars and trucks, irrespective of fuel or engine type. Used cars or trucks that undergo refurbishment in an industrial center in the south of the country (those located in Ilo, Matarani, or Tacna) are subject to a 40 percent excise tax after importation. It is prohibited to convert used vehicles to natural gas.

Peru levies a specific excise tax (ISC) of 2.17 Peruvian Nuevo Sol (PEN) (approximately \$0.59) per liter on domestically produced Pisco, while domestically produced spirits other than Pisco and imported distilled spirits face a higher specific or *ad valorem* ISC based on alcohol content (*e.g.*, 3.47 PEN (approximately \$0.95) per liter, or 40 percent *ad valorem* for beverages containing 20 percent or more alcohol by volume). Given the higher effective tax rate, U.S. and other imported distilled spirits products are at a competitive disadvantage to Pisco in the Peruvian market.

### Non-Tariff Barriers

Peru has eliminated many of its non-tariff barriers and, in accordance with the Agreement commitments, subjects remaining measures to additional disciplines.

Peru currently restricts imports of certain used goods, including clothing and shoes (except as charitable donations), medical devices (except by individual physicians for their own use), tires, cars more than two years old, vehicles with more than eight seats and a gross weight over five tons, and trucks more than two years old weighing more than 12 tons.

Peru's registration and marketing approval processes for pharmaceuticals and medical devices remain slow, hampering market access.

The express shipments industry has expressed concerns over policies and actions of Peru's Customs agency SUNAT that appear to disproportionately penalize discrepancies on the manifest for low value shipments. Under Peru's Customs Crime Law No. 28008 of 2003, express delivery managers and legal representatives are subject to criminal investigations and penalties for minor discrepancies in the value of invoices of low value shipments. Furthermore, the same law allows administrative sanctions that can also be brought against the express courier companies concurrently for the same violations. Express delivery carriers are subject to the same fixed monetary penalty as containerized cargo, regardless of the differences in shipment size or value.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

The "Healthy Food Promotion Act for Children and Adolescents" (Law No. 30021 of 2013) mandates a front-of-package warning statement on food labels for prepackaged foods. The law also establishes limitations on advertising and promoting such food and beverage products to children and adolescents, which include restrictions on the promotion, advertising, and sale of these products in or around schools.

The 2017 Manual on Health Warnings, which implemented Law No. 30021, contains technical specifications and guidelines for the inclusion of these warnings on processed food labels and in media advertisements. The United States supported concerns regarding these policies raised by Costa Rica and Ecuador at the WTO Committee on Technical Barriers to Trade in May 2020 and June 2020. The Manual has been amended several times after the warnings went into effect in 2019. In June 2021, Peru extended the exemption allowing use of stickers in lieu of printed, non-sticker labels through March 31, 2022. However, the latest extension is specific to imported products while domestic products must now print the warning label on the front of the package. After that date, Peru will require the use of a printed, non-sticker label for compliance with warning label requirements unless another extension is made or a permanent exemption is granted.

The United States will continue to monitor ongoing developments related to these issues.

### **Sanitary and Phytosanitary Barriers**

#### *Biotechnology*

On January 6, 2021, the Peruvian Congress passed Law No. 31111, which extended Peru's moratorium on the cultivation and import for cultivation of genetically engineered organisms, such as seeds, for fifteen years. Law No. 31111 extends Peru's prior ten-year moratorium under Law No. 29811, which would have expired in November 2021. Peru has not supported its biotechnology moratorium with a risk assessment or otherwise put forward a scientific justification for it, as called for in the measure's implementing regulations. Peru never notified Law No. 29811 or its implementing regulations to the WTO Committee on Sanitary and Phytosanitary Measures, and Law No. 31111 does not appear to address Peru's undefined tolerance levels for accidental presence of genetically engineered components in conventional planting seeds. The United States has raised its concerns regarding the moratorium with government officials from Peru at each annual meeting of the Agreement Standing Committee on Sanitary and Phytosanitary Measures from 2012 through 2020. The United States will continue urging Peru in this forum and in other opportunities to address the United States' concerns and to notify its moratorium to the WTO.

## *Meat Product Certification*

In January 2018, Peru's Ministry of Foreign Trade and Tourism (MINCETUR) sent a letter to the U.S. Department of Agriculture (USDA) formally notifying new sanitary import requirements for U.S. processed meat and egg products. A Single Export Sanitary Certificate (SESC) containing both human and animal sanitary requirements from Peru's National Sanitary Authority (DIGESA) and the National Agrarian Health Service (SENASA) must accompany shipments of processed products of animal origin, including processed meat and egg products as of 2018. The United States has encouraged Peru to notify this certificate requirement to the WTO Committee on Sanitary and Phytosanitary Measures to ensure transparency and avoid potential disruptions to trade over confusion with Peru's current and proposed certification requirements. In October 2019, USDA's Food Safety and Inspection Service (FSIS) sent a letter to MINCETUR with a proposed certificate enclosed that included Peru's SESC attestations for processed meat products. In January 2021, SENASA indicated that it was still reviewing the United States' proposal, but DIGESA confirmed that it was willing to accept the proposed FSIS certificate to meet the SESC requirement. The United States continues to engage with Peru to finalize the certificate.

## **GOVERNMENT PROCUREMENT**

In August 2017, Peru updated its guidelines for the acquisition of goods and services in the defense sector. Peru now appears to be authorizing military and defense entities to reach agreements with foreign vendors from the private sector through the Armed Forces Purchasing Agency – as well as directly with foreign state-owned entities, as has historically been the case, but the degree to which this change has been implemented remains unclear. Legislative Decree 1444 issued in September 2018 modified the public procurement law to allow government agencies to use government-to-government (G2G) agreements to facilitate procurement processes. Following the execution of recent infrastructure tenders using the G2G model in 2019, an increasing number of ministries and government entities are now requiring foreign companies, including U.S. firms, to obtain sponsorship by their respective governments in order to compete for major procurements.

The United States Government is not permitted to sign such contracts, which would make the United States financially liable for the work and overall performance of private sector companies conducting the work. Peru's use of G2G procurements has prevented U.S. domiciled companies from competing in some relevant government tenders.

U.S. firms continue to identify corruption as a significant problem in the government procurement process in Peru. The United States continues to engage with Peru to establish better rules and conditions for fair and transparent competition in public procurements through technical assistance in the preparation of legislation to improve Peru's public supply chain procurement system.

Peru is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement. However, the Agreement contains disciplines on government procurement. The United States will continue to engage with Peru to ensure that all procurements covered by the Agreement's provisions are conducted in a manner that is consistent with the Agreement.

## **INTELLECTUAL PROPERTY PROTECTION**

Peru remained on the Watch List in the [2021 Special 301 Report](#).

Peru continued to take positive steps relating to intellectual property (IP) protection and enforcement, including with respect to online piracy, interagency coordination, and IP court proceedings. Such steps include the signing of a memorandum of understanding with the United States Patent and Trademark Office

to strengthen the Peruvian judiciary's capacity and enforcement with respect to IP laws, as well as partnering with the World Intellectual Property Organization to modernize Peru's IP system. However, pirated and counterfeit goods continue to remain widely available in Peru and right holders cite particular concerns with respect to counterfeit medicines, internet piracy, and illicit recordings in cinemas. For example, the Gamarra market, a popular shopping center in Lima, Peru, is listed in the [2021 Notorious Markets List](#).

The United States continues to call for Peru to fully implement the Agreement's IP obligations including enacting statutory damages for copyright and trademark infringement. The United States also calls on Peru to pass anti-camcording legislation and undertake IP reforms that include increasing and enhancing enforcement efforts such as the jurisdiction of special IP prosecutors, border measures, and further increasing coordination among enforcement agencies.

## **LABOR**

A review of Peru's progress on implementing specific recommendations to improve worker rights practices in Peru's non-traditional export sectors has been ongoing since the issuance of a U.S. Department of Labor (DOL) [report in 2016](#). DOL's report, published in response to a submission from the public under the Agreement, raised significant concerns regarding the right to freedom of association in certain sectors, which include textiles, apparel, and certain agricultural products. The report also noted concerns regarding labor law enforcement in Peru.

# THE PHILIPPINES

## TRADE AGREEMENTS

### The United States–Philippines Trade and Investment Framework Agreement

The United States and the Philippines signed a Trade and Investment Framework Agreement (TIFA) on November 9, 1989. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and the Philippines.

## IMPORT POLICIES

### Tariffs

The Philippines' average Most-Favored-Nation (MFN) applied tariff rate was 6.1 percent in 2020 (latest data available). The Philippines' average MFN applied tariff rate was 9.8 percent for agricultural products and 5.5 percent for non-agricultural products in 2020 (latest data available). The Philippines has bound 66.9 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 25.7 percent.

Products with unbound tariffs include certain automobiles, chemicals, plastics, vegetable textile fiber, footwear, headgear, fish, and paper products. MFN applied tariffs on fresh fruit, including grapes, apples, oranges, lemons, grapefruits, and strawberries, as well as on processed potato products (including frozen fries), are between 7 percent and 15 percent (except dates and figs, which have a 3 percent MFN applied tariff). WTO bound rates are much higher at 35 percent and 50 percent, including for fresh potatoes at 40 percent.

U.S. agricultural exports are significantly inhibited by the high in-quota tariffs for agricultural products under the Philippines' tariff-rate quota (TRQ) program, known as the Minimum Access Volume (MAV) system. Under the MAV system, the Philippines imposes TRQs on numerous agricultural products, including sugar, corn, coffee and coffee extracts, potatoes, pork, and poultry products, with in-quota tariffs ranging from 30 percent to 50 percent.

The Philippines continues to apply high tariffs on finished automobiles and motorcycles. A 30 percent tariff is imposed on completely built passenger vehicles with capacity of less than 10 persons (*i.e.*, cars) as well as motorcycles; 20 percent for passenger vehicles with capacity of 10 or more (*i.e.*, buses); and, 20 percent for commercial vehicles (*i.e.*, trucks). New vehicle imports from Association of Southeast Asian Nations (ASEAN) countries, Korea, and Japan benefit from preferential tariffs under the Philippines' free trade agreements. The Philippines continues to extend duty-free treatment to imports of capital equipment, spare parts, and accessories by motor vehicle manufacturers and other enterprises registered with the Board of Investments (BOI) under Executive Order No. 226.

The Philippines Motor Vehicle Development Program, implemented by the BOI, is designed to spur exports and encourage local assembly through low tariffs on components. A one percent tariff applies to completely knocked-down (CKD) kits imported by registered participants and a zero percent tariff for CKD kits for the assembly of hybrid and electric vehicles.

Pursuant to Annex 5 of the WTO Agreement on Agriculture, the Philippines maintained a rice quota of 350,000 metric tons (MT) until the special treatment expired on June 30, 2012. In July 2014, the WTO approved an extension of the Philippines rice quantitative restrictions until July 1, 2017. In connection with

the extension of rice special treatment, the United States and the Philippines reached a bilateral agreement on Philippine agricultural concessions in June 2014. As part of this agreement, the Philippines reduced tariffs on a variety of agricultural products, including buttermilk, cheese, grapes, poultry, and walnuts.

The Philippines did not pursue an extension of its WTO waiver in 2017 and instead began consideration of legislation to convert its rice quotas into tariffs. The Philippine President issued Executive Order No. 23 in May 2017, which unilaterally extended tariff concessions (*e.g.*, for mechanically deboned poultry meat) until the Philippines enacted a law on the tariffication of rice.

While the Philippine Congress considered the rice tariffication law, the United States encouraged Philippine industry to advocate for maintaining tariff concessions as a way to stimulate economic activity and ensure affordable food prices. As part of an October 2018 Joint Statement concluded under the TIFA, the Philippines recognized the U.S. interest in the extension of Philippine tariff rates on certain agricultural products. The Philippines also committed to expeditious consideration of petitions for the extension of such rates, consistent with established procedural rules. The Philippine President signed rice tariffication legislation into law on February 14, 2019, replacing rice quantitative restrictions with tariffs. On May 15, 2021, the President signed Executive Order (EO) 135 lowering the in-quota and out-quota rice tariff rates to 35 percent, from 40 percent in-quota and 50 percent out-quota rates. This places the MFN duty in line with the ASEAN rate of 35 percent until May 2022.

Responding to surging pork prices due to African swine fever's devastation of the hog sector, the Philippines temporarily lowered pork duties and increased the quota volume via EO 134, setting pork tariffs significantly lower than the original 30 percent in-quota and 40 percent out-quota rates. The President also issued EO 133 on May 11, 2021, raising the MAV or tariff-rate quota on pork imports from 54,210 MT to 254,210 MT.

In January 2021, following a petition from importers to the Philippine Tariff Commission (Tariff Commission), the President signed EO 123, again extending the five percent concessionary rate for mechanically deboned meat of chicken and turkey that originated as part of the June 2014 agreement, this time through December 31, 2022. A petition to reduce the duty on frozen potato fries to zero percent has been pending with the Tariff Commission since March 2021.

## **Non-Tariff Barriers**

### *Quantitative Restrictions*

The Philippines prohibits the importation of used motor vehicles, except in certain cases which require prior authority to import from the Department of Trade and Industry. Importation of used motor vehicle parts is also regulated.

### *Customs Barriers and Trade Facilitation*

Reports of corruption and irregularities in customs processing persist, including incidents of undue and costly delays, irregularities in the valuation process, 100 percent inspection and testing of some products, and inconsistent assessment of fees.

In August 2018, the Philippines Customs Commissioner issued an internal memorandum to customs collectors reminding them of their general legal obligation to assess duties on the basis of transaction value. As part of the October 2018 Joint Statement, the United States welcomed the Philippines' efforts to ensure the WTO-consistent valuation of agricultural imports for duty collection purposes, including the enforcement of laws, regulations, and policies prohibiting the use of reference pricing. Despite the

submission of documentary evidence of payments (*e.g.*, contracts, purchase orders, telegraphic transfers and letters of credits), some importers still reported that the Philippine Bureau of Customs continues to use reference prices for the valuation of meat and poultry products in a manner that appears inconsistent with the WTO Customs Valuation Agreement (CVA).

In 2020, the Bureau of Customs implemented the Enhanced Value Reference Information System (e-VRIS), which is a database of information on the value and classification of imports for reference purposes in support of the implementation of the CVA. Members of the Philippine House of Representatives continue to raise concerns about the practice of using reference prices to assess duties and flag corruption risks in the new valuation system.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

In conjunction with ASEAN harmonization efforts, the Philippines is working to align domestic motor vehicle standards and regulations with those promulgated by the United Nations Economic Commission for Europe (UNECE). Under the October 2018 United States-Philippine Joint Statement, both governments pledged to cooperate to implement a U.S. work program on automotive standards issues in the context of the TIFA. The United States also recognized the Philippines' commitment to the continued acceptance of vehicles that meet multiple high-standard automotive standards, including, among others, the U.S. Federal Motor Vehicle Safety Standards (FMVSS).

#### *Meat Labeling*

Following a surge in imports, in July 2021 the Philippines abruptly began enforcing burdensome meat and poultry labeling requirements that, while in place for several years, had previously not been applied. This change resulted in many detained containers of U.S. products and delays of other container shipments en route. The Philippine Government subsequently issued policy clarifications in November 2021 granting labeling flexibilities indefinitely until the policies can be reviewed and revised, thereby allowing continued exports of U.S. meat and poultry. The United States will continue to closely monitor developments.

### **Sanitary and Phytosanitary Barriers**

#### *Import Permits*

The Philippines Department of Agriculture (DA) requires that importers obtain a sanitary and phytosanitary import clearance (SPSIC) permit and transmit the permit to the exporter prior to shipment of any agricultural product. Each permit is valid for only one shipment and has limited validity periods of 15 to 90 days depending on commodity type. This requirement adds costs, complicates the timing of exports, and prevents the rerouting to the Philippines of products intended for other markets but not sold there for commercial reasons. It also prevents an exporter from reselling an imported product if the importer refuses to accept delivery or abandons the shipment. In 2019 and 2020, the Philippines stopped SPSIC issuances for imported agricultural products, including U.S. table grapes, chipping potatoes, and whole birds along with products not currently supplied by the U.S., such as feed wheat, rice, and corn.

On August 10, 2021, DA issued Administrative Order No. 21 temporarily extending the validity of SPSICs for imported meat and poultry from 60 to 90 days in response to COVID-19 related supply chain and shipping disruptions. Recognizing the contribution of meat imports to the overall food security of the country, DA granted the temporary extension of all SPSICs for meat and poultry issued from August 10 to December 31, 2021.

The Philippine Secretary of Agriculture, in coordination with the Philippine Fisheries Development Authority and Bureau of Fisheries and Aquatic Resources and in consultation with the National Fisheries and Aquatic Resources Management Council, determines a maximum importable volume of fish products during closed and off-fishing seasons or during occurrences of calamities. The Secretary may prescribe the species type of fish to be imported and the volume to be imported. Issuance of SPSICs is based on these determinations, a process that appears to quantitatively restrict fish imports during Philippine closed fishing seasons.

### *African Swine Fever*

Since the confirmation of African Swine Fever (ASF) in the Philippines on September 9, 2019, both national and local government units (LGUs) have maintained temporary restrictions on the entry and exit of live hogs and pork products with LGU requirements typically exceeding international and national government recommendations, particularly for heat-treated products. Such constraints on the movement of processed pork products resulted in lower demand for imported frozen pork, which is used as a raw material for processed meat products. The U.S. Department of Agriculture is engaging in multiple cooperative programs with the Philippines to address the issue.

### *Import Registration*

Since 2018, the Philippine Food and Drug Administration (PFDA) halted new registrations and discontinued renewal of pre-existing registrations for products containing lake colors (a type of fat-soluble food color additive). PFDA's policy appears that it may be inconsistent with international standards for food additives. The Philippines notified this measure to the WTO in August 2019 but has not responded to comments from the United States. Global manufacturers also sent a food additive petition to the PFDA for the authorization of lake colors in 2019 but have not yet received any decision.

### *Agricultural Biotechnology*

In response to a December 2015 decision by the Philippines Supreme Court, the Philippines adopted a Joint Department Circular for the import of genetically engineered crops that requires the approval of five agencies (Departments of Agriculture; Health; Science and Technology; Environment and Natural Resources; and, Interior and Local Government) in October 2016. Biosafety permit approvals and application renewals have been slowed by the bureaucratic process of the new Joint Department Circular. The DA is currently undertaking a review of the Joint Department Circular and the biotechnology regulatory framework, making note to comply with the 2018 Ease of Doing Business Act. In 2020, the Philippines also became a co-sponsor of the WTO International Statement on Agricultural Applications for Precision Biotechnology, which reiterates high-level approaches regarding the fair, science-based treatment of precision biotechnology, such as genome editing.

On August 13, 2021, the Philippines notified to the WTO the updated list of imported commodities (*e.g.*, pineapples, safflower, and spores) requiring a genetically modified declaration to be issued by the accredited laboratory/shipper/importer/responsible officer from the country of origin. The Philippines confirmed that importers continue to be acceptable signatories to the declaration upon the products' arrival at Philippine ports.

### *Cold Chain Regulations*

The Philippines has long maintained a two-tiered system for regulating the handling of frozen and freshly slaughtered meat for sale in local wet markets, which imposes more burdensome requirements on the sale

of frozen meat, including imported meat, than it does on the sale of freshly slaughtered meat (which is sourced primarily from domestically raised animals). Seeking to address this issue and given the importance of the cold chain in the Philippines, the United States and the Philippines announced as part of the October 2018 Joint Statement their intent to collaborate to develop cold chain requirements and best practices in the Philippines, taking into account international guidelines and codes of practice regarding food hygiene adopted by the Codex Alimentarius Commission. This work builds on private sector and local efforts already underway in the Philippines to improve the existing cold chain. Since the issuance of the October 2018 Joint Statement, the U.S. Agency for International Development started to fund a cold chain project in four Philippine localities in conjunction with the Cold Chain Association of the Philippines. A U.S. Department of Agriculture Food for Progress project includes a cold chain component in its overall mission to improve Philippine sanitary and phytosanitary (SPS) measures and facilitate agricultural trade.

On June 2, 2020, DA issued Administrative Order No. 24 to add conditions to approve SPSIC permits by requiring importers to obtain certificates of availability of space of accredited cold storage warehouses and meat importation usage reports for imported meat and poultry. However, the DA subsequently suspended implementation of the Administrative Order. On September 16, 2020, the Philippines reinterpreted its existing regulations to expand its longstanding ban on the sale of imported frozen fishery products at local fresh meat, fish, and produce markets (*i.e.*, so-called “wet” markets) to supermarkets and electronic commerce. As a result, the sale of frozen fish products is limited to institutional buyers, such as food processors, and hotel and restaurant chains.

## **GOVERNMENT PROCUREMENT**

The government procurement system in the Philippines generally favors Philippine nationals or Filipino-controlled enterprises for procurement contracts. Republic Act (RA) No. 9184 or the Government Procurement Reform Act specifies minimum Filipino ownership requirement of 60 percent in the procurement of goods, consulting services and infrastructure projects. Domestic goods are also given preferential treatment over imported products in the bid evaluation process. Additionally, Executive Order No. 120 issued in 1993 directs government departments and agencies, including government-owned and controlled corporations, to exert best efforts to negotiate countertrade equivalent to at least 50 percent of the value of contracts on foreign capital equipment, machinery, products, goods, and services worth at least \$1 million. Government Procurement Policy Board Resolution 14-2005 states that a government agency must comply with the provisions of RA 9184 if it decides to adopt countertrade as an internal procurement policy.

The Philippines is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since June 2019.

## **INTELLECTUAL PROPERTY PROTECTION**

While the Philippines has made progress in intellectual property (IP) protection and enforcement since its removal from the Watch List under Special 301 in 2014, the United States continues to have concerns. U.S. right holders report issues with increasing online piracy, counterfeit drugs, and counterfeit apparel. Such counterfeiting and piracy concerns led to the continued inclusion of Manila’s Greenhills Shopping Center on the 2021 [Notorious Markets List](#). Stakeholders also criticize provisions in the patent law that may preclude the issuance of patents on certain chemical forms unless the applicant demonstrates increased efficacy. Other stakeholder concerns include ineffective IP enforcement, including a lack of capacity and expertise, and slow prosecution and conviction of cases. The United States continues to monitor the development of new regulations related to geographical indications (GIs), including their potential impact on market access for U.S. products. As part of the October 2018 Joint Statement, the United States recognized that the Philippines committed “to protect GIs in a manner mutually beneficial to both countries

by ensuring transparency, due process, and fairness in the laws, regulations, and practices that provide for the protection of GIs, including by respecting prior trademarks and no restriction of the use of common names.” In addition, the statement includes confirmation by the Philippines that it will not provide automatic GI protection, including to terms exchanged as part of a trade agreement. The United States will continue to monitor the implementation of this and other commitments related to GIs, including through engagement under the TIFA.

## **SERVICES BARRIERS**

### **Audiovisual Services**

The Philippine Constitution prohibits foreign ownership in mass media, including cable television and broadcasting, as well as film distribution and pay-television. Additionally, foreign equity in private radio communications networks is limited to 40 percent under 2018 changes to the Foreign Investment Negative List (FINL).

### **Express Delivery**

Foreign equity participation in the domestic express delivery services sector is limited to 40 percent.

### **Financial Services**

Qualified foreign banks may own up to 100 percent of domestically incorporated banks or enter the market as foreign branches, but ownership restrictions apply to non-bank investors, regardless of their nationality. Non-bank foreign individuals and enterprises, as with non-bank Filipino investors, may not own more than 40 percent of the total voting stock in a domestic commercial bank, nor own more than 60 percent of the voting stock in a thrift or rural bank.

Banks that seek entry as foreign branches cannot open more than five sub-branch offices. The Philippine Central Bank ensures that majority Filipino-owned banks control at least 60 percent of the total banking system assets.

Foreign financial technology companies and banks have been using the Philippines’ digital banking licenses to access the underserved financial services market. However, on August 31, 2021, the Central Bank imposed a three-year moratorium on new applications for these licenses. Six applications were approved prior to this moratorium, and a seventh application is still pending.

### **Insurance Services**

The Insurance Code provides that all insurance companies operating in the Philippines must seek to cede risks to reinsurance companies admitted to conduct business in the country before entering outward foreign reinsurance arrangements. Moreover, insurance companies operating in the country must cede 10 percent of outward reinsurance placements to the state-controlled National Reinsurance Corporation of the Philippines.

Generally, only the state-owned Government Service Insurance System may provide insurance for government-funded projects and coverage for all government properties, assets, contracts, rights of action, and other insurable risks to the extent of government’s interest.

## **Professional Services**

The Philippine Constitution limits the practices of certain professions to Philippine citizens. However, various laws and regulations provide for exceptions on a reciprocal basis, such as medicine, pharmacy, nursing, and engineering. The practice of law, radiology and x-ray technology, criminology, and marine deck and engine officers are still reserved to Philippine citizens.

### *Advertising Services*

The Philippine Constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers must be Philippine citizens.

## **Retail Services**

Philippine law restricts foreign investment in small retail ventures to Philippine nationals, however amendments to its Retail Trade Liberalization enacted in December 2021 open the sector to greater foreign participation. These amendments lower the minimum investment required for foreign retailers from \$2.5 million to \$500,000 and lower the per-store investment requirement from \$830,000 to \$200,000. Foreign retailers remain prohibited from engaging in trade outside their accredited stores, such as through the use of carts, sales representatives, or door-to-door selling.

## **Public Utilities**

On February 2, 2022, the Philippine Congress passed amendments to the Public Service Act (PSA) of 1936, lifting longstanding restrictions that had limited foreign ownership to 40 percent in several sectors previously deemed to be “public utilities.” With the reform, the logistics, railways, shipping, tollways, and telecommunications sectors are now open to 100 percent ownership by foreign investors. Many U.S. industry stakeholders have welcomed the amended PSA as a significant reform.

## **Telecommunications Services**

The Philippines allocates and manages spectrum through the Radio Control Law of 1931 (RA 3846 and its amendment RA 584), Executive Order 546 s. 1979, and Public Telecommunications Policy Act of 1995 (RA 7925). These laws and directives provide the country’s legal framework for spectrum enfranchisement, operation, and permitting in line with International Telecommunication Union requirements, and general provisions on the allocation and assignment of radio spectrum. While RA 7925 requires the conduct of open tenders in allocating spectrum, no bidding has ever been carried out to allocate spectrum (*e.g.*, “spectrum auctions”). Unlike in most other countries, where public consultation documents, market reviews, and spectrum management plans are issued by the regulator before spectrum is assigned or awarded to an entity, evaluation of applications for spectrum use in the Philippines is not conducted through a public process. Evaluation of applications typically involves the submission by an applicant of a letter of request to the National Telecommunications Commission for its spectrum needs. This model is inherently non-transparent, constituting an “administrative” approach by which applicants are chosen based on the government’s prioritization of certain criteria (like financial or technical capacity). This lack of transparency is reflected in the National Radio Frequency Allocation Table, which does not specify which bands are assigned to which entities.

The anticipated Open Access and Data Transmission bill, still pending full congressional approval in the Philippines as of March 2022, seeks to lower barriers to market entry, and lower the cost of deploying broadband facilities, and make more spectrum available for Internet service.

## **BARRIERS TO DIGITAL TRADE**

### **Internet Services**

While U.S. cloud service providers are active in the Philippine market, they continue to face constraints that limit their participation, particularly in competing for government projects. The Philippines requires government agencies to procure cloud computing services from the Government Cloud (also known as GovCloud), a cloud infrastructure set up by the Department of Information and Communications Technology. U.S. cloud-based services providers support the Philippines' plans to digitize public service functions, but remain concerned about government-mandated data localization requirements, ostensibly mandated to ensure cybersecurity or address latency issues.

The Philippine President issued EO 127 in March 2021, known as the National Policy for Inclusive Access to Satellite Services, which allows telecommunication entities, value-added service providers, and internet service providers to have direct access to foreign and domestic satellites, repealing the previous policy that required telecommunication companies to first apply for a congressional franchise prior to using satellite facilities. The Department of Information and Communications Technology subsequently issued EO 127's Implementing Rules and Regulations in September 2021.

### **Electronic Commerce**

Some U.S. stakeholders have raised concerns about the proposed Internet Transaction Act, introduced in June 2020 and still pending full congressional approval in the Philippines as of March 22, 2022, which aims to promote electronic commerce, consumer protection, and equal treatment of resident and non-resident online platforms, and which would require platforms and online businesses selling to customers in the Philippines to register in the Philippines.

## **INVESTMENT BARRIERS**

### **Performance Requirements**

In 2015, the BOI implemented a six-year Comprehensive Automotive Resurgence Strategy (CARS) program that aims to revive the domestic automotive industry by providing approximately \$200 million worth of fiscal incentives each to three qualified domestic carmakers and parts manufacturers. Registered participants must comply with performance-based terms and conditions, including minimum output of 200,000 automobile units within the program period and domestic production of body shells and large plastic parts assemblies. In June 2017, the BOI allocated the funds for the third and final slot to the government's public utility vehicle modernization program. The CARS program was set to expire in 2021, but has been recommended for extension. However, no official extension has been announced as of March 2022.

### **Limitations on Foreign Equity Participation**

The Philippines has significant restrictions on foreign investment. The FINL, last updated in October 2018, enumerates foreign investment restrictions in two parts: List A details restrictions mandated by the Constitution or specific laws, and List B sets out restrictions mandated by the government for reasons of national security, defense, public health and morals, and the protection of small and medium-sized enterprises. Foreign investment in sectors from the FINL may be prohibited outright (*e.g.*, mass media, practice of professions such as radiology, law, and technology, and small-scale mining, cooperatives) or subject to limitation (*e.g.*, natural resource extraction). The amended FINL increased some of the foreign ownership limits, including for contracts involving construction and repair of locally funded public works

from 25 percent to 40 percent, and private radio communication networks from 20 percent to 40 percent. The FINL continues to allow 100 percent foreign equity participation in sectors such as Internet access providers, wellness centers, and higher education institutions and organizations (except those for professional subjects included in government board or bar examinations, and entities outside the formal education system providing “short-term high-level skills” training). The Philippine Securities and Exchange Commission monitors corporations’ compliance with the foreign equity restrictions mandated under the FINL.

### *Trade-Related Investment Measures*

Under the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act enacted on March 26, 2021, a foreign-owned enterprise whose foreign ownership exceeds 40 percent may qualify for BOI incentives, such as specific tax credits and tax exemptions, if the enterprise’s proposed activity is listed in the proposed Strategic Investment Priority Plan (SIPP) or meets the industry tier and/or location criteria. The BOI is currently drafting the SIPP; in the interim, the BOI is implementing the Investments Priorities Plan issued in 2020 pending the approval of the SIPP. Prior to the passage of the CREATE Act, a foreign-owned enterprise was required to conduct a “pioneer activity” or export at least 70 percent of its production in order to qualify for BOI incentives. The CREATE Act removed these requirements.

## **SUBSIDIES**

### **Export Subsidies**

The Philippines offers a wide array of fiscal incentives for export-oriented investments, particularly investments related to manufacturing. These incentives, subject to review based on several performance indicators, are available to qualified firms located in designated export processing zones, free port zones, and other special industrial estates registered with the Philippine Economic Zone Authority (PEZA). The available incentives include: income tax holidays or exemptions from corporate income tax for up to seven years; an option for either special corporate income tax or enhanced deductions for up to 10 years after the income-tax-holiday period; payment of a five percent special tax on gross income less allowable deductions in lieu of all national and local taxes; exemption from duties and taxes on imported capital equipment, machinery, spare parts, and raw materials; exemption from wharfage dues, imposts, and fees; and, a zero percent VAT rate on local purchases (including telecommunications, electricity, water, and lease of building) directly and exclusively used in the registered project or activity. The PEZA approves incentives for projects with investment capital of \$20 million and below, and the Fiscal Incentives Review Board (FIRB) approves incentives for projects beyond the \$20 million investment capital threshold. Additionally, under the Export Development Act, exporters are entitled to tax credits, starting from 2.5 percent for the first five percent increase in annual export revenue, and an additional five percent and 7.5 percent for the next two incremental five percent increases in annual export revenues.

The CREATE Act introduced a sunset provision on the aforementioned preferential tax rates and benefits provided to activities currently registered with Philippine investment promotion agencies, including PEZA. The law grants a 10-year transition period to export enterprises registered prior to the passage of CREATE with the option to reapply for special corporate income tax treatment subject to the conditions set in the proposed SIPP and a performance review by the FIRB.

## **OTHER BARRIERS**

### **Bribery and Corruption**

Corruption is a pervasive and longstanding problem in the Philippines. National and local government agencies, particularly the Bureau of Customs, are beset with various corruption issues. Both foreign and domestic investors have expressed concern about the propensity of Philippine courts and regulators to stray beyond matters of legal interpretation into policymaking, as well as the lack of transparency in judicial and regulatory processes. Investors have also raised concerns about courts being influenced by bribery and improperly issuing temporary restraining orders to impede legitimate commerce.

# QATAR

## TRADE AGREEMENTS

### The United States–Qatar Trade and Investment Framework Agreement

The United States and Qatar signed a Trade and Investment Framework Agreement (TIFA) in March 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Qatar.

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

As a member of the Gulf Cooperation Council (GCC), Qatar applies the GCC common external *ad valorem* tariff of five percent on the value of most imported products, with several country-specific exceptions. Qatar’s exceptions include alcohol (100 percent), tobacco (100 percent), urea and ammonia (30 percent), and steel (20 percent). Wheat, flour, rice, feed grains, and powdered milk are exempt from custom duties, in addition to more than 600 other goods.

#### *Taxes*

Qatar began to implement a tax on “special goods,” such as alcohol and pork products (100 percent), in January 2019, but announced in April 2020 that the tax on alcohol would be suspended until after the 2022 FIFA World Cup.

In 2016, GCC Member States agreed to introduce common GCC excise taxes on carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products (100 percent). U.S. beverage producers report that the current tax structure for carbonated drinks, which also applies to sugar-free carbonated beverages, fails to address public health concerns and also disadvantages U.S. products. Sugary juices, many of which are manufactured domestically within GCC countries, remain exempt from the tax. Qatar has implemented these excise taxes.

### Non-Tariff Barriers

#### *Import Licensing*

An import license is required for the importation of most products. Qatar issues import licenses to Qatari citizens, Qatari partners in limited liability companies, or to foreign-owned entities operating in Qatar that are registered with the Ministry of Commerce and Industry. On occasion Qatar has established special import procedures through government-owned companies to address increases in demand. Only authorized local agents of foreign firms are allowed to import goods produced by the firms they represent. In the telecommunications sector, commercially registered companies in Qatar can import telecommunication equipment by obtaining an Import Authorization License from the Communications Regulatory Authority. The Qatar Distribution Company, a subsidiary of the national air carrier Qatar Airways, has sole authority to import pork, pork products and alcohol.

### *Documentation Requirements*

In order to clear goods from customs zones at air and sea ports in Qatar, importers must submit a number of authenticated forms, including a detailed customs declaration, a bill of lading, a certificate of origin, and *pro forma* invoice, as well as an import license. The Qatari Embassy, a Qatari consulate, or the Qatari Chamber of Commerce in the United States must authenticate import documentation for U.S.-originated imports. This consularization process or authentication requirement is burdensome and costly to U.S. exporters. Qatar's customs authority charges a fine of one percent on the shipment value if the invoice is not legalized by the Chamber of Commerce in the country of origin of the exported products.

Imported agricultural products require different certificates depending on the category of the product. Meat, fish, eggs, livestock, live poultry, grains, animal feed and planting seeds require an original health certificate. All processed or shelf-stable foods exported to Qatar require a "Certificate to a Foreign Government," or in the case of U.S. exports, a U.S. Food and Drug Administration "Certificate to a Foreign Government: Food for Human Consumption." Imported meat and meat products require an original halal slaughter certificate issued by an approved Islamic authority.

### *Customs Barriers and Trade Facilitation*

Qatar ratified the WTO Trade Facilitation Agreement (TFA) in June 2017. Qatar has not yet submitted four transparency notifications related to: (1) import, export, and transit regulations; (2) details of operation of the single window; (3) the use of customs brokers; and, (4) customs contact points for the exchange of information. These notifications were due to the WTO on February 22, 2017, according to Qatar's self-designated TFA implementation schedule. U.S. industry criticizes the limited transparency of changes to Qatar's customs procedures.

## **TECHNICAL BARRIERS TO TRADE**

### *Restrictions on Hazardous Substances – Electrical Goods*

In March 2018, GCC Member States notified to the WTO a draft Gulf Standardization Organization (GSO) technical regulation that would, among other things, require pre-market testing by accredited labs for certain hazardous substances in electrical goods. The measure would also require each type of good to be registered annually and includes a requirement to submit sample products prior to receiving approval for use in the GCC. The United States has raised concerns that the proposed regulatory requirements would have a significant negative impact on the imports of U.S. electrical and electronic equipment (such as information and communications technology, medical equipment, machinery, and smart fabrics), especially as the trade restrictive third party certification requirements differ from international best practices, which typically permit a supplier's declaration of conformity, supported by documentation requirements, such as test results and manufacturing specifications, in conjunction with integrated enforcement mechanisms, such as regulatory sanctions, liability in tort law, and mechanisms to monitor or remove nonconforming products from the market.

### *Dairy Regulations*

In June 2019, Qatar's Ministry of Public Health implemented a Council of Ministers circular on dairy imports that includes restrictions on reconstitution of dairy products, and shelf-life requirements for "white cheeses," including U.S. exports of mozzarella cheese. Qatar did not notify this regulation to the WTO prior to implementation. The U.S. Government pressed Qatar on the trade restrictive nature of its regulation in bilateral discussions as well as WTO TBT Committee meetings. On August 22, 2021, the Ministry issued an update to the June 2019 regulation that expanded its scope, increasing the concerns of the U.S. dairy

industry. Qatar again failed to notify to the WTO the new regulation prior to its implementation. The U.S. Government and private sector stakeholders continue to raise concerns with Qatar on this regulation, including the transparency of its implementation and the food safety and food quality rationale of the measure.

### *Halal Regulations*

In April 2020, GCC Member States notified to the WTO a draft GSO technical regulation establishing halal requirements and certification for animal feed. The U.S. animal feed, beef and poultry industries have expressed concerns that the new technical regulation may place additional requirements on U.S. producers without offering additional assurance of meeting Member States' legitimate regulatory objectives. The United States submitted comments to GCC Member States in July 2020 noting the unprecedented and potentially trade-restrictive nature of the measure.

### *Energy Drinks*

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

## **GOVERNMENT PROCUREMENT**

Cabinet Decision 16/2019 stipulates that non-Qatari companies participating in tenders must utilize local goods and services for at least 30 percent of a tender's value, including local raw materials, locally manufactured goods, transportation services, security, guarding, and catering services, or any other local services provided. In addition, the Ministry of Finance provides a 30 percent set-aside for domestic small and medium-sized enterprises and requires that all ministries and government entities provide a preference for domestic goods for day-to-day operational requirements, which also receive a 10 percent price preference when used in public procurement bids.

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

## **INTELLECTUAL PROPERTY PROTECTION**

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

## **SERVICES BARRIERS**

### **Financial Services**

Foreign Banks established in Qatar are licensed by Qatar Central Bank (QCB) or Qatar Financial Centre Regulatory Authority (QFCRA). The Qatari Government permits foreign banks licensed by QFCRA to establish a physical presence and conduct most types of banking business, including provision of shariah-compliant banking services, in the Qatar Financial Centre (QFC). However, these foreign banks are not

allowed to offer stand-alone retail banking services outside the QFC. Laws and regulations that govern banking practices in the QFC's Regulatory Authority differ from regulations by the Qatar Central Bank for local and foreign banks, in that the former more closely resemble international banking laws and regulations.

### **Distribution Services**

Only Qatari individuals and domestically licensed entities are allowed to serve as local commercial agents for foreign firms to distribute products or services, except in certain sectors. Additionally, the Minister of Commerce and Industry can waive the nationality requirement for commercial agents of foreign companies that have direct contracts with the Government of Qatar.

### **BARRIERS TO DIGITAL TRADE**

The Qatari Government requires a license from telecommunications providers and companies wishing to provide Voice over Internet Protocol services, granting such licenses only to companies intending to charter in Qatar. This requirement serves as a barrier for foreign or Internet-based communications service providers that are typically able to operate without a license. Qatar's only telecommunications service providers, Ooredoo and Vodafone Qatar, which are both majority owned by state-controlled entities, obtained such licenses in 2021.

### **INVESTMENT BARRIERS**

Qatar enacted the law "Regulating the Investment of Non-Qatari Capital in Economic Activity," in January 2019. This law increased the percentage of allowed foreign capital in domestic investments up to 100 percent in all sectors, except for the banking and insurance sectors and commercial agencies. Full foreign ownership in the banking and insurance sectors remains subject to Qatari Cabinet approval. The law included provisions protecting foreign investment from expropriation, exempting some foreign investment projects from income tax and customs duties on imports of raw materials, and allowing the transfer of investment assets to new owners without delay. Implementing regulations for this law had not been published as of March 2022.

In October 2018, Qatar enacted the law "Regulating Non-Qatari Ownership and Use of Properties," which allowed non-Qataris, commercial companies, and real estate investment funds freehold ownership of real estate in 10 designated zones and usufructuary right of real estate of up to 99 years in 16 additional zones. Outside of the designated zones, non-Qataris were permitted to own property in some residential villas and retail outlets in commercial complexes.

# RUSSIA

## SANCTIONS AND COUNTERSANCTIONS

In response to Russia's initial invasion of Ukraine and attempted annexation of Crimea in March 2014, the United States imposed sanctions on Russian Government officials, individuals who supported the illegal annexation of Crimea, and on critical sectors of the Russian economy. In response to Russia's premeditated and unprovoked further invasion of Ukraine in 2022, the United States has taken and will continue to take steps to isolate Russia from the global economy and hold President Putin accountable for his war against Ukraine. Those measures include, *inter alia*, withdrawal of most-favored-nation status for Russian goods, import and export bans, financial and investment restrictions in certain industries, and blocking measure against certain individuals.

Beginning in August 2014, Russia has enacted a variety of measures in retaliation for U.S. sanctions. The initial measures banned the importation of a variety of agricultural products from the United States and other countries. More recently, the Russian Government has imposed or proposed measures to impact, *inter alia*, financial transactions, protection of intellectual property, exports and re-exports of certain goods, and, possibly, nationalization of foreign-owned assets.

The United States continues to engage with industry to analyze and assess the impact of sanctions on trade in the broader context of U.S. national interests. However, the U.S. Government, in conjunction with its allies and partners, is working to ostracize and isolate Russia. Consequently, the ability of the Office of the U.S. Trade Representative (USTR) to raise and resolve market access barriers in Russia is severely limited.

## TRADE AGREEMENTS

### Membership in the World Trade Organization

On August 22, 2012, Russia became the 156th Member of the World Trade Organization (WTO), and on December 14, 2012, following the termination of the application of the Jackson-Vanik Amendment to Russia, the United States and Russia consented to the application of the WTO Agreement between the two countries. Russia's accession to the WTO signaled Russia's movement to adopt the key WTO principles of national treatment, Most-Favored-Nation (MFN) treatment, transparency, and, more generally, the rule of law. That progress appears to have waned, however, as reported in the [2021 Report on the Implementation and Enforcement of Russia's WTO Commitments](#), issued pursuant to section 201(a) of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012. As noted above, the United States, working with other G7 Leaders, has announced plans to revoke most-favored-nation status for Russian goods.

### Eurasian Economic Union

Russia is a member of the Eurasian Economic Union (EAEU), a limited customs union that also includes Armenia, Belarus, Kazakhstan, and Kyrgyzstan. Moldova, Uzbekistan, and Cuba have observer status at the EAEU. As a consequence of its membership in the EAEU, Russia's import tariff levels, trade-in-transit rules, non-tariff import measures (*e.g.*, tariff-rate quotas, import licensing, and trade remedy procedures), and customs policies (*e.g.*, customs valuation, customs fees, and country of origin determinations) are based on EAEU legal instruments. As of March 2022, the EAEU member states are estimated to have harmonized nearly 90 percent of their tariffs governing trade with third countries. The remaining unharmonized tariffs are due mainly to tariff preferences and exemptions from the EAEU Common External Tariff (CET) granted to some member countries, *e.g.*, CET tariff concessions approved for Armenia and for Kazakhstan as a

result of their WTO commitments. The Eurasian Economic Commission (EEC) is the supranational body charged with implementing external trade policy for member states and with coordinating economic integration among them. While tariff harmonization and standardized regulatory approvals across member states have eased the process of doing business for some U.S. companies within the customs union, some regulatory regimes – such as those applying to medical devices and to pharmaceuticals – have not been standardized and still require approvals by the individual member states.

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

Russia's average MFN applied tariff rate for all goods was 6.6 percent in 2020 (latest data available). Russia's average MFN applied tariff rate was 9.7 percent for agricultural products and 6.1 percent for non-agricultural products in 2020 (latest data available).

Russia has bound 100 percent of its tariff lines in the WTO, with an average WTO bound tariff rate of 7.5 percent. Russia's average WTO bound tariff rate for agricultural goods (10.7 percent) was slightly higher than its average applied rates of 9.7 percent in 2020 (latest data available). Russia's average WTO bound rate for non-agricultural products was 7.1 percent – also slightly higher than its average applied rate of 6.1 percent. Russia's maximum WTO bound tariff rate was 109 percent in 2020 (latest data available).

Although Russia has implemented all the tariff reductions required by its WTO commitments, some concerns remain. For example, Russia has not informed WTO Members whether, for those goods subject to a combined tariff, the *ad valorem* equivalent of the specific duty is within its WTO *ad valorem* bound duty rate. In addition, U.S. stakeholders assert that Russia uses benchmark pricing to calculate duties on imports of certain types of footwear.

Of greatest concern, however, is Russia's 2018 decision to adopt tariffs ranging from 25 percent to 40 percent on various industrial products (mainly certain types of construction machinery) imported from the United States. Russia took this action in retaliation against the President's decision to adjust U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. (These retaliatory duties are being applied by Russia only, not by other EAEU member states.) The United States has urged Russia to work with the United States to address excess capacity in the global steel and aluminum sectors, rather than engage in unjustified retaliation designed to punish U.S. workers and companies. On August 27, 2018, the United States launched dispute settlement proceedings against Russia at the WTO and requested consultations with Russia. Following unsuccessful consultations in November 2018, the United States requested the establishment of a panel. A panel was composed in January 2019. Due to the COVID-19 pandemic, the panel does not expect to issue the report until 2022.

Since December 2013, when the Russian President announced support for “streamlining electronic commerce,” government officials have proposed various reductions in the duty-free threshold for online purchases from non-EAEU online stores. Starting in 2019, the EEC has reduced annually the ceiling on duty-free purchases in foreign online stores from \$1,100 in 2018 to \$220 on January 1, 2020. Russia has proposed that the EEC consider lowering the thresholds even further, to less than \$25, by January 1, 2024.

#### *Taxes*

Russia applies a value-added tax (VAT) of 20 percent on goods, works, and services (with some limited exceptions). Russian and U.S. leasing companies have reported that the VAT assessed on inputs for

exported final products is often not refunded and that they often must resort to court action to obtain reimbursements. Leasing companies have reported that VAT refunds on exports are the source of significant fraud, and that the Russian Government's actions to prevent fraud make it even more difficult for legitimate exporters to obtain refunds. Another 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. Similarly, in 2020, Russia amended its tax code to exempt from VAT the royalties paid on software included in the Unified Register of Russian Software. Because only Russian software is included in the Register, the cost of using non-Russian software can be automatically 20 percent higher than using Russian software.

Russia has imposed a recycling fee on automobiles and certain other wheeled vehicles that requires importers (since 2012) and manufacturers (since 2016) of automobiles and certain other wheeled vehicles (including self-moving agriculture and industrial vehicles) to pay a fee, determined by the age, total mass, and engine size of the vehicle. This fee is intended to cover the cost of recycling the vehicle at the end of its useful life. In April 2018, the fee for all types of vehicles increased, on average, by 16 percent to encourage the development of environmentally-friendly waste management technologies. In January 2020, the average rate of the fee for passenger cars more than doubled, purportedly to offset lower customs rates and maintain the overall level of tariffs. As a result, in 2020 to 2021, recycling rates for new private passenger cars imported by their owners ranged from RUB 3,400 (approximately \$46) to RUB 445,000 (approximately \$6,042) and for the same used vehicles ranged from RUB 5,200 (approximately \$71) to RUB 700,200 (approximately \$9,507). Although the fee applies to both domestic producers and importers, concerns remain regarding the overall level and calculation of the fee for heavy-duty commercial vehicles. Moreover, industry stakeholders assert that the Russian Government offers a variety of subsidies to offset the recycling fee based on criteria that ensure only domestic producers, including domestic manufacturers of foreign-branded cars, receive the offset subsidies.

## **Non-Tariff Barriers**

### *Import Bans*

On August 6, 2014, Russia issued an order banning certain food and agricultural imports from Australia, Canada, the member states of the European Union (EU), Norway, and the United States, initially for a period of one year. The list of banned food included certain beef, pork, poultry, fish and seafood products, fruits and nuts, vegetables, some sausages, and most prepared foods. Russia has since amended the list of products covered by the ban and expanded the list of countries covered by the ban, adding Albania, Iceland, Liechtenstein, Montenegro, Ukraine, and the United Kingdom. In September 2021, Russia extended the ban until December 31, 2022.

In December 2018, Russia imposed a further ban on a wide variety of imports from Ukraine and on exports from Russia to Ukraine (both agricultural and non-agricultural). This ban covers not only products produced in Ukraine, but also any products transshipped through Ukraine and intended for the Russian market, thus potentially affecting U.S. exports to Russia. Since December 2018, the list of banned imported products has been amended 10 times and, as of March 2022, includes 172 Harmonized System (HS) codes of products subject to import bans and 14 HS codes subject to export bans.

### *Import Licensing*

Although Russia simplified its licensing regimes when it became a WTO Member, stakeholders report that the processes to obtain an import or activity license remain burdensome and opaque. For example, in its WTO accession protocol, Russia committed to undertake certain reforms to its import licensing regime for

products with cryptographic functionalities (encryption products). Although the rules governing import licensing, including those for encryption products, are developed and promulgated at the EAEU level, the implementation of the rules is carried out by individual member states. 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 2012, Russia amended the regulations governing activity licenses for the distribution, among other activities, of encryption products. In doing so, Russia reasserted control over many consumer electronic products that had previously not needed an activity license to distribute. Because an activity license to distribute encryption products is required to obtain an import license for encryption products, the 2012 amendments impose an additional indirect burden on the importation of such products.

Additionally, importers of U.S. alcohol products face uncertainty with regard to Russia’s regulatory regime. (*For further information, see the section on Technical Barriers to Trade.*) For example, Russia abolished the requirement to obtain an import license for alcohol on accession to the WTO. However, Russia’s Federal Service for the Regulation of the Alcohol Market still requires an activity license to warehouse and distribute alcohol in Russia.

Import licenses or activity licenses to engage in wholesale and manufacturing activities are necessary also for the importation of pharmaceuticals, explosive substances, narcotics, nuclear substances, equipment to be used at nuclear installations and corresponding services, hazardous wastes (including radioactive waste), and some food products (*e.g.*, unprocessed products of animal origin). Stakeholders assert that Russia’s opaque and burdensome activity licensing regime allows it to control access to many sectors, such as mining. U.S. officials have raised concerns about these import licensing issues with Russian and EAEU officials.

#### *Customs Barriers and Trade Facilitation*

In 2019, Russia began to implement a mandatory labeling regime (track and trace regime) in selected industry sectors that requires the application of an encrypted label to products, both imported and domestically-produced, in an ever-widening list of industry sectors. The mandatory labeling regime applied initially to only certain industry sectors (*e.g.*, footwear, apparel, pharmaceuticals, and perfumery products) but is expected to apply to most products sold in Russia by 2024. Each label carries a unique identification key (similar to a barcode or a Quick Response code) and allows each and every product to be traced within Russia from production and importation to the point of sale. To obtain the labels under the track and trace regime, the importer or manufacturer must partner with a Russian entity and provide detailed information about the product to a public-private Operator, who then issues encrypted labels. Russia asserts that the regime will fight counterfeit products and prevent tax fraud. Various affected industry stakeholders have raised significant concerns about the regime, including: short implementation timelines; lack of operational details from the Russian Government; the quantity of detailed data required for the labels; the risk of disclosure and misuse of the sensitive data collected under the regime; the possibility of national treatment and trading rights issues stemming from different procedures for importers to obtain these labels compared to domestic manufacturers; the requirement that the labels must be purchased from a single Russian

company; duplication with existing tracking regimes (e.g., the system for tracking alcohol products); and arbitrary misuse of the system to halt imports. Although Russia has shown some flexibility in response to stakeholder concerns (e.g., allowing the release of certain pharmaceutical products on a notification basis to alleviate drug shortages allegedly caused by the new labeling regime), the United States will work with stakeholders and the Russian Government to ensure that the system does not create new trade barriers to U.S. exports or undermine the benefits of the WTO Trade Facilitation Agreement (TFA).

In 2021, Russia introduced another system to trace goods through the chain of commerce in Russia (the traceability regime). The traceability regime monitors the circulation of an entire consignment of goods and is operated by the Federal Tax Service whereas the labeling regime is operated by a public-private Russian company. The United States is concerned that implementation of these regimes is duplicative and will create additional burdens at the border, contrary to the goals of the TFA.

U.S. stakeholders have raised concerns that Russia's practice of assessing tariffs on the royalty amounts for the domestic use of imported audiovisual materials, such as television master tapes, DVDs, and digital cinema packs, represents a form of double taxation because royalties are also subject to withholding, income, VAT, and remittance taxes. U.S. consumer goods companies have also reported that Russia's customs authorities calculate customs duties not just on the value of the physical carrier medium, but also on royalty value of the copyright- or patent-protected content contained on the medium (i.e., on the value of the proceeds of the authorized licensed use of a copyright- or patent-protected work). U.S. companies contend that this methodology leads to inflated valuations for tariff purposes.

U.S. stakeholders report that Russia does not publish all regulations, judicial decisions, and administrative rulings of general application on customs matters. In addition, U.S. exporters report that customs enforcement varies by region and port of entry and that changes in regulations can be frequent and unpredictable, adding to costs and delays at the border. U.S. officials have pressed Russia to improve transparency in this area and ensure compliance with WTO commitments.

### *Import Substitution Policies*

In 2021, Russia continued to accelerate its promotion of import substitution and called for greater local content requirements across a variety of sectors and introduced quotas for purchases of Russian goods and services. (For further information, see the sections on *Investment Barriers*, *State-Owned Enterprises*, and *Government Procurement*.) Russian Government officials, including Russia's president, have signaled that import substitution is now a central tenet of Russian economic policy. Sectors in which localization policies have been developed and implemented over the last several years include agriculture, transport vehicles, telecommunications, consumer goods, textiles, optical fiber, defense, banking, oil and gas, solar and wind energy, software, and medical devices.

Initially, the Russian Government implemented these preferences primarily through government procurement, but since 2015 have increasingly extended the mandated preferences to purchases by state-owned enterprises (SOEs). For example, amendments to Russia's law governing SOE purchases expressly favor Russian-produced products, including by granting the Russian Government the authority to establish plans and tender rules for the purchase of specific Russian goods, works, and services. Other amendments established a Government Import Substitution Commission with responsibility for determining which types of machinery and equipment must be sourced locally for large investment projects by SOEs, state corporations, or certain private businesses. In November 2015, the Russian Government issued a decree extending additional controls over the purchasing decisions of 35 of Russia's largest SOEs, including Gazprom, Rosneft, and Aeroflot. The decree has been amended 15 times since its approval. As of March 2022, the list included over 1,000 SOEs. As a result, the selected SOEs' purchases of pharmaceutical, high technology, and innovative products must be coordinated with the Federal Corporation on Development of

Small and Medium Business. Russian law further recommends that SOEs follow the more restrictive procurement rules that govern federal and municipal procurement. (*For further information, see the section on Government Procurement.*)

Further, in December 2019, Russia adopted a law requiring the pre-installation of Russian software on certain consumer electronic products (*e.g.*, smartphones, computers, tablets, and smart TVs) sold in Russia. The Russian Government has identified categories covered by the pre-installation mandate, including search engines, mapping and navigation software, anti-virus software, software that provides access to electronic-government infrastructure, instant messaging and social network software, and national payment software. Every year the Russian Government identifies specific software within each category that must be pre-installed, unless the software is incompatible with the device's operating system. In 2021, Russia increased the pressure, requiring that starting on January 1, 2022, all smartphones sold in Russia must have the Yandex browser pre-installed and all computers and laptops sold in Russia must have the Yandex browser and Kaspersky Internet Security pre-installed. The Russian Government continues to explore options to mandate the use of Russian-made software. Although the Russian Government presented the mandate as giving Russian consumers more choice and helping domestic information technology companies promote their products, stakeholders note that the law appears to be another effort by the Russian Government to disadvantage imports and increase control over technology. In addition, technology companies are concerned that the new law would expose devices and services to potentially unsafe, insecure, or unreliable technology. The United States has raised concerns directly with the Russian Government and will closely monitor implementation of this policy, which has the potential to seriously disrupt U.S. and other foreign suppliers of devices, software, and services.

Since implementing the import ban on certain agricultural products in 2014, Russian Government officials have pressed for greater food self-sufficiency and urged import substitution (and an expansion of exports) in seeds and animal genetics. In 2020, the Russian Government approved an action plan to implement its new Food Security Doctrine. The Doctrine sets the self-sufficiency thresholds for various product groups, ranging as high as 95 percent for some products. In addition, the Doctrine sets the task of achieving a positive trade balance of agricultural products, raw materials, and food. In addition, U.S. stakeholders assert that foreign firms are not given access to the committee that decides which seeds are included in the official register and receive significantly fewer registrations than do Russian firms. The Manufacturing Industry Development Strategy for 2021 to 2024, which the government approved in June 2020, states that the share of goods manufactured domestically has increased from 51 percent in 2014 to 60 percent in 2020 and establishes an import substitution target of 70 percent of manufactured goods produced domestically by 2024.

The Russian Government has also long supported localizing automotive manufacturing. In 2005, Russia introduced an investment incentive regime in the automotive sector with domestic content requirements and production targets. In December 2010, Russia initiated a second automotive industry investment incentive program that increased significantly the required domestic production volume and the domestic content requirement and added a direct investment mandate. In response to a WTO commitment to end the WTO-inconsistent elements of the automotive investment incentive program, Russia in 2019 introduced a points-based system to receive subsidies. Under the new system, car manufacturers accumulate points based on the level of localization, the localization of technological operations, and the use of Russian components and raw materials. The points are used to earn the right to receive industrial subsidies, apply for corporate programs to increase competitiveness, and conclude contracts for the supply of products for state needs.

In the telecommunications sector, the Ministry of Economic Development and the Ministry of Industry and Trade (MIT) have established local content requirements for specified applications or projects. The localization level depends on, among other things, the ownership structure of the company, ownership of

the legal rights to the technologies and software, scope of production in Russia, and the scope of the research activities and technological operations carried out in Russia.

Another instrument Russia uses to implement its import substitution policies is a Special Investment Contract (SPIC). In 2015, Russia introduced SPICs to focus on creating or modernizing its industrial capabilities, particularly for those products that Russia does not produce. Participation in a SPIC allows an investor to enroll in certain Russian subsidy programs designed for domestic manufacturers and benefit from certain tax incentives. Under a SPIC, the investor must implement a project that launches or develops one of the technologies on the List of Advanced Technologies and invest at least RUB 750 million (approximately \$10.2 million). A SPIC envisions the setting of target indicators (*e.g.*, production and sales volumes, minimum tax payments, and number of jobs) for which the investor is held accountable. In August 2019, Russia adopted a new SPIC 2.0 framework, extending the possible lifetime of the available subsidies, eliminating the minimum investment amount, extending the maximum term of the contract, and clarifying rules on profit tax advantages, among other changes. The SPIC 2.0 framework is aimed primarily at localizing modern technologies. In November 2020, the government approved a list of 630 “advanced technologies” from approximately 15 industries eligible for SPIC 2.0.

Russia has expanded its localization policies beyond requiring the use of Russian-made goods to increasingly favor Russian-origin services. (*For further information, see the section on Services.*)

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

U.S. companies cite technical regulations and related product-testing and certification requirements as major obstacles to U.S. exports of industrial and agricultural goods to Russia. Russia does not accept internationally recognized certificates, such those issued by the U.S. Food and Drug Administration; it recognizes only those certificates issued by authorized agencies from one of the EAEU member countries with a representative office in Russia. Russian authorities require product testing and certification as a key element of the approval process for a variety of products, and, in many cases, only an entity registered and residing in Russia can apply for the necessary documentation for those product approvals. Consequently, opportunities for testing and certification performed by competent bodies outside Russia are limited, increasing the burden and costs for companies exporting to Russia. Manufacturers of telecommunications equipment, oil and gas equipment, construction materials and equipment, and veterinary biologics, such as vaccines, have reported serious difficulties in obtaining product approvals within Russia. Other EAEU member states are in the process of adopting similar requirements.

#### *Alcohol*

Russian regulations on alcoholic beverages continue to raise trade-related concerns. At the national level, there is a long-standing requirement to register alcoholic beverages with the Federal Supervisory Service for Protection of Customers Rights and Human Well-Being (Rosпотребнадзор). In 2021, the old system of excise stamps was abolished and replaced with new federal special stamps, through Resolution of the Government of the Russian Federation No. 2348, of December 29, 2020. The importer is now responsible for marking imported alcohol products with the new federal special stamps before the products enter Russia and for submitting an electronic application through the Unified Federal Automated Information System. The requirement to use the new special stamps has resulted in high administrative costs for importers because they had to recertify already imported alcoholic products and mark them with new federal special stamps corresponding to the new product classification.

In December 2018, the EEC adopted a technical regulation, Decision of the Eurasian Economic Commission Council No. 98, revising the alcoholic product safety requirements in the EAEU; however, implementation of this regulation was delayed until January 1, 2024. Although stakeholders report that the revised regulation includes some improvements from the original version (e.g., liberalized ingredient labeling and a reduction in the size of the warning statement), some concerns remain. For example, the definitions for different categories of spirits, the use of analytical parameters for certain product categories, minimum aging requirements, product certifications, and conformity assessment procedures all remain unclear within the regulation. The United States will continue to engage with Russia to ensure that stakeholder concerns are addressed.

Stakeholders have also raised concerns about recent legislative amendments that affect Russia's regulation of the wine market, particularly Federal Law No. 345-FZ of July 2, 2021. In particular, stakeholders are concerned that certain definitions and provisions could create barriers to U.S. wine exports, such as limitations placed on wine exported in bulk and restrictions on the use of certain ingredients. Other concerns relate to limitations on the right to use certain geographical indications or appellations of origin and the rules governing labeling (with follow-on implications for labeling approvals), as well as the failure to provide implementing regulations or a transition period. In addition, stakeholders note that Russia requires one or multiple certificates for imported wine from the United States even when those wines conform to both U.S. and Russian standards. Often these certificates must be an original document issued by the U.S. Government or an officially accredited organization located only in the country of importation. The United States will continue to work to ensure that Russia's and the EAEU's alcoholic beverages control regime is consistent with Russia's WTO commitments and urge Russia and the EAEU to adopt international standards or guidelines for such products.

### *Pharmaceuticals*

The Law on Circulation of Medicines sets forth the basic regulations for biologics and biosimilars; however, regulatory approval of all medicines in Russia are subject to EAEU regulatory procedures, potentially simplifying the process. Nevertheless, U.S. stakeholders continue to express concerns about implementation of the relevant regulations. In addition, U.S. pharmaceutical manufacturers have recognized improvements in Russia's regime governing orphan drugs, but note that the procedures lack sufficient detail to provide certainty about the process. Finally, U.S. stakeholders continue to raise concerns about the implementation of Russia's Good Manufacturing Practices (GMP) regime for pharmaceutical products. U.S. stakeholders have raised concerns that Russia treats domestic and foreign manufacturers differently in the implementation of its GMP regime for medicines. For example, stakeholders have highlighted the higher rate of unwarranted denials of foreign GMP certificates, the lack of a process for paper review of corrective actions for minor deficiencies, and disparate legislatively mandated treatment of GMP procedures for local and foreign sites. Moreover, industry stakeholders report that Russia is finalizing new measures that will require GMP certificates for imported veterinary drugs beginning in 2023, potentially closing the Russian market to exports of U.S. veterinary drugs.

### *Toys*

In 2016, the EEC issued draft amendments to EAEU technical regulations on toy safety ostensibly to eliminate from the market toys that may affect the psychological well-being of children. The draft measure did not appear to be based on scientific evidence or relevant international standards. Following numerous engagements in the WTO Committee on Technical Barriers to Trade and bilaterally between U.S. Government officials and officials from the Government of Kazakhstan, which had proposed the amendments), the EEC withdrew the draft measure. In January 2021, however, Russia's Ministry of Health issued proposed draft legislation that would establish what U.S. stakeholders have characterized as an unprecedented and highly arbitrary psychological assessment of toys, games and play structures. U.S.

industry is concerned that the draft measure would lead to the arbitrary exclusion of certain toys from the Russian market. U.S. toy industry stakeholders have also raised a concern about the EAEU's ban on recycled content in toys, which they claim contradicts global toy safety standards and undermines the growing focus of the U.S. toy industry on sustainability.

### *Transparency*

The United States continues to emphasize to Russia the importance of transparency. The United States has used a variety of fora, including meetings of the WTO Committee on Technical Barriers to Trade and inquiry point requests, to urge Russia to notify proposed technical regulations and conformity assessment procedures, including proposed amendments, at an early enough stage and with sufficient time so that comments can be taken into account. In response, Russia has notified some proposed technical regulations and conformity assessment procedures. The United States continues to remind Russia of its obligation to take into account comments submitted by other WTO Members.

### **Sanitary and Phytosanitary Barriers**

As noted above, Russia has banned imports of most agricultural products since August 2014. Notwithstanding the resulting virtual cessation of agricultural trade, the issues discussed below remain market access barriers.

### *Beef and Beef Products*

Russia maintains standards on beef and beef products more stringent than international standards set by the World Organization for Animal Health (OIE) or the Codex Alimentarius Commission (Codex). Despite the United States having a “negligible BSE risk” status – the lowest risk category provided by the OIE for bovine spongiform encephalopathy (BSE) – Russia has resisted modifying BSE provisions in the current U.S.-Russia certificates for beef and prepared meat, effectively banning imports of U.S. cooked and uncooked beef from cattle over the age of 30 months. In addition, in 2013, Russia adopted a zero-tolerance policy for beta agonists and trenbolone acetate, standards that are more stringent than the Codex's maximum residue levels for these substances in beef. The United States is not aware of any risk assessments for these products. Although the United States has established a Never Fed Beta Agonists Program, Russia's prohibition of these hormones (even where Russia's countersanctions are not in place) continues to exclude U.S. beef and beef products from the Russian market. Russia has also adopted a near zero-tolerance for tetracycline residues in beef, a standard more stringent than Codex's maximum residue limits (MRLs), but again appears to have failed to provide WTO Members with a risk assessment that conforms to international guidelines. Finally, Russia's also maintains a zero tolerance for *Salmonella* spp., *Listeria monocytogenes*, other coliforms (in addition to *E. coli*), and a low tolerance for aerobic and anaerobic plate counts on raw product. Such a policy is unwarranted with regard to raw products because food safety experts and scientists recognize that these pathogens are often closely associated with, and cannot be entirely eliminated from, raw meat and poultry products. The United States will continue to press for the removal of these barriers to exports of U.S. beef and beef products.

### *Milk and Milk Products*

In 2014, the United States and the Russia–Kazakhstan–Belarus Customs Union (CU) concluded negotiations on a U.S.–CU veterinary certificate for heat-treated milk products. Nevertheless, Russia has effectively banned the importation of U.S. dairy products since September 2010, when Russia's Federal Service for Veterinary and Phytosanitary Surveillance (VPSS) instructed customs officials to allow shipments only from exporters on VPSS-approved lists. The EEC has now extended this listing requirement to most agricultural products. This directive appears to be inconsistent with EAEU legislation eliminating

the requirement that a foreign producer be included on an approved list in order to be eligible to export dairy products to the EAEU. The United States continues to work with Russia and the other EAEU member states to eliminate the listing requirement for exporters of low-risk products, including heat-treated dairy products.

### *Pork and Pork Products*

Russia maintains near zero-tolerance levels for tetracycline-group antibiotics, a standard that is more stringent than Codex's MRL. As part of its WTO accession commitments, Russia committed to submit a risk assessment for tetracycline antibiotics conducted in accordance with Codex methodology or to align its tetracycline standards with Codex standards. However, Russia has yet to pursue either approach as of March 2022. Russia's adoption of a zero-tolerance for both beta agonists and trenbolone acetate (described above), along with its ongoing counter sanctions, have deterred most U.S. pork and pork products from re-entering the Russian market. The United States will continue to press for the removal of these barriers to exports of U.S. pork and pork products.

Russia also requires U.S. pork to be frozen or tested for trichinosis, a requirement that constitutes a significant impediment to exports of U.S. fresh and chilled pork to Russia. The United States does not consider these requirements related to trichinosis to be necessary because U.S. producers maintain stringent biosecurity protocols that limit the existence of trichinae in the United States to extremely low levels in commercial swine. The United States will continue to try to engage with regulatory authorities in Russia to resolve this trade concern.

### *Live Pigs and Products from Blood Derived from Swine*

Due to concerns about reports of the porcine epidemic diarrhea (PED) virus in the United States, Russia has, since May 2014, banned imports from the United States of live swine and products of swine blood that have not been subjected to heat treatment. In June 2014, the United States requested that the trade restrictions be rescinded, offering to add a "60-day PED free" statement to the current bilateral export certificate for live swine as well as testing of pigs for PED during isolation, but the restrictions remain in place. Russia has not responded to this request.

### *Poultry*

Even though Russia's August 2014 import ban on many U.S. agricultural products included poultry, Russia has also implemented several regulations that would restrict U.S. poultry exporters from accessing Russia's market even in the absence of this ban. For example, since December 2014, Russia has banned all imports of U.S. poultry due to unsubstantiated claims (made prior to Russia's countersanctions) that it had detected restricted substances in U.S. poultry products, and concerns over regulatory changes in the U.S. poultry inspection system. In addition, Russia continues to ban the importation and sale of certain frozen poultry for use in baby food and special diets, but has not provided the United States with risk assessments that conform to international standards to support these regulations. Moreover, Russian regulations place an impractical upper limit on the amount of water content in chilled and frozen chicken, despite calls by stakeholders and the U.S. Government to adopt the alternative of requiring labeling regarding water content. The United States will continue to look for opportunities to work with regulatory authorities in Russia to resolve these trade concerns.

Since 2015, Russia has imposed various restrictions on the transit of U.S. poultry through Russian territory due to highly pathogenic avian influenza. In February 2018, Russia lifted its transit ban for poultry shipments transiting Russia to Kazakhstan but left in place traceability requirements applicable to certain U.S. poultry shipments without providing a risk- or science-based justification.

### *Pet Food and Animal Feed*

Russia requires a veterinary certificate to ship pet food and animal feed with components of animal origin to Russia. Additionally, either a letter from the producer attesting to the absence of feed derived from agricultural biotechnology or a copy of the agricultural biotechnology registration provided by the Russian Ministry of Agriculture is required for all pet food and animal feed. Russia also requires that inputs for pet food or animal feed imported from a third country be accompanied by an official certificate endorsed by a veterinary official of that country's national animal health agency. Additionally, Russia restricts the use of most U.S. ruminant-origin ingredients in pet foods and animal feeds, further impeding access for U.S. exports to this market and limiting the variety of available U.S. products. Despite its WTO accession commitment to eliminate listing requirements for these products, Russia continues to require approved lists of exporting establishments for pet food of animal origin. Since April 2019, Russia has refused to allow new U.S. facilities to export pet food to Russia until the facility receives a VPSS inspection or a U.S. supervision system audit due to the detection in January 2019 of unregistered genetically engineered (GE) components in a U.S. feed additive exported to Russia. Following three more alleged GE detections, Russia imposed a "temporary restriction" on imports from all U.S. pet food and animal feed facilities as of March 2, 2021. Notwithstanding U.S. Government efforts to elicit more information on this restriction, and requests that Russia notify to the WTO its "Methodological Guideline for registration of GE Feed", Russia has not yet responded to either request and the restriction remains in place. Biotechnology products have been used safely in U.S. commerce for many years and the ingredients used in pet food have passed regulatory food and feed safety assessments.

### *Agricultural Biotechnology*

On June 29, 2017, Russia amended its legislation governing agricultural biotechnology, extending Russia's ban on cultivation and breeding of GE plants and animals on its territory. The measure prohibits the importation of GE planting seeds, strengthens state control of GE organisms and products derived from such organisms, and establishes penalties for violations of this federal law. This law effectively suspends the development of any system to approve agricultural biotechnology for cultivation, but permits research. In 2020, the Russian Government approved an action plan to implement its new Food Security Doctrine. Among other things, the Doctrine prohibits imports of GE organisms for the purpose of sowing, growing, breeding, and circulation; prohibits the cultivation and breeding of animals whose genetic program has been modified by GE methods or that contain genetic material of artificial origin; and controls the importation and circulation of food products containing GE organisms (except for the import and sowing of GE organisms, growing plants, and breeding animals for study and research). The Doctrine contains measures to control the circulation of GE material used for production of animal feed, feed additives, and medicinal products for veterinary use. These measures require product registrants to provide country of origin product registration information and either a statement from the producer that the feed contains no GE event or a copy of the agricultural biotechnology event registration provided by VPSS.

Russia has a registration system for GE food, but methodological guidelines for registering agricultural biotechnology products for feed use were not finalized until March 2020. Existing GE feed registrations are valid for only a five-year period, whereas registrations for GE food products are valid for an unlimited period. Due to the delay in adopting feed use registration guidelines, feed registrations remained valid for only two soybean products (produced in Russia) and three corn products (produced in the United States) as of May 2021. Registrations for all other previously registered corn and soybean products—13 in total—expired in 2017. In 2020, Russia temporarily allowed imports of GE soybeans and soybean meal for feed even though the relevant registrations had expired, as long as the import was accompanied by the Expert Conclusion issued by VPSS when the product was originally registered. The application fees for registration average \$80,000 depending on the range of examinations and customs clearances, and these

fees apply to the first registration of GE products for food and feed products as well as the subsequent reregistration of feed products. These fees, in the view of U.S. stakeholders, are excessive. Furthermore, Russia still does not have a fully functioning approval system for “stacked” GE crops that contain more than one agricultural biotechnology trait. Rospotrebnadzor has developed a system for food approvals for stacked products, but there has been no progress in the development of an approval system for feed. Additionally, Russia has set the threshold for the presence of non-registered GE products at less than 0.9 percent. The presence of GE products cannot be reliably measured at levels below one percent, and any attempt at measurement inevitably results in a large fraction of false positives. The risk that even technically compliant shipments would be rejected due to false positives would serve as a significant deterrent to shipment of feed to Russia.

### *Veterinary Drugs and Pathogens*

Russia maintains a zero-tolerance policy for residues of veterinary drugs that it has not approved domestically, many of which are commonly used in U.S. animal production. Findings of veterinary drug residues during Russian border inspection of U.S. meat products have resulted in trade disruptions, including the suspension of U.S. beef, pork, and poultry facilities as approved sources for exported product. The United States is not aware of a risk assessment from Russia to justify its zero-tolerance policy.

### *Systemic Issues*

In addition to the product-specific issues discussed above and the 2014 import ban, U.S. exporters of agricultural products continue to face systemic issues in Russia. For example, Russian and EAEU veterinary certificates require U.S. regulatory officials to certify that exported products satisfy EAEU sanitary and veterinary requirements and meet certain chemical, microbiological, and radiological standards. These requirements are problematic because many EAEU sanitary and veterinary requirements appear to be excessively restrictive and lacking in scientific justification. Similarly, Russia requests U.S. exporters to submit certifications stating that the United States is free from various livestock diseases, even where the product in question could pose no risk of transmission. In other cases, Russia requires export certificates for products for which certifications are unnecessary. For example, Russia requires phytosanitary attestations for shipments of certain plant-origin products destined for further processing, such as corn for popcorn, even though such processing removes any potential risk. The United States is also concerned with Russia’s failure to remove certain veterinary control measures for lower risk products.

Russia, pursuant to an EEC regulation, allows imports of most products under veterinary control (*e.g.*, meat, poultry, dairy, and seafood) only from facilities on a list approved by all EAEU member states. The United States has worked with Russian and other EAEU authorities to narrow the scope of products subject to this listing requirement, with some success, but much of this work remains ongoing. Pursuant to a bilateral agreement signed in November 2006, Russia agreed to grant U.S. regulatory officials the authority to certify new U.S. facilities and recertify U.S. facilities that have remedied a deficiency. In practice, however, Russia has not consistently recognized the authority of U.S. regulatory officials to certify additional U.S. facilities, and there have been delays in responding to U.S. requests to update the list of approved U.S. facilities. The EAEU has competence for facility inspections and approvals. The United States worked with Russian and EAEU authorities to negotiate an EAEU inspection regulation that allows the EAEU to accept the certification of additional facilities provided by sanitary and phytosanitary authorities in third countries that certify new facilities. However, implementation of this regulation has lacked predictability and transparency because EAEU member states often continue to insist on conducting their own inspections prior to approving a facility, without providing any rationale. The United States will work closely with Russia to ensure that the EAEU inspection regulation is implemented fully.

## GOVERNMENT PROCUREMENT

Russia is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since May 2013. In its WTO Accession Protocol, Russia committed to request observer status to the WTO Committee on Government Procurement and to begin negotiating to join the WTO GPA within four years of its WTO accession. On August 19, 2016, Russia informed GPA Members of its intent to initiate negotiations to join the GPA. However, Russia's GPA accession negotiations did not start until Russia submitted its initial offer in June 2017 and its replies to the Checklist of Issues in September 2018. When it joined the WTO, Russia committed its government agencies to award contracts in a transparent manner according to published laws, regulations, and guidelines. Russia has adopted certain local content requirements relating to federal or municipal government procurement that it argues are not subject to the national treatment obligations of the General Agreement on Tariffs and Trade and the General Agreement on Trade in Services. Given the breadth of the Russian Government's role in the economy and the scope of the numerous import substitution policies and local content requirements, such measures impede trade because U.S. exports are excluded from a broad section of the Russian economy. Government procurement restrictions have accelerated since 2014 when Russia established a 15 percent preference for a variety of goods (including certain food products, pharmaceuticals, steel, machinery, and medical products) produced in the EAEU in purchases for government use and up to 30 percent for certain other products.

In addition, Russia has banned states and municipalities from purchasing foreign-made automobiles, other vehicles, and machinery, and banned procurement of a broad array of consumer goods produced outside the EAEU. The Industrial Policy Law, adopted in 2015, specifically promotes import substitution and localization, restricting government procurement (and SOE purchases) of foreign-made products. It provides a framework for the support of innovative product manufacturing, research and development subsidies, and infrastructure projects as well as implementation of the Buy Russia law. The law also includes provisions for financial and material support to Russian companies to boost their export potential.

To implement the Industrial Policy Law, Russia has established local content requirements for a variety of industrial product sectors, including machine tools, automotive, special mechanical engineering, photonics and lighting, electrical-technical, cable, and heavy machinery. Consequently, for example, some types of metalworking equipment must contain between 20 percent to 50 percent domestic parts, with increasing targets each subsequent year. Since 2015, Russia has reaffirmed and expanded the ban on government procurement of a wide range of foreign-made products, including, but not limited to, furniture, vehicles, machinery and equipment, tools, appliances, paper and cardboard, and shoes and clothing.

In addition, measures aimed at the health care industry, such as Russia extending its "three's-a-crowd" localization policy (banning government procurement of certain imported goods if more than two companies from EAEU member states submitted a bid) to government tenders for many drugs, medical devices and health-related disposable goods, have been challenging for U.S. stakeholders. If the "three's-a-crowd" rule is not applicable, a 15 percent price preference is applied. Russia has also adopted additional restrictions on government procurement of imported medicines and medical devices. However, in response to shortages in many vital medicines, the Russian Government issued a resolution in August 2020 introducing exceptions to the "three's-a-crowd" rule for ten onco-hematological medicines until the end of 2021. The draft updated Pharma 2030 program includes the goal of having domestic production of medicines be no less than 42 percent of total consumption by 2030 in monetary terms. An additional challenge to U.S. pharmaceutical producers is a reimbursement system that allows only domestic companies to request annual adjustment of prices registered by the Ministry of Health (MIT).

In August 2021, the MIT issued a resolution that significantly strengthens restrictions on public procurements for a range of over 170 groups of electronic equipment, including more than 30 groups of

medical devices manufactured by foreign companies. The resolution introduced the so-called “two’s-a-crowd” rule, which requires public customers procuring products listed in the resolution to reject bids from foreign manufacturers if there is already one (or more) bids for the supply of the same product manufactured in the EAEU. For the medical devices listed in this measure, this requirement will replace the similar “three’s-a-crowd” rule, described above. These measures follow measures imposed by Russia that ban government procurement of over 100 imported radio electronic products and components and a 30 percent price preference in purchases by state-owned enterprises.

The Russian Government has also banned a list of certain food and dairy products from non-EAEU member states for government and municipal procurement, including fresh and frozen fish, fish products, canned fish, salt, beef, pork, veal, poultry, cheese, cottage cheese, rice, butter, and sugar, and established minimum purchasing requirements of domestic goods. In April 2020, the Russian Government introduced yet another series of bans and restrictions on the admission of foreign industrial goods for the purpose of public procurement and procurement for the needs of national defense and state security.

Russia has expanded the reach of its import substitution policies into the technology sector. Pursuant to amendments to Russia’s national procurement law, Russia has created a registry of Russian software. Foreign-made software not on the list will no longer routinely qualify for government and municipal procurement unless no similar domestically produced software is available. In July 2016, the Russian Government went a step further and issued an order that approved a three-year plan to switch government agencies to Russian office software. According to U.S. stakeholders, because the move to domestic software was not moving fast enough, the Russian Government in 2020 proposed measures that would expand the list of companies considered Critical Information Infrastructure (CII), and thus extend to many private companies the import substitution requirements and local content requirements applied to government entities. Such a move would limit the ability of foreign-controlled entities to provide IT services to CII entities, and would require CII entities to migrate toward using only domestic software and hardware.

To oversee the implementation of these policies, Russia has created a Government Commission on Import Substitution with the mandate to support the production of priority goods, works, and services that are not produced in Russia. (*For further information, see the section on Import Substitution Policies.*) In July 2020, the Duma adopted amendments to the public procurement law providing the Russian Government with additional authority to introduce fixed quotas on purchases of some foreign products by government entities.

## **INTELLECTUAL PROPERTY PROTECTION**

Russia remained on the Priority Watch List in the [2021 Special 301 Report](#). Challenges to intellectual property (IP) protection and enforcement in Russia include continued copyright infringement, trademark counterfeiting, and the existence of non-transparent procedures governing the operation of collective management organizations (CMOs).

Despite recent implementation of anti-piracy legislation, Russia remains home to several sites that facilitate online piracy, as identified in the [2021 Notorious Markets List](#). Stakeholders continue to report that Russia needs to direct more action to rogue online platforms targeting audiences outside the country. While right holders are able to obtain court-ordered injunctions against infringing websites, investigations and prosecutions of the owners of the large commercial websites distributing pirated material, including software, are lacking. Also, stakeholders report that in the past few years, use of mobile applications to access pirated content has increased exponentially. In 2018, right holders and online platforms in Russia signed an anti-piracy memorandum to facilitate the removal of links to infringing websites; application of the memorandum was extended until February 2022. The terms of the memorandum may be implemented

as legislation that would cover all copyrighted works and apply to all Russian platforms and search engines. In addition, the Duma has approved amendments to legislation that attempts to address the increasing use of mobile applications to access illicit content.

Russia remains a thriving market for counterfeit goods sourced from China. Despite increased seizures by the Federal Customs Service, certain policies hamper IP enforcement efforts. For example, the return to sender policy for small consignments, which returns counterfeit goods to their producer, is problematic because it does not remove such goods from channels of commerce.

Royalty collection by CMOs in Russia continues to lack transparency and lags behind international standards. Reports indicate that right holders are denied detailed accounting reports, making it difficult to verify how much money is being collected and distributed. Also, right holders are excluded from the selection and management of CMOs.

Finally, stakeholders have also raised concerns related to the protection against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. Stakeholders report that Russia is eroding protections for undisclosed data. Stakeholders continue to express concerns also regarding certain evidentiary standards applied by the judiciary.

## **SERVICES**

As noted above, Russia has begun to extend its import substitution policies beyond the provision of goods to include the provision of services.

### **Audiovisual Services**

Under its 2017 VOD law (video-on-demand), Russia limits foreign ownership, management, or control of certain online video streaming service. Russia also prohibits advertising on pay television. While having little impact on state-owned (and state-financed) television channels, this prohibition, according to industry, has a significant adverse financial impact on foreign cable and on-demand services. Stakeholders have also raised concerns about the Russian Government's introduction of burdensome VOD reporting requirements, which also raise data protection and privacy concerns.

### **Financial Services**

Russia continues to prohibit foreign banks from establishing branches in Russia; consequently, only local subsidiaries are allowed. Moreover, since 2014, Russia has required that foreign-based credit card companies transmit data for all transactions within Russia through the National System of Payment Cards, undermining a key competitive advantage of foreign payments suppliers, which was to rely on self-owned and value-adding global processing platforms located outside of Russia. In addition, the Central Bank of Russia (CBR) offers a domestic credit card (Mir) and a system which allows cheap peer-to-peer payments for Russian retail bank customers (Faster Payment System). Providing preferential treatment for Mir payment cards, the Government of Russia has passed mandates requiring public sector employees receiving state funds and welfare benefits to migrate to Mir payment cards and making pensions accessible only through Mir bank cards. U.S. stakeholders have raised concerns about Russia's creeping financial nationalism and the potential for unfair competition in the provision of these services because the CBR is the state regulator as well as the service provider.

## **Insurance Services**

Although Russia has raised the aggregate limit on foreign capital in the insurance sector from 25 percent to 50 percent, a lack of transparency regarding the issuance of licenses, among other issues, hinders foreign investment in the market. Stakeholders report that the process for an individual or a company to obtain a license to provide an insurance service remains difficult. There is a mandatory cession requirement that 10 percent of each reinsurance contract be offered to the state-owned reinsurance company, Russia National Reinsurance Company, established in 2016.

## **Telecommunications Services**

In 2017, the Russian State Commission for Radio Frequencies issued a decision requiring telecommunications operators seeking to rent capacity from a foreign satellite operator to demonstrate that Russian satellite providers do not have such capacity.

## **Other Services Barriers**

Russia maintains restrictions on foreign suppliers providing certain energy-related services and services to public utilities. Russia has also not yet amended its legislation to reflect its WTO commitment to remove the limitation on sales of biologically active substances to pharmacies and specialized stores as of March 2022.

As noted above, the new mandate to pre-install Russian software applications on a range of electronic devices may have the effect of providing trade-distortive advantages to Russian services suppliers. (*For further information, see the section on Import Substitution.*)

Under Federal Law of 23.05.2015 N 129-FZ, the Russian Government has the authority to ban the activities of foreign or international non-governmental organizations deemed to be undermining “state security”, “national defense”, or “constitutional order” by placing them on the “undesirable list.” Under this law, any involvement by Russian citizens and organizations with a foreign institution of higher education on the government’s “undesirable list” is a potential crime. Being placed on the “undesirable list” has a financial impact on foreign institutions of higher education, not only in loss of revenues from tuition and fees, but also on their investments in joint-degree programs, student exchange programs, and joint research projects. In June 2021, a U.S. institution of higher education became the first foreign institution to be placed on the list.

## **BARRIERS TO DIGITAL TRADE**

### **Data Localization**

In 2016, Russia began to enforce the first step of its data localization regime. The initial legislation required that certain data collected electronically by companies on Russian citizens be processed and stored in Russia. Such requirements impose significant operational challenges not only on providers of data storage and processing services, as well as a wide array of other data-intensive services, but also on manufacturers who rely on those services. Initially, nominal fines were introduced and noncompliant sites were blocked by the Russian Government, but in 2019, legislation was adopted raising the fines for non-compliance to as high as RUB 18 million (approximately \$244,000). Industry stakeholders continue to raise concerns that the law limits their ability to offer a variety of services in Russia and increases the cost of doing business in Russia – particularly for small and medium-sized enterprises.

The second major step was the adoption in 2016 of the so-called Yarovaya Amendments, requiring certain telecommunications and Internet service providers to store certain communications content locally for six months and store metadata related to such content for one year or longer, depending on the type of provider. In 2021, some of the deadlines to move data back to Russia and to increase local data-storage capacity by 15 percent a year were delayed by one year. Industry representatives assert that the Yarovaya Amendments, under the guise of fighting terrorism, may require companies to assist government authorities in decrypting user communications, and prohibit encryption measures unless a decryption key is provided to the Russian authorities upon request. Industry has also raised a concern about the requirement that Russian Internet service providers (ISPs) must install a special device on their servers to allow the Russian security services to track all credit card transactions. Russia has also implemented restrictions on consumers' use of virtual private networks (VPNs) and threatened to shut off market access for ISPs that allow VPNs to exist or function without being blocked. U.S. companies are concerned that these provisions may require them to provide the Russian Government with excessive access to citizens' private information.

### **Internet Services**

Russia's so-called "Aggregators Law," which entered into force in 2017, requires news search and aggregation services that exceed one million daily visitors and that are offered in the Russian language with the possibility of showing ads to offer advertisement services through a local subsidiary in Russia. Foreign providers are not permitted to offer such services on a cross-border basis, even though they are allowed to own a local company that offers them. The law additionally provides for significant content restrictions.

### **Other Digital Trade Issues**

Russia's Sovereign Internet Law took effect on November 1, 2019, giving the Russian Government the authority to establish an alternate domain name system for Russia, cut off the Russian segment of the Internet from the global Internet under certain circumstances, and take additional steps to facilitate government control of Internet traffic within Russia and otherwise exert control over certain content and user activities. Stakeholders have also pointed to content restrictions imposed by the Russian Government as tools to restrict access to digital information. Digital platforms can be fined or blocked for restricting access to "socially significant information"; digital platforms can also be fined or blocked for failure to remove "banned" information, such as information on political protests. Finally, in 2021, Russia implemented the so-called "Landing Law" which requires certain information technology companies (*i.e.*, any company with a website or application with more than 500,000 daily users) to establish a physical presence in Russia. U.S. companies, particularly small and medium-sized companies, contend that this local presence requirement, coupled with difficult compliance requirements, harsh penalties, and concerns about staff safety, constrain their ability to operate in Russia.

## **INVESTMENT**

While Russia has prioritized improving its investment climate, U.S. and other foreign investors continue to cite issues, such as corruption, lack of transparency, and the threat of creeping expropriation, as barriers to investment. Notwithstanding the creation of an Anticorruption Council and the enactment of significant anticorruption legislation, some internationally recognized corruption indices suggest there has been little progress in reducing corruption. In addition, Russia's foreign investment regulations and notification requirements can be confusing and contradictory and have had an adverse effect on foreign investment as a result. Further obstacles to investment in Russia include inadequate dispute resolution mechanisms, weak protection of minority shareholder rights, the absence of requirements for all companies and banks to adhere to accounting standards consistent with international norms, and problems with enforcing the rule of law.

The 1999 Investment Law contains broadly defined provisions that give the Russian Government considerable discretion to prohibit or limit foreign investment in a potentially discriminatory fashion. For example, the Law permits the government to circumscribe investors' rights for "the protection of the constitution, public morals and health, and the rights and lawful interest of other persons, and the defense of the state." Although the Law includes a grandfather clause that protects certain investment projects (those that existed as of 1999, have greater than 25 percent foreign capital participation, and total investment of more than \$41 million) against certain changes in the tax regime or new limitations on foreign investment, a lack of corresponding tax and customs regulations means that effective protection afforded by this clause is, at most, very limited.

Russian law places two primary restrictions on land ownership by foreigners: (1) foreign persons or entities may not own land located in border areas or other specifically assigned sensitive territories, and (2) foreign citizens and foreign legal entities cannot own more than 50 percent of a plot of agricultural land (though foreign companies are permitted to lease agricultural land for up to 49 years).

Pursuant to the October 2014 "On Mass Media" law, foreign investors are limited to a 20 percent equity share in Russian media companies. Russia also imposed ownership restrictions on over-the-top media service providers that provide streaming services, messaging services, or internet-based voice calling solutions. U.S. stakeholders have complained that these types of ownership restrictions reduce consumer choice and discriminate against foreign investors.

U.S. stakeholders have also raised concerns over limits on direct investments in the mining and mineral extraction sectors that they say discriminate against foreign companies, as well as a licensing regime they describe as nontransparent and unpredictable.

### **Investment Taxes**

U.S. companies have also raised concerns about Russian tax authorities' scrutiny of payments that cross Russia's borders, but remain, for tax purposes, in the legal structure of the same Russian company. This issue has arisen chiefly in two contexts: (1) when a multinational company transfers an employee temporarily to 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.

### **SUBSIDIES**

Gazprom, a publicly listed but state-controlled Russian company, has a monopoly on exports of pipeline natural gas produced in Russia and charges higher prices on exports of natural gas than it charges to most domestic customers. U.S. stakeholders have raised concerns that Russia's natural gas pricing policies effectively operate as a subsidy to domestic industrial users in energy-intensive industries, such as steel, and industries that use natural gas as a production input, such as the fertilizer industry. Stakeholders have also raised concerns about government subsidies to Russia's uranium enrichment industry, which they claim have allowed Rosatom, an SOE, to expand its production capacity despite a global surplus. According to past industry reports, state-owned and state-controlled banks have provided preferential loans to the steel and related industries, subsidizing those industries and distorting global competition.

The Russian Government protects its domestic automotive industry through a variety of programs. (*For further information, see the sections on Taxes and Import Substitution Policies*). Adding to the indirect subsidies offered to the industry, the Russian Government provided RUB 158 billion (approximately \$2.15

million) in support to the Russian automotive industry between 2018 and 2020, and forecasted providing RUB 38 billion (approximately \$516 million) in 2021. U.S. stakeholders assert that such subsidies distort international markets, not just in finished automobiles, but in related upstream markets as well.

Also of concern to U.S. stakeholders is the potential cost advantage to certain Russian agricultural producers as a result of 2021 government decrees that provide subsidies for the transportation of agricultural products, including for the transportation of wheat, barley, and corn from interior regions toward export destinations. The measures are intended to stimulate the movement of grain exports from these interior regions, stabilize domestic grain prices, and support profit margins of agricultural producers. In September and December 2019, the Government of Russia amended the eligibility criteria for transportation subsidies provided through the Russian Export Center to Russian exporters in order to encourage exports of high-value added goods including sugar, meat fish, dairy and other products.

## **STATE-OWNED ENTERPRISES**

Russia's numerous state-owned enterprises (SOEs) play a prominent role across much of Russia's economy. The Russian Accounts Chamber has estimated that SOEs account for about 48 percent of Russia's economy. While private enterprises are theoretically allowed to compete with SOEs on the same terms and conditions, in practice, the competitive playing field can be distorted in favor of SOEs. These advantages result from SOEs' lack of transparency and lack of independence; subsidization by the government; access to preferential lending by state-owned banks; unclear responsibilities of their boards of directors; misalignment of managers' incentives and company performance; inadequate control mechanisms on managers' total remuneration or their use of assets transferred by the government to the SOEs; and minimal disclosure requirements. In December 2014, the Russian Government reversed a prohibition against senior government officials serving on the boards of SOEs, further tilting the playing field in favor of SOEs or state-controlled enterprises by re-introducing a governmental or political voice in the companies' decision-making processes. In 2021, senior Russian Government officials chaired the boards of a variety of SOEs.

A specific variant of SOEs, state corporations, are completely owned by the government and operate under separate legislation and in a marketplace skewed in their favor. For example, state corporation holding structures and management arrangements (*e.g.*, senior government officials as board members) create conditions for preferential treatment, while the case-by-case legal construction of state corporations (by virtue of their separate legal framework) leaves much scope for discretion and lobbying by company insiders at the expense of private enterprises. There are six state corporations: Rosatom, VEB, Fund for Communal Housing, Deposit Insurance Agency, Roskosmos, and Rostec.

In August 2021, the government extended by two years the implementation of the 2020-2022 Privatization Program, with plans to fully privatize 86 federal state unitary enterprises and sell its stakes in 186 joint stock companies and 13 limited liability companies. The Russian Government still maintains a list of 76 SOEs with "national significance" that are either wholly or partially owned by Russia and whose privatization is permitted only with a special governmental decree, including Aeroflot, Rosneftgaz, Transneft, Russian Railways, and VTB. However, Russia has been slow in implementing the privatization plan. The treatment of foreign investors in privatizations conducted to date has been inconsistent, with foreign participation at times confined to minority stakes, which creates concerns about protection for minority shareholders and corporate governance.

## OTHER BARRIERS

### Export Policies

Russia maintains export duties on 106 types of products for both revenue and policy purposes. For example, a variety of products are subject to export tariffs, such as certain fish products, oilseeds, fertilizers, non-ferrous metals, hides and skins, and wood products. Russia has indicated that it intends to eliminate gradually most of these duties, except for those applied to products deemed strategically significant, such as hydrocarbons and certain scrap metals.

Notwithstanding its stated intent of reducing export duties, Russia introduced a ten percent export duty on certain types of roughly processed timber to limit exports of certain lumber, curb prices of unprocessed lumber, and reorient the Russian forestry sector toward the production of products with higher added value effective July 1, 2021; on August 1, 2021, Russia introduced new or higher export duties on 340 steel and non-ferrous metal products to control domestic prices. These export restrictions were initially intended to be temporary (until December 31, 2021) but have since been replaced by broader restrictions (i.e., higher export duties) and extended until December 31, 2022. Russia has also banned the export of raw hides intermittently since 2014 in order to protect its leather processing industry. In December 2020, the Russian Government imposed temporary tariff rate quotas for exports of wheat, rye, barley, and corn; in January 2021, the Russian Government increased the within-quota export duty on wheat, corn, and barley. In 2020, Russia implemented temporary export restrictions on sunflower seeds, soybeans, rice, millet, buckwheat, meslin, cereal and cereal pellets, crude flour, barley, rye, corn, onions, garlic, and turnips. Although the export restrictions on some of these products have since been lifted, the export duties on wheat, barley, rye, and corn were lifted only to be replaced by “floating duties” based on certain benchmarks. In October 2021, the Ministry of Agriculture proposed to introduce a separate quota for wheat exports starting February 15, 2022, within the general grain quota, in order to curb rising prices. Finally, in November 2021, Russia imposed an export quota on nitrogen fertilizer until May 31, 2022.

The Russian Government also increased the export duties on soybeans and sunflower seeds. In July 2021, Russia also implemented a temporary “floating duty” on sunflower oil until September 2022. Russia retains the ability to modify these export duties expeditiously if the need arises, contributing to uncertainty in the market. In September 2020, the Russian President ordered the government to impose a complete ban on exports of raw and crudely processed forest products from Russia effective January 1, 2022.

Russia maintains a list of products that are deemed essentially significant for the domestic market and hence could become subject to export restrictions or prohibitions. In 2015, Russia amended the list to include a variety of steel and non-ferrous metal scrap. Because Russia is a major source of scrap on global markets and a major steel producer, this addition contributed to the uncertainty of the availability of Russian scrap for export to global markets and caused concern among U.S. stakeholders of possible market distortions. Such concerns were realized in August 2019, when Russia placed a four-month quota on exports on ferrous waste and scrap to territories outside the EAEU. The quota was in effect between September and December of 2019. As of December 2018, precious metals ores and concentrates have also been added to the list of products subject to potential export restraint, as have certain waste or scrap of precious metal or of metal clad.

Historically, Russia has maintained high export duties on crude oil to encourage domestic refining. Although Russia committed to cut its export duties on oil and oil products to the level of Kazakhstan as part of the process to establish the EAEU, in late 2015, the Russian Government suspended the planned duty reductions for at least one year in order to gain extra revenue in light of economic pressures. Amendments to the Tax Code signed into law on November 24, 2014, and known as the tax maneuver, will gradually reduce export duties on oil and light oil products and increase the mineral extraction tax and

export duties for refined products to compensate for the resulting loss of federal budget revenues. The change will make domestic crude more expensive for domestic refiners. Separately, Russia maintains a 30 percent export tax on natural gas. Stakeholders claim that Russia has placed higher rail freight rates on certain raw materials intended for export, contrary to its WTO commitment to eliminate discrepancies in such rates by July 1, 2013. Since June 2015, Russia has not lowered its rail freight rates charged on certain materials for exports or otherwise worked to eliminate the differential freight rates.

# SAUDI ARABIA

## TRADE AGREEMENTS

### **The United States–Saudi Arabia Trade and Investment Framework Agreement**

The United States and Saudi Arabia signed a Trade and Investment Framework Agreement (TIFA) in July 2003. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Saudi Arabia.

## IMPORT POLICIES

### **Tariffs and Taxes**

#### *Tariffs*

As a member of the Gulf Cooperation Council (GCC), Saudi Arabia applies the GCC common external *ad valorem* tariff of five percent on the value of most imported products, with several country-specific exceptions. Saudi Arabia’s applied tariff rates range from 6.5 percent to 40 percent on goods that compete with domestic industries.

In May 2020, the Saudi Customs Authority released its amended Harmonized Tariff Schedule to increase various customs duty rates effective June 10, 2020. While the increases are within established WTO ceilings, certain rates increased up to 25 percent.

#### *Taxes*

In 2016, GCC Member States agreed to introduce common GCC excise taxes on carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products (100 percent). U.S. beverage producers report that the current tax structure for carbonated drinks, which also applies to sugar-free carbonated beverages, fails to address public health concerns and also disadvantages U.S. products. Sugary juices, many of which are manufactured domestically within GCC countries, remain exempt from the tax. Saudi Arabia implemented the tax on carbonated drinks in July 2017, and expanded the tax in 2019 to include a 50 percent excise tax on all beverages with added sugar, except for beverages with naturally occurring sugars.

### **Non-Tariff Barriers**

#### *Import Bans and Import Licensing*

Saudi Arabia prohibits the importation of 37 categories of products, such as alcohol, pork products, and gambling devices. Furthermore, special approval is required for the importation of 23 categories of “restricted” products, such as pharmaceutical products, wireless equipment, and drones.

#### *Customs Barriers and Trade Facilitation*

U.S. private sector stakeholders previously raised concerns about the policies and practices of Saudi customs, including inconsistent application of regulations, inaccurate assessment of duties, delayed clearance of goods, and a lack of a mechanism for U.S. exporters to seek an advance ruling on Saudi customs procedures and regulations. However, a change in leadership at the Saudi Customs Authority in 2017 has resulted in reduced documentation requirements, shortened clearance times in major ports, and

increased cooperation across Saudi trade agencies. Over the past four years, the Saudi Customs Authority has continued its efforts to make customs policies and procedures more business-friendly. In May 2021, the Saudi Council of Ministers approved merging of the General Authority of Zakat and Tax (GAZT) and the General Authority of Customs to form the Zakat, Tax and Customs Authority (ZATCA).

While Saudi Arabia cancelled its requirement that invoices and customs documentation be authenticated by the Saudi Chamber of Commerce or Saudi Embassies in the country of export, this practice is still required by the Saudi Food and Drug Authority for a number of products.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

Over the years, Saudi Arabia has revised technical regulations for a variety of products relying primarily on standards developed by the International Organization for Standardization and International Electrotechnical Commission. Saudi Arabia has been increasingly reluctant to accept other international standards that may meet or exceed Saudi Arabia's objectives, including those developed by U.S. domiciled organizations through open, transparent, and consensus-based processes. Saudi Arabia's refusal to accept these other international standards, which are often used by U.S. manufacturers, creates significant market access restrictions for certain industrial and consumer products exported from the United States, including protective footwear, automobiles, electrical equipment, and appliances.

The United States continues to engage Saudi Arabia on the importance of accepting international standards that are developed consistent with the WTO Committee on Technical Barriers to Trade (WTO TBT Committee) Decision on international standards. The United States continues to encourage Saudi Arabia to develop and implement effective 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 considered. U.S. manufacturers have noted the importance of such consultation as Saudi Arabia develops and implements Corporate Average Fuel Economy regulations as well as new energy efficiency regulations for a variety of consumer and industrial products, including air conditioners, electrical appliances, lighting, electrical motors, energy usage intensity, tires, and insulation

#### *Restrictions on Hazardous Substances – Electrical Goods*

Saudi Arabia notified to the WTO its draft "Technical Regulation for the Restrictions of Hazardous Substances (RoHS)" in December 2020 and subsequently published a revised version in the Official Gazette in July 2021, with a proposed implementation date of January 5, 2022. Saudi Arabia subsequently announced a six-month delay in implementation until July 4, 2022, at which time the regulation will take effect for small household electrical items; implementation for other covered products would follow at scheduled intervals. The revised version of the regulation does not address the concerns about the original version of the regulation that were outlined in detailed comments from the U.S. Government and U.S. industry, and similar comments from other trading partners and global industry.

The most significant concerns relate to discrepancies between Saudi Arabia's proposed regulation and international best practice for such regulations. In particular, the proposed regulation includes an onerous, trade-restrictive requirement to provide a third-party certificate of conformity from a list of Saudi government approved testing facilities, typically required to test high-risk products, rather than relying on the more widely used conformity assessment measures appropriate for lower risk products, such as the electrical equipment covered by the RoHS regulations. Conformity assessment schemes for RoHS, such as the European Union's RoHS rules, typically rely on integrated enforcement mechanisms including a

supplier's declaration of conformity, documentation of test results and technical specifications, regulatory sanctions, liability in tort law, and mechanisms to monitor or remove nonconforming products from the market. Saudi Arabia has yet to provide conformity assessment bodies and manufacturers with complete and consistent guidance necessary to implement this unique requirement. Saudi Arabia also has yet to clarify the precise scope of the regulation; provide guidance on the process for testing whole equipment and/or critical components of a product; and clarify a requirement for suppliers to attach information that may include sensitive intellectual property as a part of their technical file of supporting documentation.

In March 2018, GCC Member States notified to the WTO a draft Gulf Standardization Organization (GSO) technical regulation that would, among other things, require pre-market testing by accredited labs for certain hazardous substances in electrical goods. The measure would also require each type of good to be registered annually and includes a requirement to submit sample products prior to receiving approval for use in the GCC. The United States has raised concerns that the proposed regulatory requirements would have a significant negative impact on the imports of U.S. electrical and electronic equipment (such as information and communications technology, medical equipment, machinery, and smart fabrics), especially as the trade restrictive third party certification requirements differ from international best practices, which typically permit a supplier's declaration of conformity, supported by documentation requirements, such as test results and manufacturing specifications, in conjunction with integrated enforcement mechanisms, such as regulatory sanctions, liability in tort law, and mechanisms to monitor or remove nonconforming products from the market.

#### *Conformity Assessment*

In 2019, Saudi Arabia implemented the Saudi Product Safety Program and launched an online certification process (SABER) for certain regulated exports to Saudi Arabia. Importers of these products are required to register via the online SABER platform to obtain Product Certificates of Conformity (PCoC) and Shipment Certificates of Conformity (SCoC). Products requiring PCoCs include, but are not limited to: detergents, building materials, paints, vehicle spare parts, lubricant oils, toys, and textiles. An SCoC must be obtained for each shipment containing a regulated product. An increasing number of U.S. companies have expressed concerns with the new SABER platform, including costs, administrative burdens, and undue delays, and some have reported inconsistencies in product testing fees and clearance processes. The United States has questions about how the scheme will relate to GCC conformity assessment requirements.

#### *Halal Regulations*

Saudi Arabia suspended imports of U.S. poultry in June 2018 due to implementation of halal regulations that ban stunning of poultry prior to slaughter. U.S. officials have informed the Saudi Food and Drug Authority (SFDA) that the U.S. production system and government regulations ensure that poultry is alive prior to the slaughter process. In 2019, several other trading partners with similar production practices resumed exports to Saudi Arabia, while imports from the United States remain prohibited.

In 2020, SFDA's newly created division of halal oversight, the Halal Center, implemented a registration requirement for halal certifying bodies. This registration is in addition to existing requirements for registration with the Saudi Standards, Metrology and Quality Organization (SASO). These requirements have yet to be notified to the WTO, and many elements of the registration scheme remain unclear.

Saudi Arabia also maintains halal feed restrictions, including a ban on animal protein in cattle feed and restrictions on the feeding of beef tallow to cattle, for imports of meat products from the United States, which limit U.S. beef exports to Saudi Arabia.

In April 2020, GCC Member States notified to the WTO a draft GSO technical regulation establishing halal requirements and certification for animal feed. The U.S. animal feed, beef, and poultry industries have expressed concerns that the new technical regulation may place additional requirements on U.S. producers without offering additional assurance of meeting Member States' legitimate regulatory objectives. The United States submitted comments to GCC Member States in July 2020 noting the unprecedented and potentially trade-restrictive nature of the measure.

### *Labeling Requirements*

In August 2020, SFDA published "Temporary Requirements for Products with High Caffeine Content" that will restrict the amount of caffeine permitted in energy drinks and other caffeinated foods and beverages; it is not yet clear when these restrictions will enter into force.

In March 2019, Saudi Arabia notified the WTO of its intention to make mandatory a front-of-package nutritional labeling program for food products (so called "Traffic Light Labelling"), but withdrew the measure in December 2019 as Saudi authorities conducted a further review of proposed requirements. In September 2021, Saudi Arabia notified a nearly identical proposed front-of-package labeling measure to the WTO. In November 2021, the United States submitted comments on the measure and discussed these comments with Saudi officials.

In June 2021, Saudi Arabia notified to the WTO a proposed measure to restrict the marketing and advertising of foods considered to be "of low nutritional value" to children. In August 2021, the United States submitted comments on the measure and discussed these comments with Saudi officials.

### *Energy Drinks*

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

## **Sanitary and Phytosanitary Barriers**

The World Organization for Animal Health (OIE) standards on zoning and compartmentalization provide recommendations for safe international trade between countries. Despite following OIE guidelines for zoning or compartmentalization in most cases, Saudi Arabia does not recognize the existence of United States zones or compartments in the event that highly pathogenic avian influenza occurs within the United States. The United States continues to press Saudi Arabia to act consistently with OIE guidelines.

In October 2018, Saudi Arabia proposed maximum residue limits for pesticides applicable for meat, grains, and horticultural products, many of which do not conform to those set by the Codex Alimentarius Commission. Saudi Arabia is also considering a ban on several pesticides widely used in the United States. The United States continues to engage Saudi Arabia regarding concerns with these regulations.

### *Certification*

In 2021, Saudi Arabia began implementation of new regulations that require trading partners to adopt model certificates, which has interrupted U.S. exports of eggs, egg products, and seafood. The United States has requested Saudi authorities to instead accept comparable certifications currently issued by U.S. authorities.

## **GOVERNMENT PROCUREMENT**

Foreign contractors must subcontract 30 percent of the value of any government procurement, including support services, to firms that are majority-owned by Saudi nationals. An exemption is granted when no Saudi-owned company can provide the goods or services necessary to fulfill the requirements of a tender. Foreign suppliers also are required to establish a training program for Saudi nationals. However, most defense procurement is negotiated on a case-by-case basis. The Saudi Government is in the process of reforming its procurement processes and policies to incorporate new ambitious goals of Saudi employment and localized production. In addition to offsets, the Saudi Government is focused on “localization” of purchases of goods and services and increasing the percentage of Saudi nationals employed by foreign firms, known as “Saudization.” Previously, the government required offsets in investments of up to 40 percent of a program’s value for defense contracts, depending on the value of the contract. Saudi Arabia provides a 10 percent price preference for GCC goods for procurements in which foreign suppliers participate.

Saudi Arabia revised its Government Tenders and Procurement Law and the amendments were approved in April 2020. The law regulates the contractual relationship between a public/government entity and contractors in terms of government tenders. U.S. companies have reported that the procurement systems lack transparency and favor local manufacturers.

U.S. companies have reported long delays and difficulties in receiving payments for procurement contracts with national and regional government entities, with some delays lasting more than two years. Delays increased significantly in late 2015, when declining oil revenues prompted the Saudi Government to freeze payments to major contractors, accruing tens of billions of dollars in arrears and leading some companies to lay off workers. Since late 2020, Saudi Arabia has prioritized timelier payment to contractors and introduced the Etimad Platform to facilitate payments. U.S. companies continue to report significant payment delays, but report the overall amounts owed to them as of March 2022 are less than what was owed to them in 2021.

Foreign companies are permitted to provide services to the Saudi Government directly without a local agent and to market their services to other public entities through an office that has been granted temporary registration from the Ministry of Commerce. Foreign companies solely providing services to the government, if not already registered to do business in Saudi Arabia, are required to obtain a temporary registration from the Ministry within 30 days of signing a contract.

In September 2019, the Saudi Government issued a royal decree prohibiting government departments and agencies from granting contracts to foreign consultancy firms, except in circumstances where there are no qualified Saudi alternatives. The royal decree remains subject to interpretation, as the decree does not define the criteria for exemptions, nor does it clarify whether local branches of foreign owned firms would be subject to the prohibition.

Saudi Arabia is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since December 2007. Although Saudi Arabia committed to initiate negotiations for accession to the GPA when it became a WTO Member in 2005, it had not begun those negotiations as of March 2022.

## **INTELLECTUAL PROPERTY PROTECTION**

Saudi Arabia was elevated to the Priority Watch List in the Special 301 Report in 2019 in light of intellectual property (IP) issues that represent barriers to U.S. exports and investment. Saudi Arabia remained on the

Priority Watch List in the [2021 Special 301 Report](#). The Saudi Authority for Intellectual Property has taken steps to improve IP protection, enforcement, and awareness throughout Saudi Arabia. However, the SFDA has yet to resolve cases where it granted marketing approvals to Saudi companies, raising concerns about Saudi Arabia's system for providing effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for innovative pharmaceutical products. The approvals reportedly relied, directly or indirectly, on data created by U.S. pharmaceutical companies that is subject to Saudi Arabia's system for protecting against the unfair commercial use, in addition to the unauthorized disclosure, of undisclosed test or other data when generated to obtain marketing approval.

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

## **SERVICES BARRIERS**

### **Financial Services**

Saudi Arabia limits foreign ownership in commercial banks to 40 percent of any individual bank operation and foreign ownership in investment banks and brokerages to 60 percent.

### **Insurance Services**

Saudi Arabia requires that all insurance companies are locally incorporated joint-stock companies, with foreign equity limited to 60 percent. The remaining 40 percent equity must be sold to Saudis on the domestic stock market. Insurance companies must operate on a cooperative or mutual basis, in effect requiring distribution of any profits between policyholders and the insurance company.

### **Professional Services**

Entities providing certain professional services, including engineering, legal services, accounting, architecture, healthcare, dental, and veterinary services, must have a Saudi partner. As a general rule, the foreign entity's equity in the joint venture cannot exceed 75 percent of the total investment. In order to avoid the equity cap, a 2017 measure requires foreign engineering consulting firms that are seeking to register a local branch or subsidiary to demonstrate that they have been incorporated for at least 10 years and have operations in at least 4 different countries.

## **BARRIERS TO DIGITAL TRADE**

### **Data Localization**

In 2018, Saudi Arabia's Communications and Information Technology Commission (CITC) issued the Cloud Computing Regulatory Framework, which contains a data localization requirement for certain categories of sensitive data. While not yet implemented, such requirements may restrict market access for cloud and other information and communications technology (ICT) services provided on a cross-border basis. In addition, the CITC would gain broad powers to require cloud and other ICT service providers to install and maintain governmental filtering software on their networks, further restricting internet-based services. Stakeholders also raised concerns about cybersecurity control frameworks published by the National Cybersecurity Authority (NCA) in 2018 and 2020, which require that government entities and operators of critical national infrastructure host and store data within Saudi Arabia. Stakeholders have

expressed concerns that the NCA is applying these requirements to a broader array of private sector companies.

The Saudi Data and Artificial Intelligence Authority (SDAIA) published a draft Personal Data Protection Law, in September 2021, which will impose restrictions on cross-border data flows.

## **INVESTMENT BARRIERS**

### **Limitations on Foreign Equity Participation**

Foreign investment is currently prohibited in 10 sectors, including oil exploration and drilling, security services, fisheries, tourist guidance services related to religious pilgrimage, and services related to military activity. In 2016, Saudi Arabia began to allow full foreign ownership of retail and wholesale businesses, removing the previous 25 percent local ownership requirement. However, foreign investors interested in such ownership are required to satisfy several conditions, including investing more than \$50 million in the Saudi economy over five years and meeting sector specific localization requirements. These conditions have limited the ability of foreign investors to exercise full ownership in these sectors.

In 2018, Saudi Arabia began to allow foreign ownership in businesses providing services relating to road transportation, real estate brokerage, labor recruitment, and audiovisual display. All foreign investment in Saudi Arabia requires a license from the Ministry of Investment (MISA), which must be renewed periodically. While the MISA is required to grant or refuse an investment license within five days of receiving a complete application, bureaucratic impediments can delay the process. High fees for some investment licenses discourage foreign companies, especially small and medium-sized enterprises, from entering the Saudi market. Companies can also experience bureaucratic delays after receiving their license, such as delays in obtaining a commercial registry or purchasing property.

Only “qualified foreign investors” (QFIs) designated by Saudi Arabia’s Capital Market Authority (CMA) are permitted to buy directly shares listed on the local Tadawul stock exchange. To qualify as a QFI, an entity must be duly licensed or otherwise subject to oversight by a regulatory body with standards equivalent to those of the CMA and have assets under management of at least \$500 million. QFIs may not own more than 10 percent of any individual company, and cumulative foreign ownership cannot exceed 10 percent of the total Tadawul market capitalization or 49 percent of any individual company. However, investors designated by the CMA as “foreign strategic investors” may own more than 49 percent of a listed company, if the investor(s) agrees not to sell the relevant shares for at least two years.

# SINGAPORE

## TRADE AGREEMENTS

### The United States–Singapore Free Trade Agreement

The United States–Singapore Free Trade Agreement (FTA) entered into force on January 1, 2004. The United States and Singapore meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

## SANITARY AND PHYTOSANITARY BARRIERS

### *Pathogen Reduction Treatments*

Singapore only permits the use of nine pathogen reduction treatments (PRTs) in the production of beef, pork, and poultry products sold in Singapore, effectively limiting the number of U.S. suppliers that can export meat into the country. All new approvals are on hold as Singapore undergoes an internal review of its regulatory framework around PRTs. A priority for U.S. industry is the approval of hypobromous acid (HOBr)/DBDMH, a PRT that is used in more than 60 percent of U.S. beef plants. In August 2020, the Singapore Food Agency sought feedback from trading partners and local industry on its proposal for a more liberalized approach to regulating the use of PRTs in Singapore. The United States will continue to engage with Singapore on this issue and encourage the publication of regulatory amendments that allow the approval and use of PRTs in a transparent and science-based manner.

### *Pork Trichinae Testing*

Singapore requires U.S. pork exports to be frozen or tested for trichinosis, even though U.S. producers maintain stringent biosecurity protocols that limit the presence of trichinae in U.S. commercial swine to extremely low levels. U.S. industry notes the requirement delays export by two to three weeks, adding to inventory and related costs (including expensive trichinae testing).

## INTELLECTUAL PROPERTY PROTECTION

Despite Singapore's overall strong record on intellectual property (IP) protection and enforcement, including recently establishing acceleration programs that allow qualified applicants to obtain patents within 12 months and trademark registrations within 6 months, U.S. stakeholders continue to raise concerns regarding enforcement efforts against infringing goods transshipped through Singapore and the use of unauthorized streaming services and third-party illicit streaming devices to access pirated content. In September 2021, amendments to the Copyright Act were enacted that impose civil and criminal liability for knowingly making, importing for sale, commercially distributing, or selling illicit streaming devices, and also for providing a service to enable such devices to access content from unauthorized sources. The United States will monitor the implementation of these new measures.

The United States continues to urge Singapore to implement its geographical indication system in a fair and transparent manner that does not undermine market access for U.S. producers and exporters who hold trademarks or rely on the use of common names, including in connection with trade agreement negotiations and implementation.

## **SERVICES BARRIERS**

### **Audiovisual Services**

#### *Pay Television*

Since 2011, Singapore has implemented regulations requiring pay television providers to cross-carry exclusive broadcasting content acquired after March 12, 2010. These rules require a pay television company with an exclusive contract for channels or content to offer that content to subscribers of other pay television suppliers over those suppliers' networks at the same retail rates. U.S. content providers remain concerned about the negative impact these regulations have on private contractual arrangements, innovation in the packaging and delivery of new content to consumers, and investment in the market.

The United States continues to engage with Singapore to address this issue. In particular, the United States will discourage Singapore from applying these cross-carry requirements to suppliers using the burgeoning over-the-top model, serving subscribers through the Internet, rather than through dedicated cable or satellite networks.

#### *Satellite Television*

Singapore restricts the use of satellite dishes and has not authorized direct-to-home satellite television services. IMDA licenses the installation, or operation of, broadcast receiving equipment, including satellite dishes for television reception. Parties who require television services received via satellite need to apply for a TV Receive-Only System License, which is given only to certain categories of organizations, such as financial institutions, that need access to time-sensitive information for business or operational purposes.

### **Financial Services**

Unless they have been awarded Qualifying Full Bank (QFB) privileges, foreign banks and other financial institutions that issue credit cards in Singapore are permitted to provide ATM services to locally issued credit card holders only through their own networks or through a foreign bank's shared ATM network. QFBs, however, can negotiate with local banks on a commercial basis to let their credit card holders obtain cash advances through the local banks' ATM networks.

The Monetary Authority of Singapore (MAS) must approve a merger or takeover of a bank incorporated in Singapore or of a financial holding company, as well as the acquisition of voting shares in such institutions above specific thresholds: 5 percent, 12 percent, and 20 percent. One important consideration in this approval process is the government's policy of maintaining local banks' market share at no less than 50 percent of total resident deposits. With respect to expansion of business within Singapore, MAS will consider awarding new QFB privileges to foreign banks of countries, such as the United States, with which Singapore has entered into a free trade agreement, where there are substantial benefits to Singapore.

### **Professional Services**

#### *Legal Services*

Except in the context of international arbitration, U.S. and other foreign law firms with offices in Singapore are not allowed to advise on Singaporean law by hiring, or entering into partnership with, Singapore-qualified lawyers. In order to advise on Singaporean law, foreign firms must either form a joint venture with a Singaporean law practice (licensed as a Joint Law Venture) or get licensed as a Qualifying Foreign Law Practice (QFLP). QFLP licenses are limited. Ten have been issued since 2008; nine are still active as

of March 2022. According to the Ministry of Law, the QFLP scheme is not currently open for application and there are no details available regarding further rounds of applications.

## **BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE**

### **Content Moderation**

The Parliament of Singapore approved the Foreign Interference (Countermeasures) Act in October 2021. The Act empowers the government to issue takedown orders against hostile information campaigns and orders Internet service providers to block harmful content in Singapore if content providers fail to comply with requests and block applications that spread related content. While U.S. firms and civil society note the Act includes a mechanism to allow appeals, they have expressed concerns that the vague scope of the Act could capture a wide-range of publications, programming, and communications resulting in a negative effect on business operations, free press, and civil organizing in Singapore.

### **Electronic Banking Systems**

MAS issued its inaugural digital bank licenses to two digital full bank firms and two digital wholesale bank firms in December 2020. For digital full banks, MAS requires applicants to be controlled and headquartered in Singapore, for a majority of its employees to be Singapore citizens, and for foreign entities to form a joint venture with a Singapore company. Government incentives for contactless electronic commerce and transactions amid the COVID-19 pandemic rapidly are increasing the prevalence of centralized digital payment infrastructure. Some customers experience technical difficulties with making in-application purchases or transfers without a local or regional based bank card or service.

## **OTHER BARRIERS**

### **Healthcare Services**

U.S. stakeholders have expressed interest in greater transparency regarding the Ministry of Health's (MOH) procurement process, subsidy policies, and procedural rules regarding medical devices, and pharmaceuticals, notably for approvals of biopharmaceutical innovations.

#### *Pharmaceuticals*

In August 2021, Singapore introduced a list of government-approved drugs and treatments eligible for the country's basic health insurance plan available to citizens and permanent residents. For patients to receive subsidized treatment, drugs must meet a government-established threshold. MOH established this threshold to address the costs of patented drugs and establish a threshold of clinically proven treatments. Pharmaceutical industry representatives have expressed concern over the lack of transparency and stakeholder engagement from MOH in determining which drugs do or do not meet the threshold.

# SOUTH AFRICA

## TRADE AGREEMENTS

### The United States–South Africa Trade and Investment Framework Agreement

The United States and South Africa signed a Trade and Investment Framework Agreement (TIFA) on June 18, 2012, amending the original 1999 agreement. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and South Africa.

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

South Africa's average Most-Favored-Nation (MFN) applied tariff rate was 7.7 percent in 2020 (latest data available). South Africa's average MFN applied tariff rate was 8.7 percent for agricultural products and 7.5 percent for non-agricultural products in 2020 (latest data available). South Africa has bound 94.3 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 19.2 percent, including 39 percent for agricultural products and 15.7 percent for non-agricultural products in 2020 (latest data available). South Africa's maximum WTO bound tariff rate for industrial products is 50 percent, while its maximum WTO bound tariff rate for agricultural products is 597 percent.

U.S. exports face a disadvantage compared to European Union (EU) goods in South Africa due to the EU–South Africa Trade and Development Cooperation Agreement (TDCA) of 1999. South Africa's tariffs, when applied to imports from the EU on TDCA-covered tariff lines, average 4.5 percent. The MFN duty rate, which applies to imports from the United States, averages 18.4 percent for the same TDCA-covered lines. Key categories in which U.S. firms face a tariff disadvantage include cosmetics, plastics, textiles, motor vehicles, agricultural products and machinery.

The European Union–South African Development Community (SADC) Economic Partnership Agreement (EPA), which entered into provisional force in October 2016 and remains in force while awaiting ratification by all EU Member States, has led to greater disparities in tariff levels for U.S. exports. The United States has raised concerns about the tariff disparity in bilateral discussions with South Africa noting the unilateral tariff benefits the United States offers South African imports under the African Growth and Opportunity Act and the Generalized System of Preferences.

Over the years, the South African Government has encouraged domestic industry to appeal for increases up to the WTO bound tariff rates for certain products, where concerns have been raised as to a lack of global competitiveness. In September 2013, in response to requests from its domestic industry, the South African International Trade Administration Commission (SAITAC) increased applied import duties for whole chickens to the maximum WTO bound rate of 82 percent, and implemented import duty increases for other poultry products, including frozen bone-in chicken.

In March 2020, South Africa increased the tariff on bone-in chicken portions from 37 percent to 62 percent. It also increased the tariff on frozen boneless chicken cuts from 12 percent to 42 percent. The increased duty will apply to poultry imports from all countries excluding European Union and Southern African Development Community members. Furthermore, the SAITAC is currently reviewing the poultry tariff structure and considering proposals that could further hinder imports, including instituting an entry price

structure and redefining tariff lines to reflect tariffs at the 6-, 7-, or 8-digit level. This tariff line change would fold different product categories together and the South African Government would then likely select the highest tariff from amongst the group to represent the new product set.

Since 2016, U.S. frozen bone-in chicken imports into South Africa increased in each tariff year of the tariff-rate quota (TRQ) established by U.S. and South African poultry industry groups. But they fell in 2020 and 2021 in part due to the effects of the COVID-19 pandemic on the South African market. Despite challenges, 94 percent of the quota was filled and the TRQ allocation for 2021/22 was increased by the South Africans. The United States continues to work with South African partners to improve access to the poultry markets in South Africa.

## **Non-Tariff Barriers**

### *Import Bans and Import Restrictions*

The South African Department of Trade, Industry and Competition (DTIC) prohibits the import of certain classes and types of goods into South Africa, but in some cases an importer may get an exception from the prohibition by applying for an import permit from SAITAC. SAITAC also requires import permits on used goods if such goods are also manufactured domestically, significantly limiting importation of used goods. Other categories of controlled imports include waste, scrap, ashes, residues, and goods subject to quality specifications.

### *Customs Barriers and Trade Facilitation*

South Africa ratified the WTO Trade Facilitation Agreement (TFA) on November 30, 2017. South Africa has not yet submitted three transparency notifications related to import, export, and transit regulations; the use of customs brokers; and customs contact points for the exchange of information. These notifications were due to the WTO on February 22, 2017, according to South Africa's self-designated TFA implementation schedule.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

#### *Certification for EMC Goods*

In March 2016, the Independent Communications Authority of South Africa (ICASA) and the South African Bureau of Standards (SABS) signed a Memorandum of Understanding with the intent to jointly revise the approach for issuing Certificates of Compliance (CoCs) for Electromagnetic Interference/Compatibility (EMI/EMC) of electrical and electronic goods. CoCs certify that the limits of radiated and electromagnetic disturbances emanating from electrical and electronic equipment comply with regulated standards. SABS stated it was taking the measures due to “the influx of low-quality products into the country and the risks they pose to consumers.” In June 2017, SABS implemented the program for the issuance of EMC CoCs, including an annual non-refundable fee paid by manufacturers for each CoC, fees for registering factories, and fees for model name changes. The program also requires manufacturers to have EMI/EMC testing done at SABS verified third-party labs. If testing is required from an independent lab that is not SABS verified, the manufacturer must request that the lab be verified through SABS at the expense of the lab. Ultimately, the regulation is meant to ensure that all electronic equipment entering South Africa meets the required quality-performance standards. However, some industry stakeholders have raised concerns that the five-fold increase in certification costs, the additional administrative burden, and the lack of resources in South Africa to support the new procedure will extend time to market for quickly

evolving (and obsolescing) information and communications technology products. South Africa still accepts test results from ILAC certified labs, but SABS also conducts a comprehensive review of the test results to ensure that the product meets South African EMC standards. The protracted review can take up to 18 months to complete.

## **Sanitary and Phytosanitary Barriers**

### *Certification and Sealing of Containers for U.S. Meat and Poultry Exports*

At the conclusion of health certificate negotiations on poultry, pork, and beef in 2016, South Africa's Department of Agriculture, Land Reform and Rural Development (DALRRD) agreed that a U.S. Department of Agriculture (USDA) veterinarian would sign the export health certificate and accepted that the exporter would provide the container and seal information below the USDA veterinarian signature on the letterhead certificate. However, DALRRD has been inconsistent in the acceptance of the agreed-upon certificate and often requires that a USDA veterinarian sign both the health certificate and the container seals. The U.S. Government has provided numerous and extensive explanations regarding U.S. export processes, noting that USDA veterinarians are not present at each port to certify container and seal information. The United States continues to urge DALRRD to accept the 2016 agreed-upon certification procedures. Despite this action, several consignments were detained throughout 2021 due to errors in the exporter-supplied information section of import health certificates. In these instances, DALRRD has been unwilling to accept any revisions from the exporter and is instead requiring replacement of the full health certificate, causing lengthy delays.

### *Pork*

South Africa imposes multiple restrictions on the importation of pork. For example, South Africa imposes stringent trichinae-related freezing requirements for imported pork and pork products. The United States does not consider such requirements to be necessary for U.S. pork products. Additionally, South Africa requires certification that swine are free of pseudorabies, even though the United States achieved the successful eradication of pseudorabies in commercial herds in all 50 states in 2004. South Africa also imposes a restriction on pork cuts allowed for importation due to concerns related to Porcine Reproductive and Respiratory Syndrome. This restriction does not appear to be consistent with current international standards.

In January 2016, the U.S. Government and DALRRD reached agreement on the content of a USDA export health certificate for the importation of some U.S. pork and pork products into South Africa. In December 2017, DALRRD began allowing the importation of five additional pork cuts from the United States. However, many cuts remain ineligible. Discussions to expand the list of U.S. pork cuts and products that may be sold without being further processed in South Africa are ongoing as of March 2022.

### *Poultry*

In January 2016, the U.S. Government and DALRRD reached agreement on a USDA export health certificate for the importation of U.S. poultry into South Africa. At the same time, the U.S. Government and DALRRD agreed to specific procedures with respect to *Salmonella* testing to be applied to imports of U.S. poultry. This permitted the resumption of U.S. poultry imports into South Africa. Despite this significant progress, U.S. exporters and South African importers continue to experience challenges and inconsistencies related to South Africa's testing methodology.

## *Horticultural Products*

South Africa prohibits imports of apples from the Pacific Northwest, except for apples originating from orchards that have been declared free from apple maggot (*Rhagoletis pomonella*). The United States is currently seeking access for apples that originate from areas where apple maggot is present, provided that the apples undergo a cold treatment protocol. In early 2019, DALRRD tentatively agreed to the proposed cold treatment protocol and requested a site visit to inspect the production areas and cold storage process. During a September 2020 technical plant health bilateral meeting, DALRRD agreed to allow importation of apples from apple maggot-regulated areas through December 2020. However, the window of access has lapsed as the site visit was delayed due to COVID-19 travel restrictions. The United States continues to work with DALRRD to find alternative solutions for site visits.

In 2014, the United States requested market access for blueberries. APHIS and DALRRD are working on pest risk mitigations. During the September 2020 plant health bilateral meeting, DALRRD and APHIS discussed the remaining steps to open the South African market to imports of U.S. blueberries.

## **GOVERNMENT PROCUREMENT**

The 2011 Local Procurement Accord (the Accord) signed between the South African Government and South African business, labor, and community stakeholders commits the government to significantly expand the value of goods and services it procures from South Africa suppliers. The Accord included an “aspirational target” of sourcing 75 percent of government procurement locally to boost industrialization and to create jobs. South Africa’s National Industrial Participation Program, introduced in 1996, imposes an industrial participation obligation on all government and parastatal purchases or lease contracts for goods, equipment, or services, with an imported content greater than or equal to \$10 million. This obligation requires the seller or supplier to engage in local commercial or industrial activity valued at 30 percent or more of the value of the imported content of the goods or services purchased or leased pursuant to a government tender.

South Africa also uses government procurement to empower historically disadvantaged populations through its Broad-Based Black Economic Empowerment (B-BBEE) strategy. A company’s B-BBEE scorecard accounts for a percentage of a bid’s assessment, which varies by sector. (*For further information on B-BBEE, see the Investment Barriers section.*)

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

## **INTELLECTUAL PROPERTY PROTECTION**

The South African Government has taken some positive steps toward more effective enforcement of intellectual property (IP), including appointing additional enforcement officials, improving the training provided to these officials, and increasing public awareness of IP. However, stakeholders report significant concerns.

In March 2019, the South African Parliament passed the Copyright Amendment Bill and the Performers’ Protection Amendment Bill that contain some needed modernizations of the copyright law, such as the introduction of the right of communication to the public. However, these bills also contained provisions that some stakeholders, including significant numbers of South African and international stakeholders, particularly in the creative industry, assert would weaken the adequacy and effectiveness of copyright and related rights protection in South Africa. Specific concerns include broad and ambiguous exceptions to copyright, new limitations on contractual relations between private parties, and provisions regarding

technological protection measures that include overly broad exceptions and lack prohibitions on the circumvention of access controls. In June 2020, the South African President sent the bills back to Parliament citing constitutional concerns. Parliament then solicited public comments and held public hearings on the bills. As of March 2022, Parliament was still considering amendments to the bills.

The DTIC released the Intellectual Property Policy of the Republic of South Africa Phase I (IP Policy) in 2018. This policy lays the groundwork for future legislation and regulations governing IP in South Africa. Stakeholders remain engaged with South Africa to address their concerns as updates to the IP Policy are considered and provisions of the IP policy are translated into updated laws and regulations.

Under the SADC EPA, which entered into force on a provisional basis in 2016, South Africa agreed to prohibit the use of certain terms that may be common names by recognizing them as geographical indications in its domestic market. The United States remains highly concerned about countries negotiating product-specific IP outcomes as a condition of market access from the EU and reiterates the importance of each IP right being independently evaluated on its individual merits.

## **SERVICES BARRIERS**

### **Audiovisual Services**

The Independent Communications Authority of South Africa (ICASA) imposes local content requirements for satellite, terrestrial, and cable subscription services. Since March 2016, ICASA local content regulations have required up to 80 percent of broadcast programming to consist of South African programming. Foreign ownership in a broadcaster remains capped at 20 percent.

## **BARRIERS TO DIGITAL TRADE**

In April 2021, South Africa published the Draft National Policy on Data and Cloud. If the Policy's recommendations are implemented, the resulting measures would impose burdensome requirements on South African and foreign firms, including restrictions on the cross-border transfer of data through requirements that certain data be processed and stored locally, mandating a copy of all data relating to South African citizens be stored locally, and imposing mandatory data sharing requirements.

South Africa's Protection of Personal Information Act (POPIA) entered into full effect in July 2021. Approved in 2013, POPIA imposes requirements that may be burdensome for firms operating in South Africa, including potential restrictions on the cross-border transfer of personal data.

## **INVESTMENT BARRIERS**

While South Africa is generally open to greenfield foreign direct investment (FDI), merger and acquisition-related FDI is scrutinized closely for its impact on jobs and local industry. South Africa also imposes local content requirements on investments in a number of sectors.

The DTIC released a policy statement on localization in May 2021 that complements and further defines the Economic Reconstruction and Recovery plan laid out by the South African President in October 2020, as well as DTIC's 2021 release of a 42-product category import substitution plan. The localization plan's cornerstone is the implementation of a scheme to substitute at least 20 percent of imports across selected categories with local goods by 2025, with some industry specific master plans setting higher targets. For instance, the industrial master plan for textiles set a goal that 60 percent of all clothing sold in South Africa will be locally manufactured by 2030.

The B-BBEE, and associated codes of good practice, awards bidding preferences on government tenders and contracts to firms with the requisite levels of company ownership and participation by Black South Africans. The B-BBEE Codes of Good Practice creates a certification system (a “B-BBEE scorecard”) that rates a company’s commitment to the empowerment of historically disadvantaged people in South Africa. A strong rating is particularly important in competition for public tenders, as the B-BBEE scorecard will account for 10 percent of a bid’s assessment. It also is important for branding purposes and for managing client relationships, as a company’s score can influence a client’s own B-BBEE score.

South Africa has made B-BBEE requirements stricter in recent years. In the past, U.S. firms have been able to balance lower scores on ownership requirements with higher scores on other elements. Changes to the rules make that outcome more challenging.

In addition to ownership, the preferential procurement category requires localization with “empowering suppliers,” which proves challenging to companies importing products or inputs for supply chains. Although the government recently created a program called Equity Equivalence (EE) for international companies that cannot meet the ownership element of B-BBEE through the direct sale of equity to local investors, some companies have reported that the reporting requirements and high level of required financial contributions make the EE program unusable.

Sectors such as financial services, mining, and petroleum have their own “transformation charters” intended to promote accelerated empowerment of Black-owned businesses within those sectors. The charters for the integrated transport, forest products, construction, tourism, and chartered accountancy sectors have the force of law in South Africa.

### **South Africa Mining Charter**

On September 27, 2018, the Minister of the Department of Mineral Resources announced the 2018 Mining Charter, stating that the new charter will be operationalized within the next five years to bolster certainty in the sector. The charter established requirements for new licenses and investment in the mining sector and includes rules and targets for Black ownership and community development in the sector as a means to redress historic economic inequalities from the apartheid era. It recognized existing mining right holders who had a minimum 26 percent B-BBEE ownership as compliant but required an increase to 30 percent B-BBEE ownership within a 5-year transitional period. Recognition of B-BBEE ownership compliance was not transferable to a new owner. According to the 2018 Charter, new mining right licenses were required to have 30 percent B-BBEE shareholding, applicable to the duration of the mining right.

In March 2019, the Minerals Council of South Africa applied for a judicial review of the 2018 Mining Charter, based on several concerns about the charter and its role in promoting investment and providing a sustainable mining industry in South Africa.

On September 21, 2021, the High Court ruled in favor of the Minerals Council and other stakeholders, finding that the Minister lacked the authority to publish a policy document in the form of a law. As a result, mining right holders who, at any stage during the existence of their mining right achieved a minimum of 26 percent B-BBEE shareholding, and whose B-BBEE partners exited prior to the commencement of Mining Charter, will be recognized as compliant with the B-BBEE requirements of the Mining Charter for the duration of the mining right.

### **Other Investment Restrictions**

The Protection of Investment Act of 2015 contains vague language with respect to measures the South African Government may take against an investor or an investment, including “redressing historical, social

and economic inequalities and injustices”; “promoting and preserving cultural heritage and practices, indigenous knowledge and biological resources related thereto, or national heritage”; and “achieving the progressive realization of socio-economic rights.”

In October 2020, the South African Government published a draft land expropriation bill for public comment that would amend South Africa’s 1975 Expropriation Act to explicitly allow expropriation of property, including land, without compensation. The National Assembly also established a committee to engage in a parallel process to amend Section 25 of South Africa’s constitution to explicitly allow for expropriation without compensation. The amended constitutional language would have provided that “where land and any improvements thereon are expropriated for purposes of land reform ... the amount of compensation may be nil...”. It would also have required national legislation, *e.g.*, the aforementioned land expropriation bill, to set out the “circumstances where the amount of compensation is nil”. In September 2021, the *ad hoc* committee on Section 25 adopted draft language to amend the constitution to allow expropriation without compensation. However, the amendment was not adopted by the National Assembly, as it failed to garner the required two thirds majority vote on December 7, 2021, due to opposition from both left and right-leaning parties. The ruling party has pledged to move forward with the draft land expropriation bill, which it can pass with a simple majority.

## **OTHER BARRIERS**

### **Bribery and Corruption**

South African laws designed to increase transparency and reduce corruption in South Africa’s Government include legislation barring the payment of bribes to public officials. However, this legislation fails to protect whistleblowers against recrimination, including defamation claims. Although South Africa has no fewer than ten agencies engaged in anticorruption activities, high rates of violent crime continue to strain overall law enforcement capacity and continue to make it difficult for South African criminal and judicial agencies to dedicate adequate resources to anticorruption efforts.

# SWITZERLAND

## TRADE AGREEMENTS

### **The United States–Switzerland Trade and Investment Cooperation Forum Agreement**

The United States and Switzerland signed the Trade and Investment Cooperation Forum Agreement on May 25, 2006. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Switzerland.

## IMPORT POLICIES

### **Tariffs**

Switzerland's average Most-Favored-Nation (MFN) applied tariff rate was 5.3 percent in 2020 (latest data available). Switzerland's average MFN applied tariff rate was 30.4 percent for agricultural products and 1.3 percent for non-agricultural products in 2020 (latest data available). Switzerland has bound 99.7 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 7.5 percent.

In September 2021, the Swiss Parliament approved amendments to the Customs Tariff Act that would abolish tariffs on all industrial imports, while leaving agricultural tariffs unchanged. The amendments will enter into force on January 1, 2024. The elimination of industrial tariffs is expected to remove duties that currently apply to almost 26 percent of U.S. non-agricultural exports to Switzerland.

### *Agriculture*

U.S. agricultural market access to the Swiss market is limited by high tariffs on certain products, preferential tariff rates for products from other trading partners, and certain government regulations.

Swiss agriculture is highly subsidized and regulated with price controls, production quotas, import restrictions, and tariffs all supporting domestic production. Imports of a broad range of agricultural products, particularly those that compete with Swiss products, are subject to seasonal import duties, quotas, and import licensing. Agricultural products not produced in Switzerland, such as tropical fruit and nuts, tend to have lower tariffs.

Swiss trade groups and certification associations also impose some barriers to agricultural imports that compete with Swiss products. In particular, the registration fee for bovine genetics for U.S. bulls remains many times higher than the fee for domestic bulls.

### **Non-Tariff Barriers**

#### *Import Licensing*

Switzerland maintains a complex import licensing regime, primarily to facilitate the allocation of tariff-rate quotas (TRQs). In conjunction with the general agricultural importing permit, used for statistical purposes, TRQ-related non-automatic licenses are required for imports of various animal, dairy, fresh fruit, and vegetable products. General import permits are required to track the importation of certain products that are subject to compulsory stockpiling under Swiss law. These include liquid fuels and combustibles, as

well as sugar, rice, edible oils and fats, coffee, cereals for human consumption, and energy and protein-rich ingredients for use in animal feed.

Other import permits are issued as a means to implement various sanitary and phytosanitary (SPS) measures and international treaties, for the protection of human health (such as the importation of blood, narcotics, and psychotropic drugs), and for the regulation of certain forest reproductive material.

## **SANITARY AND PHYTOSANITARY BARRIERS**

Switzerland aligns many of its SPS measures with those of the European Union (EU). As noted in the SPS section of the EU Chapter in this National Trade Estimate Report, the United States remains concerned about several SPS measures the EU maintains absent scientific justification that negatively impact market access for U.S. agricultural products.

### *Agricultural Biotechnology*

Switzerland's restrictive phytosanitary measures for agricultural biotechnology products have impeded access to the Swiss market. In particular, Switzerland maintains a moratorium on planting biotechnology crops and marketing products derived from agricultural biotechnology animals. The moratorium expired at the end of 2021. In March 2022, legislative action was being considered that would reinstate the moratorium through the end of 2025.

## **GOVERNMENT PROCUREMENT**

Switzerland is a Party to the WTO Agreement on Government Procurement (GPA). Switzerland deposited its instrument of acceptance for the Revised GPA in December 2020. As a result, the revised GPA entered into force for Switzerland on January 1, 2021.

## **INTELLECTUAL PROPERTY PROTECTION**

Switzerland generally maintains high standards of intellectual property (IP) protection and IP rights enforcement and makes important contributions to promoting such protection and enforcement internationally. Although Switzerland was removed from the Special 301 Report in 2020 after many years of engagement, U.S. copyright holders continue to have concerns that Switzerland remains a host country for websites offering infringing content and the services that support them, and about amendments to Switzerland's Copyright Act that came into force on April 1, 2020. These concerns include continuing uncertainty regarding the application of the amended provisions of the Copyright Act, alleged difficulties in using IP addresses in civil claims of copyright infringement, a "private use" exception that permits single copies of a work even if derived from an unauthorized source, the lack of "access blocking" provisions on infringing internet sites from abroad, and a lack of sufficient "know-your-customer" protocols for data centers and internet service providers, among other provisions. A new tariff agreement on remuneration for "catch-up" cable television services has come into force in 2022, addressing a long-standing dispute over extensive "catch-up" television services. The United States is carefully monitoring Swiss Government measures to address copyright piracy in an appropriate and effective manner as well as the implementation, interpretation, and effectiveness of the new legislation. The United States is also closely following difficulties right holders have in enforcing their rights against anonymous infringers for the unauthorized reproduction or publication of copyright-protected works. Finally, the United States continues to have concerns with respect to copying from unlawful sources and remuneration issues for right holders under the "private use" exception in the copyright law.

## **SERVICES BARRIERS**

### **Audiovisual services**

A “unique distributor clause” in Switzerland’s Film Act requires a single distributor to have exclusive control over all language versions of a film for all forms of distribution, including theatrical release, DVDs, and video-on-demand. In September 2021, the Swiss Parliament passed a new law requiring non-domestic video-on-demand services to pay 4 percent of their revenues sourced from Switzerland into a fund to support Swiss film production. The law also requires a 30 percent quota of European-produced content in their video-on-demand offerings. The law is not yet in force. A referendum that could potentially revoke the law will take place on May 15, 2022.

### **Insurance Services**

Managers of foreign-owned insurance company branches must reside in Switzerland. Public monopolies provide fire and natural disaster insurance in 19 of 26 cantons and workers’ compensation insurance within certain industries.

## **BARRIERS TO DIGITAL TRADE**

### **Data Localization**

Swiss law restricts the transfer of personal data outside of Switzerland, except to specific countries Switzerland deems adequate under Swiss law, or when other specific requirements are met, such as the use of standard contract clauses or binding corporate rules. Restrictions on the flow of data have a significant effect on the conditions for the cross-border supply of numerous services and for enabling the functionality embedded in intelligent goods (*i.e.*, smart devices).

On September 8, 2020, the Federal Data Protection and Information Commissioner of Switzerland issued an opinion concluding that the Swiss–U.S. Privacy Shield Framework does not provide an adequate level of protection for data transfers from Switzerland to the United States pursuant to Switzerland’s Federal Act on Data Protection. The Swiss action followed a July 2020 judgment by the Court of Justice of the European Union, which invalidated an earlier European Commission decision on the adequacy of the protection provided by the U.S.-EU Privacy Shield Framework. The Swiss Government had determined in January 2017 that the U.S.-Swiss Privacy Shield Framework provided U.S.-based organizations with a mechanism to comply with Swiss data protection requirements when transferring personal data from Switzerland to the United States. The United States remains committed to working with both the EU and Switzerland to ensure continuity in transatlantic data flows and privacy protection, and remains in close contact with the Swiss Government on this matter.

# TAIWAN

## OVERVIEW

The United States and Taiwan have had a Trade and Investment Framework Agreement (TIFA), signed by the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO), since 1994. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and the Taiwan authorities. Meetings of the TIFA Council are typically co-led by a Deputy United States Trade Representative and Taiwan's Deputy Minister of Economic Affairs.

The United States and Taiwan held a TIFA Council meeting virtually on June 29, 2021. The two sides discussed a range of trade and investment issues and recognized upcoming changes to Taiwan's medical device approval process. The two sides also committed to intensify engagement aimed at addressing outstanding trade concerns, including with regard to market access barriers facing U.S. beef and pork producers, in addition to concerns raised by the United States in areas such as copyright legislation, digital piracy, financial services, and investment and regulatory transparency. The two sides discussed the importance of secure and resilient supply chains free of forced labor.

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

Taiwan's average Most-Favored-Nation (MFN) applied tariff rate was 6.34 percent in 2021. The average MFN applied tariff rate was 15.06 percent for agricultural products and 4.14 percent for industrial products in 2021. Taiwan has bound 100 percent of its tariff lines at the World Trade Organization (WTO), with an average bound tariff rate of 6.8 percent.

Taiwan maintained tariff-rate quotas (TRQs) on multiple products when it became a WTO Member in January 2002, including small passenger vehicles, fish products, and agricultural products. Taiwan subsequently eliminated TRQs for four fish products and eight agricultural products. Nevertheless, many TRQs remain in place, especially in agriculture. TRQs still cover 16 agricultural products, including rice, peanuts, bananas, and pineapples.

Taiwan has recourse to special safeguards (SSGs) for agricultural products covered by TRQs. SSGs, which are permitted under Article 5 of the WTO Agreement on Agriculture, allow Taiwan to impose additional duties when import quantities exceed SSG trigger volumes or import prices fall below SSG trigger prices. Because Taiwan previously did not import many of these products, its SSG trigger volumes are relatively low. As of March 2022, Taiwan has recourse to an SSG for 1,414 agricultural product categories, including poultry meat, certain types of offal, and milk.

#### *De Minimis Threshold*

The Ministry of Finance changed Taiwan's *de minimis* threshold, below which import duties are not collected, effective as of January 2018. This change affects a wide range of shipments imported into Taiwan. The *de minimis* value for each shipment dropped from NTD 3,000 (approximately \$100) to NTD

2,000 (approximately \$67). There is an exception for commercial samples, for which the *de minimis* level remains NTD 3,000 (approximately \$100) without frequency restrictions.

### *Taxes*

Taiwan taxes rice wine for cooking at a lower rate than alcoholic products consumed as beverages. Taiwan taxes distilled rice wine (*mijiu*) at the same, lower rate as rice wine for cooking, even though it is consumed as an alcoholic beverage. The United States and other trading partners continue to express their concerns to the Taiwan authorities that steps should be taken to ensure that imported alcoholic beverages are not taxed at a higher rate than domestically produced alcoholic beverages, including *mijiu*.

## **Non-Tariff Barriers**

### *Quantitative Restrictions*

In certain years, the Taiwan authorities have rejected bids from U.S. rice exporters under its country-specific quota (CSQ) regime, arguing that high U.S. prices had exceeded Taiwan's ceiling price. U.S. exporters have raised concerns that Taiwan's ceiling price mechanism, which is not made public, arbitrarily sets prices lower than the levels bid by U.S. exporters, causing the tenders to fail. In 2018, because of Taiwan's opaque system, 5 percent of the U.S. CSQ (3,134 metric tons) was released to global tender. In 2019, Taiwan filled the U.S. CSQ of 64,634 metric tons, but with 12,000 metric tons of that quota filled with a low-grade specification normally intended for animal feed. In 2020, the CSQ was filled by December 1 with no issues reported. While Taiwan has generally observed its CSQ commitments, which call for equal access for U.S. table rice, concerns over rice market access persist, both in terms of quantity and quality of the rice.

## **Customs Barriers**

### *Tariff Classification*

Taiwan requires that genetically engineered (GE) and non-GE raw materials, such as corn and soybeans, enter under separate tariff lines. These GE products are evaluated in comparison to their conventional counterparts, and, once approved, are comingled with conventional products in the agricultural supply chain. Thus, there is no scientific or technical basis for Taiwan's separate tariff lines for GE raw materials. This situation has not caused any trade stoppages, but it could pose significant complications in the future.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

#### *Agricultural Biotechnology Regulations*

Taiwan banned the use of biotechnology food ingredients and processed food with biotechnology ingredients in school meals as of December 2015. The United States continues to highlight the lack of a scientific basis for this ban and to urge its removal.

#### *Labeling and Other Requirements – Cosmetics*

The Cosmetic Hygiene and Safety Act, amending the Statute for Control of Cosmetic Hygiene, went into effect in May 2018. It includes requirements regarding product information registration (for Product

Information Files, or PIFs) and good manufacturing practices (GMPs). Toothpaste and mouthwash products were added to the products covered.

The Enforcement Rules of the Cosmetic Hygiene and Safety Act were issued by the Ministry of Health and Welfare in June 2019 and took effect on July 1, 2019, with the exception of Article 3 and Item 2 of Article 4, which took effect on July 1, 2021. The Taiwan Food and Drug Administration (TFDA) issued an additional 24 implementing measures, including with respect to GMP, animal testing, labeling requirements, and product recalls. All of the implementation measures, including PIF registrations, took effect on July 1, 2021

Among the various implementing measures, U.S. stakeholders are concerned with the new labeling regulations, which require a minimum font size of 1.2 mm. This font size requirement is not consistent with the requirements of most trading partners, which generally only require that labels are clear and readable. U.S. stakeholders also have urged TFDA to establish transparent review standards for proof of claims of cosmetics products, with acceptance of widely adopted test data.

#### *Notification Programs – Chemical Substances*

Taiwan's Occupational Safety and Health Act (OSH Act) and Toxic Chemical Substances Control Act (TCSCA) mandate that importers and producers of chemical substances register a wide variety of chemical substances that they sell or utilize in production with the Ministry of Labor (MOL), the Environmental Protection Agency of Taiwan (EPAT), or both. MOL and EPAT operate two separate registration programs, the Existing Chemical Notification (ECN) program and the New Chemical Notification (NCN) program, respectively.

Amendments to the Regulations for the Labeling and Hazard Communication of Hazardous Chemicals made by MOL became effective in November 2018. U.S. stakeholders are concerned with Article 18 of the regulations, which requires explanations and justifications regarding classification of hazardous chemical ingredients. In some cases, certain ingredients may lack supporting data, and so U.S. stakeholders are seeking the flexibility to use a Can Not be Classified (CNC) category.

In December 2014, in implementing the TCSCA, EPAT issued the Regulations of New and Existing Chemical Substances Registration. These regulations were revised twice, first in March 2019 and then in November 2021. The March 2019 revision listed 106 substances as the first batch of existing substances subject to standard registration and established tonnage bands with tiered requirements according to weight, registration deadlines, and data requirements. In response to industry feedback, the November 2021 revision standardized the period of validity of new chemical substance registration approvals to five years, added the maximum confidential period of the information of a new chemical substance included in the inventory of existing chemical substances of 15 years, and excluded controlled chemicals as prescribed in the OSH Act and concerned chemical substances as prescribed in the TCSCA.

Taiwan's Occupational Safety and Health Administration (OSHA) issued draft Guidelines for Hazard Assessment and Exposure Assessment of New Chemical Substances for public comment in May 2016. As of March 2022, these guidelines have not been finalized. U.S. chemical manufacturers hope to see this measure finalized soon, and they also are urging the MOL to improve the format of the Safety Data Sheet (SDS) so that chemical companies do not have difficulties preparing the information exactly in accordance with specific terms and headings specified. According to chemical manufacturers, the appropriate SDS should be developed to be consistent with the Globally Harmonized System of Classification and Labelling of Chemicals Purple Book, where manufacturers provide downstream users with hazardous chemical information and safety and protection measures. The manufacturers have also recommended that OSHA

establish a consistent review standard for confidential business information relating to chemical composition.

### *Country of Origin Labeling – Pork*

On January 1, 2021, Taiwan implemented country of origin labeling (COOL) requirements for a range of pork products, including processed pork products. The relevant measures were notified to the WTO in September 2020. The United States submitted comments raising concerns with the requirements. Taiwan's presentation of these labeling requirements to the public as a means to ensure the food safety of U.S. pork products, while simultaneously implementing maximum residue limits (MRLs) for ractopamine in imported pork, inaccurately implied that there is a food safety concern with U.S. pork products, including pork produced with ractopamine. (*For further information on the implementation of the MRLs, see Beta-agonists under the Sanitary and Phytosanitary Barriers Section.*) In addition, as manufacturers of processed pork products often change the mix of ingredients used for a particular product based on price and availability (in addition to the amounts of leftovers from the manufacturing of other products), a requirement to change labeling whenever the source of the pork changes could disincentivize Taiwan manufacturers of processed pork products from purchasing U.S. pork in favor of Taiwanese pork. The United States has raised concerns about these COOL requirements bilaterally with Taiwan, including on the margins of the October 2020 and February 2021 WTO Committee on Technical Barriers to Trade meetings and at the June 2021 TIFA Council meeting.

### *Auto Safety Standards*

Taiwan adopted the United Nations Economic Commission for Europe (UNECE) auto standards when it became a WTO Member in January 2002. In April 2008, Taiwan's Ministry of Transportation and Communications (MOTC) introduced a regulation that allows the importation of a limited number of imported vehicles that are not UNECE-compliant but do comply with U.S. Federal Motor Vehicle Safety Standards (FMVSS). MOTC's regulation limited the number of FMVSS-compliant vehicles on the road in Taiwan to 100 units per car model in 2021, and this number will be reduced to 75 units per car model by 2023. Some vehicle manufacturers in the United States want to periodically introduce unique new U.S.-made models in order to stimulate interest in their brands. However, if the vehicles are FMVSS-compliant but not UNECE compliant, exports of those vehicles cannot exceed the limit set by MOTC.

## **Sanitary and Phytosanitary Barriers**

### *Import Bans, Import Licensing, and Other Restrictions – Beef and Beef Products*

Taiwan banned imports of U.S. beef and beef products following the detection of an animal with bovine spongiform encephalopathy (BSE) in the United States in 2003. In 2006, Taiwan began allowing imports of U.S. deboned beef derived from animals under 30 months of age. In October 2009, the United States and Taiwan reached an agreement on a protocol, under the auspices of AIT and TECRO, to expand market access to fully re-open the Taiwan market to all U.S. beef and beef products for human consumption. However, in January 2010, Taiwan's Legislative Yuan adopted an amendment to Taiwan's Food Sanitation Act that bans imports of U.S. ground beef, internal organs, eyes, brains, spinal cord, and skull meat for at least 10 years following the last confirmed BSE or variant Creutzfeldt-Jakob disease case. In addition, the Executive Yuan banned imports of all beef and beef products from cattle 30 months of age and older. Taiwan also announced additional border measures, including a special import licensing scheme, for permitted offal. Additionally, Taiwan imposed stricter border inspection requirements for certain beef offal (such as tongue). In July 2014, Taiwan confirmed market eligibility for U.S. beef lips, ears, backstrap, skirt sinew, and tunic tissue, although barriers such as batch-by-batch inspections continue to discourage trade.

On January 1, 2021, Taiwan lifted the ban on imports of U.S. beef and beef products from cattle 30 months of age and older, and later clarified that removal of the ban includes U.S. beef and beef products derived from Canadian-born cattle aged 30-months or over that are raised in the United States for at least 100 days prior to slaughter in the United States. Other barriers, including the ban on imports of U.S. ground beef and certain other beef products, remain in place. The United States continues to urge Taiwan to open its market fully to U.S. beef and beef products based on science, the World Organization for Animal Health (OIE) guidelines, the United States' negligible risk status for BSE, and the 2009 AIT-TECRO beef protocol.

#### *Import Bans – Animal Byproducts*

Taiwan continues to restrict the importation of bovine blood products for animal consumption and bulk shipments of tallow from the United States, citing concerns related to BSE. The OIE guidelines recognize these commodities as safe-to-trade, regardless of the BSE risk status of the exporting country. The United States continues to urge Taiwan to open its market to U.S. bovine blood products for animal consumption and bulk shipments of U.S. tallow, based on science and the OIE guidelines.

#### *Maximum Residue Limits – Beta-agonists*

In September 2012, Taiwan implemented the Codex Alimentarius Commission (Codex) MRL for ractopamine in imported beef muscle but did not implement MRLs for ractopamine in other beef products (e.g., offal). On January 1, 2021, Taiwan implemented Codex MRLs for ractopamine in imported pork muscle, fat, and liver. Taiwan also implemented MRLs for ractopamine in imported pork kidney and other edible parts (e.g., offal other than kidney and liver) that are more restrictive than the Codex MRLs. The United States is concerned that Taiwan's MRLs for imported pork kidney and other edible parts do not reflect consumption exposure. The United States is also concerned that Taiwan's method of testing for ractopamine residue is not aligned with methods of analysis for ractopamine recommended by Codex and could provide inaccurate results. The United States continues to ask that Taiwan align its methods of detection with the standards utilized by other trading partners, which, in this case, are the ones recommended by Codex.

Apart from ractopamine, Taiwan has also not established MRLs for other beta-agonist compounds or provided science-based rationale to support its policy. The United States continues to urge Taiwan to implement science-based MRLs without undue delay and to accept and approve new applications for MRLs for beta-agonists based on science and in a timely manner.

#### *Maximum Residue Limits – Agrochemicals*

The United States has raised concerns with various aspects of Taiwan's process for establishing MRLs for pesticides, such as the limited opportunities for applicants to provide additional information during the review process and the inconsistent application of crop groups to import tolerances. The United States will continue to encourage Taiwan to further improve its MRL regulatory system to facilitate trade.

#### *Tolerance Levels – Potato Products*

As of 2019, Taiwan has rejected shipments of U.S. chipping potatoes due to a 2018 regulation that implemented specific restrictions on sprouting for imported potatoes. Entire shipments are rejected, even though sprouting does not pose a food safety risk, and potatoes with sprouts were previously removed as part of a normal sorting process prior to 2018. The United States, in coordination with U.S. industry and with regulators in Taiwan, is pursuing technical engagement on these potato issues with the goal of reaching an agreement on an appropriate response.

## **GOVERNMENT PROCUREMENT**

Amendments to Taiwan's Government Procurement Act entered into force in May 2019. The amended Act adds a national security provision. It also includes a modification requiring a government procurement contract to stipulate the responsibility of either party if its erroneous performance, false representation, or poor management causes damage to the other party. Previously, the Act had applied only to the supplier's liability. In addition, to avoid a procuring entity's delay in correcting illegal procurement conduct, the amended Act adds that the procuring entity must proceed with a lawful alternative within 20 days from the date of receipt of a finding by the Complaint Review Board for Government Procurement (CRBGP) that the procuring entity is in breach of regulations. A supplier obtaining a favorable decision against a procuring entity may request that the procuring entity reimburse necessary expenses incurred by the supplier in the preparation of the tender and the filing of a protest and complaint. The supplier may file a written complaint with the CRBGP within 15 days after the expiration of the 20-day window if the procuring entity fails to take action to comply with the CRBGP's decision within that window. The amended Act also shortens the ban period for the violation of procurement regulations to between three months and one year, depending on the number of prior violations within the past five years.

Taiwan is a Party to the WTO Agreement on Government Procurement (GPA).

## **INTELLECTUAL PROPERTY PROTECTION**

In recent years, positive developments regarding intellectual property (IP) protection and enforcement in Taiwan have included the implementation of amendments to the Pharmaceutical Affairs Act, amendments to the Copyright Act to combat illicit streaming devices, and amendments to the Trade Secrets Act to protect trade secrets during criminal investigations. However, more comprehensive copyright legislation remains pending before the Legislative Yuan, and right holders report that the draft copyright legislation submitted to the Legislative Yuan by the Executive Yuan omits important reforms and contains troubling provisions including, for example with respect to criminal enforcement. Considerable challenges also remain in combatting copyright and related rights infringement, particularly with respect to online piracy.

Implementing regulations for the amendments to the Pharmaceutical Affairs Act entered into force in August 2019, establishing a new mechanism for early resolution of potential patent disputes that includes coverage for biologics. This mechanism represents a promising step forward for Taiwan in its efforts to develop an innovative pharmaceutical sector.

An emerging challenge confronting Taiwan involves counterfeit drugs sold through online platforms. Right holders have urged Taiwan Customs, the Taiwan Intellectual Property Office, and TFDA to work together closely to combat these counterfeit drugs.

Following trade and investment discussions in 2018, the United States and Taiwan agreed to a Digital Anti-Piracy Work Plan (the Work Plan). Leading up to, and as a result of, the Work Plan, Taiwan took certain steps in the copyright arena. To combat infringing websites, the Taiwan Intellectual Property Alliance (TIPA) signed a Memorandum of Cooperation with the Taipei Association of Advertising Agencies (TAAA) in August 2017. Under this arrangement, TIPA provides TAAA with an infringing website list, and TAAA distributes the list to its members and advises them not to post advertisements on the listed websites. Expanding this initiative, the Digital Marketing Association and TIPA signed a voluntary cooperation agreement in July 2019.

In May 2019, Article 87.1.8 and Article 93 of the Copyright Act were amended to combat the use of illicit streaming devices. However, right holders report that online piracy remains widespread. Additionally,

right holders continue to report serious challenges with respect to the unauthorized use of textbooks and copyrighted teaching materials, particularly via on-campus digital platforms.

The Executive Yuan sent draft amendments to other articles of the Copyright Act to the Legislative Yuan in October 2017 for review. While the draft amendments subsequently introduced by the Legislative Yuan regarding the same articles represented progress in some areas, they also contained potentially overbroad exceptions to copyright protection and obstacles to criminal enforcement in addition to troubling provisions relating to licensing and the role of collective management organizations. These draft amendments were resubmitted to the Legislative Yuan by the Executive Yuan in April 2021 and as of March 2022 were being reviewed by the Legislative Yuan.

Amendments to the Trade Secrets Act that were passed by the Legislative Yuan in December 2019 give prosecutors the authority to issue protective orders during investigation proceedings. Previously only judges could do so during litigation. In the most significant criminal case under the amended Trade Secrets Act, a court ruled in 2020 that a Taiwan semiconductor company and three former employees were guilty of stealing trade secrets from a U.S. company to enable the development of semiconductor chips by a Chinese state-owned enterprise. The court imposed a \$3.4 million fine on the Taiwan company and sentenced the former employees to 5 years to 6 years in prison. The case involved substantial cooperation with U.S. investigators and prosecutors.

The National Communications Commission issued the draft of a new Internet Audio-Visual Service Management Act in July 2020, with a stated purpose of combating illegal online streaming of music and video. U.S. stakeholders and local industries are concerned that the draft legislation would require unnecessary and onerous disclosures of confidential business information, including customer volume, business revenues, and the proportion of self-made or co-produced programs. As of March 2022, this draft legislation had not been finalized.

## **SERVICES BARRIERS**

### **Financial Services**

#### *Securities Services*

Taiwan's Financial Supervisory Commission (FSC) provides preferential licensing procedures for foreign trust fund companies that meet FSC's localization standards. FSC lowered the ceiling for Taiwan investors' share of an offshore fund from 70 percent to 50 percent and to 40 percent in some cases in 2014. The lower ceilings apply if the offshore fund does not meet certain qualifications for the preferential management scheme, such as establishing a local presence, investing an average of NTD 4 billion (approximately \$127.5 million) in onshore funds, and recruiting a certain number of Taiwan staff. The 70 percent ceiling remains for offshore funds that meet the preferential management scheme standards. Eight offshore funds met these criteria in 2021 and are entitled to preferential treatment until September 2022. Preferential treatment of offshore funds is subject to annual review and approval.

#### *Cloud Services*

In September 2019, FSC issued amendments to the Regulation Governing Internal Operating Systems and Procedures for the Outsourcing of Financial Institution Operation. The amendments address, for the first time, the use of cloud computing services by financial institutions.

U.S. cloud service suppliers have expressed concerns about these amendments. They have raised the concern that there appears to be a preference for customer data to be kept in Taiwan, which, among other

concerns, creates a longer regulatory review process for companies seeking to host applications involving customer data outside of Taiwan. Another significant concern is the burdensome application process that financial institutions must undergo to obtain FSC permission to use cloud computing services. The application requires the submission of up to 17 documents, which is followed by a lengthy review process that can take more than 1 year. The length of the application process alone strongly discourages financial institutions from using cloud computing services. Furthermore, cloud service suppliers and financial institutions operating in Taiwan have expressed concerns over the lack of transparency and the lack of any standardized criteria used during the application process.

After a financial institution obtains regulatory approval to use cloud services, it must be audited annually. The audit is executed by FSC's Financial Examination Bureau, which appears to use different standards than the Banking and Insurance Bureaus that are responsible for approving a financial institution to use cloud services.

### **Telecommunications Services**

Taiwan maintains limits on foreign ownership in telecommunications companies. Direct foreign ownership is limited to 49 percent, and combined direct and indirect foreign ownership is limited to 60 percent. Taiwan also maintains government investment in Chunghwa Telecom, the largest domestic telecommunications company, through 35 percent ownership held by MOTC. In August 2021, MOTC eliminated the rule that set a lower limit of 55 percent combined direct and indirect foreign investment for Chunghwa Telecom, which is now subject to the 60 percent limit.

### **INVESTMENT BARRIERS**

Taiwan prohibits or limits foreign investment in certain sectors, including agricultural production, chemical manufacturing, bus transportation, sewage and water services, and social services such as public education, health, and childcare.

Foreign ownership in telecommunications, power transmission and distribution, piped distribution of natural gas, and high-speed rail is limited to 49 percent direct ownership. 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 2019, Taiwan's Ministry of Economic Affairs (MOEA) proposed amendments to the Statute for Investment by Foreign Nationals to bolster inbound investment, including an amendment that would eliminate pre-investment approval requirements for investments under \$1 million. However, those amendments were not approved by the Legislative Yuan, and MOEA is revisiting its proposal. The United States has repeatedly raised the need for transparency, consistency, predictability, and timeliness in Taiwan's investment review process.

### **OTHER BARRIERS**

#### **Pharmaceuticals**

U.S. stakeholders have highlighted the lack of transparency and predictability with respect to pricing approval procedures, the categorization of drugs with respect to price adjustments, and mechanisms for calculation of drug expenditure targets, including the new horizon scanning process. In 2013, the National Health Insurance Administration (NHIA) began implementing a pilot drug expenditure target (DET) program, which was an improvement over the less predictable price volume survey system. U.S.

stakeholders have expressed concerns over the DET program's inconsistent treatment of different forms of patented drugs with respect to price adjustments and the calculation of annual drug expenditure targets.

Because of the COVID-19 pandemic, NHIA postponed its decision on whether to continue the DET pilot program after 2021. U.S. stakeholders continue to recommend that NHIA improve the DET program and its overall pricing system, including by addressing the mechanism of providing drug-price discounts to hospitals (the so called R-zone system), reestablishing the DET formula, and addressing the inefficient reimbursement timeline.

### **Medical Devices**

Taiwan is a significant market for U.S. medical device exports. In January 2020, Taiwan passed its first-ever Medical Devices Act, after which TFDA began issuing regulations to implement provisions of the Act. Important progress was made during the June 2021 TIFA Council meeting when Taiwan committed to accept Medical Device Single Audit Program (MDSAP) audit reports in lieu of its Establishment Inspection Report protocol before the end of 2021. On October 21, 2021, TFDA published a notice implementing this commitment and allowing for TFDA's expedited review process to include MDSAP audit reports. Taiwan's recognition of MDSAP audit reports allows U.S. exporters to maintain the same level of market access granted by Taiwan pursuant to the 1998 United States–Taiwan Exchange of Letters Regarding Information Exchange, as agreed under the auspices of AIT and TECRO. U.S. stakeholders will continue to monitor Taiwan's implementation of the October 2021 notice.

In Taiwan, self-pay options are available for implanted devices and a range of other commonly used medical devices that are not approved for NHIA reimbursement. These medical devices must be issued a self-pay code. According to U.S. stakeholders, hospitals that ask patients to self-pay for devices without a code are subject to administrative penalties by NHIA. NHIA began assigning temporary self-pay codes in April 2014 but requires a review of new therapeutic procedures for which the medical device is used. U.S. stakeholders have raised concerns with these procedures, highlighting that increased process transparency and faster issuance of temporary self-pay codes are needed to accelerate patient access to innovative devices.

### **Transparency in Rulemaking**

In 2016, the mandatory notice-and-comment period for proposed laws and regulations originating in executive agencies that relate to trade, investment, or intellectual property rights was extended from 14 days to 60 days. Article 154 of the Administrative Procedure Act provides an exemption from the notice-and-comment requirement and the flexibility of a shortened comment period where there is an urgent need for legal implementation. According to the National Development Council, there were 791 draft regulations circulated for public comment in the first 9 months of 2021. About 70 percent of them had a 60-day comment period, while 6 percent had a comment period of from 30 days to 60 days, and 14 percent had a comment period of from 14 days to 30 days.

# THAILAND

## TRADE AGREEMENTS

### The United States–Thailand Trade and Investment Framework Agreement

The United States and Thailand signed a Trade and Investment Framework Agreement (TIFA) on October 23, 2002. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Thailand.

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

Thailand's average Most-Favored-Nation (MFN) applied tariff rate was 10.2 percent in 2020 (latest data available). Thailand's average MFN applied tariff rate was 29.3 percent for agricultural products and 7.1 percent for non-agricultural products in 2020 (latest data available). Thailand has bound 75.2 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 28.0 percent.

High tariffs in many sectors continue to hinder access to the Thai market for many U.S. products. The highest *ad valorem* tariff rates apply to imports competing with locally produced goods, including automobiles and automotive parts, motorcycles, beef, pork, poultry, tea, tobacco, flowers, beer and spirits, and textiles and apparel. For example, Thailand applies import tariffs of 80 percent on motor vehicles, 60 percent on motorcycles and certain clothing products, and 54 percent to 60 percent on distilled spirits. Thailand applies a 10 percent tariff on most pharmaceutical products, including almost all products on the World Health Organization's list of essential medicines, with the exception of some vaccines, antimalarials, and antiretrovirals, which are exempt.

MFN applied tariff rates on imported processed food products range from about 30 percent to 50 percent. Tariffs on meats, fresh fruits and vegetables, fresh cheese, and pulses (*e.g.*, dry peas, lentils, and chickpeas) are similarly high. For corn, the in-quota tariff is 20 percent, and the out-of-quota tariff is 73 percent. The type of potato used to produce frozen French fries is not produced in Thailand, yet imports of these potatoes face a 30 percent tariff. Tariffs on apples and almonds are 10 percent, while duties on pears, cherries, citrus, prepared almonds, and table grapes range from 30 percent to 40 percent.

#### *Taxes*

Wine imports are subject to a 54 percent tariff and six different taxes; taken together, the effective duty and tax burden is nearly 400 percent. Industry has raised concerns about the import tariffs on wine and disparate *ad valorem* taxes that appear to favor domestic white liquor.

#### *Import Fees*

Thailand imposes food safety inspection fees in the form of import permit fees on all shipments of uncooked meat. The current fee level was set in October 2016 at 7 baht per kg (approximately \$219 per metric ton (MT)) for imported uncooked meat for food or feed and at 3 baht per kg (approximately \$94/MT) for imported uncooked meat for purposes other than food or feed. These fees appear to be disproportionate to

the cost of services rendered. Under the Thai Animal Epidemics Act of 2014, the Department of Livestock and Development (DLD) has discretionary authority to increase these import fees up to five-fold.

## **Non-Tariff Barriers**

### *Import Restrictions*

Despite Thailand's 20-year Alternative Energy Development Plan (2018-2037), which aims to increase biofuels consumption, Thailand does not allow the import of biofuels intended for fuel use. Fuel ethanol imports require approval and issuance of permits by Thailand's Ministry of Energy, but to date the ministry has not issued any approvals or permits. Thailand originally aimed to phase out premium gasoline containing 10 percent ethanol blends (E10) by 2018, with the intention of making 20 percent ethanol blends (E20) the primary gasoline. However, concerns over sufficient feedstock availability in Thailand has repeatedly delayed the full transition from E10 to E20.

### *Import Licensing*

Import licenses are required for the importation of many raw materials, petroleum, industrial machinery, textiles, pharmaceuticals, firearms and ammunition, and agricultural items. In some cases, imports of certain items not requiring licenses are subject to extra fees and certificate of origin requirements. Additionally, a number of products are subject to import controls under miscellaneous laws.

Thailand imposes domestic purchase requirements on importers of several products subject to tariff-rate quotas (TRQs) including corn, soybeans and soybean meal. Thailand also imposes a domestic purchase requirement on importers of feed wheat, which is not subject to a TRQ.

### *Customs Barriers and Trade Facilitation*

Thailand provides incentives to customs officials who initiate investigations or enforcement actions. Thailand is one of the only major trading partners of the United States that still has such an incentive system. This incentive system has been a cause of concern for many years among Thailand's trading partners due to the potential for corruption and the cost, uncertainty, and lack of transparency associated with the customs penalty/reward system. Ostensibly to address these problems, at least in part, Thailand amended the Customs Act in 2017. The amendment caps incentives at 20 percent of the sale price of seized goods (or of the fine amount) with a cap of 5 million baht (approximately \$156,000). The amendment also limits post audit inspections to five years from the date of import or export. While a welcome development, the reduction of this remuneration is insufficient to address the issue of personal incentives.

The Customs Department is conducting a five-year review (2019 through 2024) of the customs penalty and reward system to determine whether its laws and regulations need to be revised to increase fairness and reduce corruption. The review will study the revenue impact of the penalty/reward system enacted under the 2017 law and compare incentive schemes used in other countries.

### *Price Controls*

The Thai Government, through the Central Committee on Price of Goods and Services, has the legal authority to control prices or set *de facto* price ceilings for essential daily-use items such as food and consumer products; farm-related products (fertilizers, pesticides, animal feed, tractors, rice harvesters); construction materials; paper; petroleum; and medicines. The controlled list is reviewed at least annually, but the price-control review mechanisms are non-transparent. In practice, the Thai Government influences

prices in the local market through its control of state monopoly suppliers of products and services, such as in the petroleum, oil, and gas industry sectors.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

#### *Labeling Requirements on Alcoholic Beverages*

Thailand's Office of Alcohol Control administers regulations on the labeling of alcoholic beverages. Thailand developed two guidelines in 2016 and 2017 to clarify specific enforcement procedures. The guidelines were intended to control the language and images used on the labels of alcoholic beverages. However, certain requirements in the guidelines were not clearly defined, which led to uncertainty among beverage producers. The United States raised concerns about the potential for uneven application of the guidelines given the unclear language. The lack of clear definitions and interpretation of the 2016 and 2017 guidelines has created difficulties in implementing and enforcing the regulations. Thailand notified the United States in 2019 that it would issue a third revised guideline but has not done so as of March 2022.

#### *Agricultural Biotechnology*

Thailand's regulations prohibit the cultivation of genetically engineered (GE) crops, but allow imports of processed food containing GE ingredients, GE cotton lint, and GE soybeans and GE corn for feed and industrial uses.

In July 2019, Thailand notified the WTO of a draft regulation entitled "Labelling of Genetically Modified Foods". Developers of GE crops and industry stakeholders are concerned that, if implemented as written, the labelling standards in the regulation would allow for discretion in enforcement and cause asynchrony across product approvals, potentially delaying or disrupting the trade flow of soybeans, corn, and processed foods containing GE organisms and microorganisms into Thailand. The United States has submitted comments to Thailand on this notification. The Thai Food and Drug Administration included a positive list and a temporary approval list for GE corn and soybeans in the draft regulations to help facilitate some trade during a proposed five-year grace period.

The Ministry of Natural Resources and Environment (MONRE) held public hearings in early 2020 on a revised draft of the Biodiversity Act. The Biodiversity Act includes biosafety regulations covering research, field trial, and commercialization of GE plants, animals, and microorganisms. MONRE intends to submit draft legislation to the Cabinet though the timeline for doing so remains unclear. The draft Biodiversity Act's definition of biosafety covers access to biological resources, fair and equitable sharing of benefits arising from utilization of biodiversity, and the Cartagena Protocol on Biosafety's provision on living modified organisms' effects on biodiversity.

### **Sanitary and Phytosanitary Barriers**

#### *Import Ban on Agricultural Chemicals*

In October 2019, Thailand's National Hazardous Substances Committee (NHSC) recategorized three agricultural chemicals, or active ingredients, to Type 4 toxic substances, a category of chemicals that is prohibited from production, import, export, or possession. The three agricultural chemicals included two herbicides (glyphosate and paraquat) and an insecticide (chlorpyrifos). The NHSC later reversed its decision for glyphosate but kept the recategorization for paraquat and chlorpyrifos. The Ministry of Public Health prohibited the domestic use of paraquat and chlorpyrifos effective June 1, 2020, while the ban on

imported products went into effect June 1, 2021. The Ministry of Public Health established limits of detection between 0.005 mg/kg and 0.02 mg/kg for both paraquat and chlorpyrifos for the following three food categories: (1) food grains; (2) fresh vegetables and fruits; and (3) meat, milk, and eggs.

#### *Audits of Facilities for Imports of Animal-Derived Products*

Thailand's DLD requires audits of production facilities in the exporting country to allow the importation of seven animal-derived products, including meat, meat and bone meal, and feather meal. Each audit approval is valid for five years. In addition, DLD imposes five-year facility audit approvals for imported animal feed ingredients derived from or containing poultry products, including poultry meat meal, poultry by-products meal, feather meal, blood meal, plasma powder, egg powder, poultry fats and/or oils, and palatability enhancers or flavoring agent innards. The United States has recommended that Thailand adopt a systems approach on audits to reduce the expense and burden of this requirement. The DLD conducted a fact-finding trip in late 2019 but has not yet submitted the questionnaire to the U.S. Department of Agriculture to proceed with the audit.

#### *Import Restrictions on Beef and Beef Products*

Thailand restricts beef offal imports. DLD confirmed that fresh tongue, cheek meat, oxtail, tendon, hanging tender, inside skirt, and outside skirt are categorized as muscle cuts and are thus permissible. In September 2018, DLD conducted an audit of the U.S. production system and transmitted its draft findings to the United States in March 2019. In its report, DLD notably requested confirmation that U.S. beef and beef products for export to Thailand are not derived from cattle treated with beta-agonists, including ractopamine, a condition that would potentially bar entry of U.S. beef offal into the Thai market.

#### *Plant Quarantine Restrictions*

Thailand requires fumigation for shipments of dried distiller grains with solubles (DDGS) due to the detection of quarantine pests in August 2018. In October 2021, the United States worked closely with Thailand to establish science-based fumigation requirements for U.S. DDGS exports to Thailand that include both methyl bromide and phosphine fumigation.

#### *Import Restrictions on Pork*

In 2012, after the Codex Alimentarius Commission established maximum residue limits (MRLs) for ractopamine in cattle and pig tissues, Thailand indicated it would lift its ban on imports of pork from countries that allow ractopamine use, including the United States. However, Thailand has not yet established MRLs for ractopamine in pork, which effectively prevents the importation of U.S. pork products. In 2019, Thailand and the United States agreed to review potential risk management options for Thailand to develop an MRL for ractopamine. However, due to lack of progress on the issue, effective December 30, 2020, the United States revoked approximately one-sixth of Thailand's duty-free trade preferences under the U.S. Generalized System of Preferences program.

#### *Import Bans on Poultry*

Thailand imposed a ban on U.S. live poultry and poultry meat due to the sporadic presence of highly pathogenic avian influenza in the United States. The ban applies to all such U.S. products, notwithstanding World Organization for Animal Health guidelines that recommend importing countries regionalize their bans rather than apply them on a country-wide basis. Thailand has banned U.S. turkey meat since late

2014. Thailand sent officials to conduct a production-system audit of U.S. turkey in July 2019. The United States continues to negotiate with the DLD to regain market access for uncooked U.S. turkey.

## **GOVERNMENT PROCUREMENT**

The Public Procurement Act (PPA) is the primary legal authority governing public sector procurement. The PPA applies to the national and local governments but excludes public-private partnership projects, state-owned enterprises directly engaged in commercial activities, and military units. The PPA allows for consideration of factors other than lowest price in procurement decisions, such as life-cycle cost analysis and total cost of ownership. Due to insufficient training and the large number of appeals of value-based or performance-based awards, most agencies, in practice, default to a lowest-cost technically acceptable procurement methodology.

Thailand's National Science and Technology Development Agency (NSTDA) introduced a Thai Innovation List in 2016 to develop domestic industrial capacity in target economic sectors, including pharmaceuticals and medical products. Only authorized Thai majority-owned companies may list products on the Innovation List. The Innovation List, which currently has more than 500 entries, grants special government procurement privileges for listed products. For example, Thai Government agencies and public hospitals must allocate at least 30 percent of their budgets for pharmaceutical products, medical products, and nutritional supplements on this list. More than 200 products, all of which are generic, are included on the list.

Thailand is not a Party to the WTO Agreement on Government Procurement (GPA), but it has been an observer to the WTO Committee on Government Procurement since June 2015.

## **INTELLECTUAL PROPERTY PROTECTION**

Thailand remained on the Watch List in the 2021 Special 301 Report. Although Thailand continues to make progress on intellectual property (IP) protection and enforcement, including: (1) by improving coordination of enforcement efforts to combat trademark counterfeiting and copyright piracy, (2) by increasing enforcement of online counterfeiting and piracy, and (3) and by taking legislative and administrative steps to address backlogs for patent and trademark applications. However, concerns remain.

Although the sale of counterfeit goods in physical markets has significantly decreased due to the impact of the COVID-19 pandemic and travel restrictions, the United States remains concerned about the availability of counterfeit and pirated goods online. Other U.S. concerns include online piracy by devices and applications that allow users to stream and download unauthorized content, overly broad technological protection measure exceptions, unauthorized camcording, unauthorized collective management organizations, the widespread use of unlicensed software in both the public and private sectors, the backlog in pending pharmaceutical patent applications, and cable and satellite signal theft. Draft amendments to the Copyright Law and Patent Act could address some concerns, but the Thai Parliament has not adopted these amendments as of March 2022. The United States will continue to monitor these issues.

The United States continues to encourage Thailand to provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. In addition, the United States continues to urge Thailand to engage in a meaningful and transparent manner with all relevant stakeholders before adopting new IP laws, regulations, or guidelines, including on pharmaceutical issues.

## **SERVICES BARRIERS**

### **Audiovisual Services**

The 2008 Motion Picture and Video Act authorizes Thailand's Film Board to establish ratios and quotas limiting the importation of foreign films. The Film Board had not exercised this authority, however, as of March 2022. Foreign investment in terrestrial broadcast networks is limited to 25 percent of registered capital and voting rights.

### **Express Delivery**

The Postal Service Act gives Thailand Post a legal monopoly on delivering letters and postcards up to two kilograms. Private express delivery companies must pay a fine up to 20 baht per item (less than \$1) for delivery of documents and shipments up to two kilograms in Thailand. Thailand also imposes a 49 percent limit on foreign ownership of companies providing land transport services.

### **Financial Services**

Thailand limits the number of licenses for foreign bank branches and subsidiaries and accepts applications for new foreign banking operations only sporadically. Thailand has not held a round of applications for new licenses since 2013, when Thailand granted new subsidiary licenses to two foreign banks. In addition, Thailand may grant new foreign banking licenses to banks from certain countries, conditioned on reciprocal treatment offered to Thai banks. Under this program, Thailand has offered foreign banking licenses to banks from Association of Southeast Asian Nation (ASEAN) countries under the ASEAN Banking Integration Framework.

In 2018, the Bank of Thailand expanded the types of service points allowed for foreign bank operations to include physical branches, off-premises ATMs, and appointed agents. Foreign subsidiaries may operate up to 40 service points, while foreign branches may open a maximum of three service points.

Foreign investors are authorized to establish wholly-owned bank subsidiaries. Foreign investment in existing domestic banks is limited to 25 percent of shares, although the Bank of Thailand can raise this amount to 49 percent on a case-by-case basis. In addition, the Minister of Finance, with a recommendation from the Bank of Thailand, may authorize foreign ownership above 49 percent if it is deemed necessary to support the stability of a financial institution or the overall financial system during an economic crisis.

Since 2013, Thailand has required in-country processing of all domestic retail debit electronic payment transactions for debit cards issued in Thailand. This requirement means foreign suppliers are precluded from supplying these services across borders and must establish a local presence and build processing facilities in Thailand. When a card is accepted on more than one network, at least one of those networks must be a domestic debit card network. Under the 2016 Thai Bank Chip Card Standard, the Bank of Thailand requires financial institutions that issue debit cards to issue cards with local-standard chips. Merchants and financial institutions are required to have equipment that can accept local-standard chips.

Foreign equity in life and non-life insurance companies is initially limited to less than 25 percent of the total number of voting shares that have been sold. Foreign directors may hold no more than 25 percent of the initial board of director seats. The Thai Government allows a company to increase the foreign equity in the company up to 49 percent and the seats held by foreign directors up to one-half of the board, if the company meets conditions relating to improving efficiency and competitiveness. In addition, the Ministry of Finance, with the recommendation of the Office of Insurance Commission, may permit a company to have foreign ownership exceeding 49 percent, or foreign directors comprising more than one-half of the

board, or both, under certain circumstances, such as for the purpose of strengthening the overall stability of the insurance sector.

## **Professional Services**

### *Legal Services*

Foreign nationals, with the exception of “grandfathered” non-citizens, may not provide legal services. In certain circumstances, foreign attorneys can obtain a limited license entitling them to offer advisory services in foreign and international law. U.S. persons may own interests in law firms in Thailand only if they enter into commercial association with local attorneys or local law firms.

### *Accounting Services*

The Foreign Business Act reserves accounting services for Thai nationals unless specific onerous conditions are met. As a result, foreign nationals cannot serve as professional accountants in Thailand. In addition, foreign nationals cannot be licensed as certified public accountants unless they are citizens of a country with a reciprocity agreement, pass the required examination in Thai, and legally reside in Thailand. Foreign accountants may serve as business consultants. Foreign nationals are permitted to own up to 49 percent of an accounting professional service but only through a limited liability company registered in Thailand.

### *Engineering Services*

Thailand’s Engineering Act assigns four classifications of engineering professionals: (1) senior professional engineer, (2) professional engineer, (3) associate engineer, and (4) adjunct engineer. Foreign engineers can only be certified as adjunct engineers, the lowest classification, regardless of qualifications. Applicants must pass an oral exam in Thai language (an interpreter with no engineering background can be used during the oral exam). Businesses have expressed concerns that the restrictions allow foreigners to work only in a small set of civil engineering services, and that local members of the profession control the onerous process in order to limit competition.

## **Telecommunications Services**

Thai law allows foreign equity up to 49 percent in basic telecommunications service providers and higher levels of foreign equity for providers of value-added services. This constitutes an improvement on the 20 percent foreign equity cap listed in Thailand’s provisional 1997 WTO commitments. On October 28, 2021, Thailand submitted an amendment to its WTO General Agreement on Trade in Services (GATS) schedule that represented incremental improvements to its 1997 WTO commitments. Thailand also maintains regulations to restrict “foreign dominance” in certain telecommunications operators, which the National Broadcasting and Telecommunications Commission has defined as holding at least half of all voting rights, having controlling power over the majority vote in shareholder meetings, or having the ability to appoint or remove half of the directors.

## **BARRIERS TO DIGITAL TRADE**

### **Technology**

The National Cybersecurity Act (CSA) entered into force in May 2019. The law is designed to strengthen the cybersecurity capabilities of government agencies. In 2021, the National Cybersecurity Agency (NCSA) published implementing regulations for the CSA that define critical information infrastructure (CII) and establish a national coordination center to monitor and resolve cyber threats. The seven sectors

classified as CII are: (1) national security, (2) essential government services, (3) banking and finance, (4) information technology and telecommunication, (5) transportation and logistics, (6) public utilities (electricity, petroleum and natural gas, and water utilities), and (7) health. Legal experts have raised concerns that the implementing regulations lack clear CII criteria and grant sector regulators broad authority to classify additional essential services as CII, creating uncertainty for businesses in those sectors. U.S. stakeholders have also raised concerns that the law gives NCSA broad powers to enter premises and to monitor, test, freeze, or seize computers without sufficient protections or opportunities to appeal, and that cybersecurity awareness and systems to prevent cyberattacks at public sector organizations remain weak and outdated.

On September 1, 2021, the Revenue Department began collecting a seven percent value added tax (VAT) on digital services provided by foreign businesses, including media downloads, games, stickers, brokerage services, and advertising. Foreign digital services providers with annual revenues exceeding 1.8 million baht (\$58,000) are required to register with the Revenue Department and make monthly VAT filings.

### **Data Localization**

In May 2021, the Thai Government issued a royal decree to postpone until May 31, 2022, the enforcement of most sections in the Personal Data Protection Act (PDPA). The deferral will provide more time for businesses to prepare for complying with the new legislation, which creates a Personal Data Protection Committee (PDPC) that is empowered to fine companies for noncompliance up to 5 million baht (approximately \$156,000). The PDPA restricts the transfer of personal data outside of Thailand, except to specific countries that the PDPC has determined provide adequate data protection or when other specific requirements in the PDPA are met. The United States will continue to engage with Thailand to promote interoperability between Thai and U.S. approaches to data protection to ensure the cross-border flow of data between Thailand and the United States.

### **Internet Services**

Thailand's Computer Crime Act provides the government expansive authority to regulate online content. A "Computer Data Filtering Committee" has power to obtain court approval to block a range of websites, including those that the Committee finds disseminate information violating public order.

The Computer Crime Act raises particular concerns for online services that host non-IP-protected, user-generated content. The Act establishes a liability shield for online service providers with respect to non-IP-protected, user-generated content if they comply with requirements to remove certain content within specified timeframes. However, the mandated timeframes vary across content types and are as short as 24 hours for some types of content. Without strict compliance, service providers will be subject to penalties and treated as if they had created the offending content themselves.

On the other hand, some U.S. stakeholders note the Computer Crimes Act has improved the environment for enforcement against online piracy with respect to copyright-protected content.

In August 2021, Thailand Electronic Transactions Development Agency (ETDA) introduced the Draft Royal Decree on the Supervision of Digital Platform Services. The draft decree imposes burdensome obligations on foreign businesses, including a local presence requirement, and creates criminal liability for local representatives for non-compliance with the draft decree, as well as broad authority for the ETDA to impose additional obligations. The draft decree was approved by the cabinet in October 2021 and, as of March 2022, was awaiting final approval from the Council of State.

## **INVESTMENT BARRIERS**

### **Limitations on Foreign Equity Participation**

The Foreign Business Act (FBA) lays out the framework governing foreign investment in Thailand. Under the FBA, a foreigner (defined as a person who is not a Thai national, a company that is not registered in Thailand, or a company in which foreign ownership accounts for at least 50 percent of total shares) must obtain an alien business license from the Ministry of Commerce’s Department of Business Development or other relevant ministry or regulator, such as the Bank of Thailand, before commencing business in a sector restricted by the FBA. Although the FBA prohibits majority foreign ownership in many sectors, U.S. investors registered under the United States–Thailand Treaty of Amity and Economic Relations (AER) are exempt. Nevertheless, the privileges under the AER do not extend to U.S. investments in the following areas: communications; transportation; fiduciary functions; banking involving depository functions; the exploitation of land or other natural resources; domestic trade in indigenous agricultural products; and the practice of professions reserved for Thai nationals.

## **LABOR**

In April 2020, the United States partially suspended Thailand’s tariff benefits under the Generalized System of Preferences (GSP) program due to Thailand’s failure to take steps to afford workers in Thailand internationally-recognized worker rights, particularly with regard to freedom of association. Approximately one-third of Thailand’s GSP-eligible trade, for which the United States is a relatively important market for Thailand, were excluded from duty-free treatment. Due to worker rights issues in the seafood and shipping industries, GSP eligibility was revoked for all seafood products from Thailand. As of March 2022, partial suspension of duty-free treatment under GSP remained in effect.

## **OTHER BARRIERS**

In general, U.S. stakeholders have expressed concern that Thai Government processes for revising laws and regulations affecting trade and investment lack consistency and transparency.

The Thai Ministry of Public Health currently sets the “median price or maximum procurement price” (MPP) for all medicines. U.S. stakeholders have expressed concerns that the current methodology and implementation of the MPP policy lacks transparency and predictability.

In 2019, Thailand amended the Medical Devices Act of 2008 and by October 2021 had finalized approximately 70 new sub-regulations to the amended Medical Devices Act. The Thai Food and Drug Administration has issued and implemented many of the sub-regulations without adequate notice and opportunity for comment by industry stakeholders, making it difficult for U.S. companies to comply with the multitude of announced and forthcoming changes.

### **Bribery and Corruption**

Corruption continues to hamper Thailand’s economy and trade, despite ongoing legislative and administrative efforts to address the problem. Stakeholders say that irregular payments and bribes are often paid to obtain favorable judicial decisions. The National Anti-Corruption Commission (NACC) is the primary independent body vested with powers and duties to counter corruption in the public sector. The NACC is responsible for investigating and prosecuting corruption involving high-ranking government officials and politicians. The Public Sector Anti-Corruption Commission under the Ministry of Justice investigates and prosecutes corruption cases involving lower-level government employees. While several agencies have jurisdiction over corruption issues, their actions are not always complementary. Thai law

enforcement's investigative and prosecutorial capacity is limited, and Thai laws focus predominantly on abuse of office rather than financial or asset-related malfeasance. Anticorruption mechanisms continue to be employed unevenly and for political purposes, and the lack of transparency in many administrative procedures serves to facilitate corruption.

In 2018, a new anticorruption law replaced the 1999 Organic Act on Countering Corruption and its various amendments. The new anticorruption law, the "Act Supplementing the Constitution Relating to the Prevention and Suppression of Corruption," maintained a key provision criminalizing bribe-giving by legal entities but expanded the definition of legal entities to include any foreign company (registered abroad but operating in Thailand) and its associated persons (employees, joint venture partners, agents, etc.). Mandatory fines for bribery must be equal to or up to double the amount of the benefit received from the corrupt act. The 2018 law also allows NACC to seek international cooperation in investigations.

The Comptroller General's Integrity Pact program seeks to deter corruption in public procurement in Thailand. Projects covered under the Integrity Pact since 2015 are subject to third-party monitoring by the independent nongovernmental organization, the Anti-Corruption Organization of Thailand.

# TUNISIA

## TRADE AGREEMENTS

### **The United States–Tunisia Trade and Investment Framework Agreement**

The United States and Tunisia signed a Trade and Investment Framework Agreement (TIFA) on October 2, 2002. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Tunisia. The most recent meeting of the United States–Tunisia Trade and Investment Council, established under the TIFA, was held in May 2021.

## IMPORT POLICIES

### **Tariffs**

Tunisia's average Most-Favored-Nation (MFN) applied tariff rate was 11.6 percent in 2016 (latest data available). Tunisia's average MFN applied tariff rate was 31 percent for agricultural products and 8.3 percent for non-agricultural products in 2016 (latest data available). Tunisia has bound 58 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 57.9 percent.

Goods imported into Tunisia can be subject to tariff rates as high as 200 percent. Agricultural goods are subject to customs tariffs ranging from zero percent to 36 percent, with most agricultural imports at the high end of this range. All imported goods subject to tariffs are assessed a customs administrative fee amounting to three percent of the total duties paid on the import.

### **Non-Tariff Barriers**

Tunisia maintains a number of non-tariff barriers. Approximately three percent of imported goods, including agricultural products, automobiles, and textiles, require an import license issued by the Ministry of Trade and Export Development. Tunisia also imposes certain quotas, especially for imported consumer goods that compete with local products. Importers of these goods must request an allotment from the Tunisian Government to receive an import license. The licenses are typically valid for 12 months after issuance by the Ministry of Trade and Export Development. Several agricultural products are also subject to burdensome technical import requirements established in a book of specifications.

Tunisian law prohibits the export of foreign currency from Tunisia as payment for imports prior to the presentation of documents to the importer's bank confirming shipment of the merchandise from the country of origin. In addition, the Central Bank of Tunisia prohibits Tunisian purchasers from using foreign currency to pay for specific imported goods until their banks confirm that they have sufficient foreign currency in their accounts. These requirements remain a source of confusion and difficulty for some U.S. companies.

The Tunisian Central Pharmacy maintains a monopoly on pharmaceutical imports. Some U.S. companies complain that they face pressure to lower drug prices in order to obtain market authorization and, following authorization, encounter reimbursement delays of up to one year.

### *Customs Barriers and Trade Facilitation*

Customs processing remains cumbersome, labor intensive, and, for the most part, reliant on paper documents, despite some steps in 2019 to digitize certain customs processes. Inconsistent application of

customs processes within the Tunisian Customs Administration can be a significant obstacle for importers. Risk management and other targeting is primarily conducted manually by reviewing large volumes of entry documents in paper form, although Tunisia expanded its simplified customs clearance process for authorized operators from 56 companies in 2019 to 105 companies in 2021.

Tunisia notified the latest update to its customs valuation legislation to the WTO in May 2011, but has not yet responded to the WTO Checklist of Issues describing how the Customs Valuation Agreement is being implemented.

Tunisia ratified the WTO Trade Facilitation Agreement (TFA) in July 2020. Tunisia is overdue in submitting two transparency notifications related to import, export, and transit regulations; and customs contact points for the exchange of information. These notifications were due to the WTO on February 22, 2017, according to Tunisia's self-designated TFA implementation schedule.

## **GOVERNMENT PROCUREMENT**

The High Committee on Public Procurement, within the Prime Ministry, represents the highest authority for examination, auditing, recourse, and assistance in all public procurement operations. As of September 2018, all public procurement operations are conducted electronically through a bidding platform called the Tunisia Online E-Procurement System. Winning bidders are selected on the basis of "the lowest bid that meets the specifications." However, this does not apply to procurements by the Ministry of Defense, the Ministry of Interior, three major state banks, and other ministries when their procurements relate to security. Moreover, Tunisia's public procurement law gives preference to national products over foreign products of equal quality, provided the domestic products are not more than 10 percent more expensive.

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

## **INTELLECTUAL PROPERTY PROTECTION**

Tunisia has made some progress with respect to intellectual property (IP) protection and enforcement. However, the prevalence of, and trade in, counterfeit and pirated goods remains a concern. The United States will continue to engage with Tunisia to improve IP protection and enforcement in the region.

## **BARRIERS TO DIGITAL TRADE**

The Tunisian Dinar is convertible for limited current account transactions only. Tunisian citizens cannot open foreign currency bank accounts, with some exceptions. This limits Tunisians' ability to purchase goods and services online or receive payments from foreign digital firms. Foreign investors and resident exporters have the right to hold foreign currency accounts with authorization from the Central Bank of Tunisia. Individuals of Tunisian nationality and any company incorporated in Tunisia (and receiving most of its revenues from operations in Tunisia) operating in the telecommunications, information technology, education and academia, advice or research sectors can use "Digital Technology Charge Cards" issued by the Ministry of Communication Technologies and Digital Economy to make international purchases of certain digital products and services. Individual users are limited to the equivalent of 1,000 dinars (approximately \$357) in annual purchases, while companies are limited to 10,000 dinars (approximately \$3,570), and startups to 100,000 dinars (approximately \$35,700). These thresholds are fixed in dinars so the actual value of the allotments has been impacted by currency fluctuations.

## **INVESTMENT BARRIERS**

Entering Tunisia's domestic market, particularly the services sector, remains difficult for foreign investors. Foreign ownership is limited to 49 percent in many sectors, and the process of investing is particularly challenging in areas that are not government priorities (*i.e.*, where there are no public tenders). Under Tunisia's investment code, high-value joint ventures with a foreign investor must be approved by the Tunisian Government, which assesses the potential benefit of the investment to the Tunisian economy. Investors in Tunisia frequently complain of delays, lack of transparency regarding rules and fees, competition from state-owned enterprises, and other bureaucratic complications in the process of registering a business.

In May 2018, the government adopted ministerial decree No. 417, publishing a list of 100 economic activities in various sectors that required government authorization for investment. The sectors include: natural resources and construction materials; transportation by land, sea, and air; banking; finance; insurance; hazardous and polluting industries; health; education; telecommunications; and services. At the time the decree was adopted, the government announced plans to shorten the list of sectors requiring authorization within three years. In June 2021, the government announced the elimination of government authorization requirements for 27 business activities in various sectors. The change would allow foreign and local investors to open businesses under conditions detailed in books of specifications without waiting for a government license. The action is meant to revive an economy heavily impacted by the COVID-19 pandemic and boost investment in sectors such as tourism, transportation, finance and renewable energy. While text of the government's decree has yet to be published, the elimination of authorization categories would help improve Tunisia's investment climate. There is no clear timeline for when authorization requirements will be removed for additional sectors.

## **SUBSIDIES**

Tunisian industrial companies that produce for the export market benefit from duty-free import of capital goods when there are no local equivalent capital goods. These companies also benefit from a full tax and duty exemption on raw materials, semi-finished goods, and services necessary for operation.

Since 2018, Tunisia has failed to respond to questions raised in the WTO Committee on Agriculture in connection with its agricultural domestic support and export subsidy outlays.

## **STATE-OWNED ENTERPRISES**

State-owned enterprises (SOEs) compete with the private sector in industries such as telecommunications and maintain monopolies in key economic sectors considered sensitive by the government, such as transportation and distribution of water.

## **OTHER BARRIERS**

Although Tunisia continues to make efforts to expand opportunities for businesses, U.S. companies across a range of sectors report that cumbersome, time-consuming government processes and inconsistent regulatory practices make it difficult to enter and operate in the Tunisian market.

# TURKEY

## TRADE AGREEMENTS

### The United States–Turkey Trade and Investment Framework Agreement

The United States and Turkey signed a Trade and Investment Framework Agreement on September 29, 1999. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Turkey.

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

Turkey's average Most-Favored-Nation (MFN) applied tariff rate was 11.1 percent in 2019 (latest data available). Turkey's average MFN applied tariff rate was 42.3 percent for agricultural products and 6.1 percent for non-agricultural products in 2019 (latest data available). Turkey has bound 50.5 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 28.9 percent.

Turkey has taken advantage of substantial differences between its applied and WTO bound tariff rates to increase tariffs significantly across multiple sectors. Since mid-2014, Turkey has increased tariffs by an average of 26 percent on products classified in 50 Harmonized System chapters, affecting a wide range of sectors, including furniture, medical equipment, tools, iron, steel, apparel, footwear, carpets, and textiles.

The Turkish Government announced on April 18, April 20, May 20, and June 28, 2020, decisions to impose additional temporary import tariffs between 2 percent to 50 percent for more than 4,000 products. The extra import duties, which were originally scheduled to be lifted by the end of September 2020, have been extended indefinitely. None of the additional tariffs exceed Turkey's WTO bound tariff rates. These additional duties will not be applied to imports originating from the European Union (EU), European Free Trade Association (EFTA), and other countries which have preferential trade agreements with Turkey.

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.

On June 21, 2018, Turkey imposed additional duties on U.S. products, in retaliation against the United States' March 2018 decision to take action on imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended, that threaten to impair U.S. national security. Turkey imposed retaliatory duties on more than 20 U.S.-originating goods, including an additional 60 percent tariff on passenger cars and parts, a 70 percent tariff on distilled spirits, a 30 percent tariff on leaf tobacco, a 25 percent duty on rice, and a 10 percent tariff on wood products and tree nuts.

Turkey continues to maintain high tariff rates on many imported food and agricultural products. Tariffs on fresh fruits range from 15 percent to 146 percent, while the range for poultry tariffs is between 23.5 percent and 65 percent. For a number of commodities in high demand, however, the government prior to 2018 had made limited allowances for duty free imports. In 2018, Turkey established zero tariff-rate quotas (TRQs)

on wheat, barley, and corn, later adding pulses and rice. The quota amounts authorized for Calendar Year (CY) 2021 were the same as for CY 2020 and allowed for duty-free wheat imports up to 1,500,000 tons, barley imports up to 700,000 tons, corn imports up to 700,000 tons, rice imports up to 100,000 tons, and pulse imports up to 100,000 tons. The Turkish Government executes these TRQs through the Turkish Grain Board (TMO), a government entity which imports the commodities duty free through publication of purchase tenders. Due to ongoing food inflation, on December 31, 2021, Turkey extended the temporary elimination of tariffs on wheat, corn, barley, rye, oats, chickpeas, and lentils, which had been initially implemented on September 8, 2021, through December 31, 2022. Domestic vegetable and cooking oil prices have also increased significantly, resulting in the December 31, 2021, announcement of Turkey's temporary elimination of tariffs on sunflower and safflower seed for crushing, crude sunflower oil for food, and crude sunflower and safflower oil for technical purposes through June 30, 2022.

### *Taxes*

On August 13, 2021, Turkey decreased its special consumption tax (OTV) on some imported passenger automobiles and increased the minimum thresholds at which the duties are imposed. The OTV rates on automobiles with an engine volume not exceeding 1600 cubic centimeters (cc) decreased to 45 percent to 80 percent (down from 60 percent to 80 percent), depending on base value. The OTV rates on automobiles with engine capacity between 1,600 cc and 2000 cc decreased to 45 percent to 80 percent (down from a flat 80 percent), depending on base value. The first tier threshold (now taxed at 45 percent) for an automobile with an engine capacity of less than 2000 cc increased from Turkish lira (TL) 0 to 85,000 (approximately \$8,920) to TL 0 to 92,000 (approximately \$9,600). The second tier (now taxed at 50 percent) applies to automobiles with a base value from TL 92,000 to TL 150,000 (approximately \$15,485), and the third tier (now taxed at 80 percent) applies to automobiles with a base value above TL 150,000. For electric automobiles with motor power above 50 kilowatts and motor cylinder volume less than 1800 cc, the rate ranges were changed to 45 percent to 80 percent, depending on base value.

On January 3, 2022, Turkey increased the OTV on “List 3” items, in line with the domestic producer price index (PPI) inflation as determined by the Turkish Statistical Institute. “List 3” items include alcoholic beverages, fruit juices, soft drinks, and tobacco products. The OTV law requires “List 3” items to be automatically reassessed every six months to adjust the OTV in line with inflation. Due to the announced 47.39 percent PPI inflation in the second half of 2021, the OTV on these products increased by the same amount, raising the OTV on wine from TL 11.8 (approximately \$1.68) to 17.4 (approximately \$2.48), on sparkling wine from TL 79.5 (approximately \$11.34) to TL 117.2 (approximately \$16.72), and on beer from 63 percent plus TL 2.4 (approximately \$0.34) to 63 percent plus TL 3.5 (approximately \$0.50). The OTV on distilled spirits with an alcohol rate by volume of 18 percent or less increased from TL 95.3 (approximately \$13.59) to TL 140.5 (approximately \$20.04) and on distilled spirits with an alcohol rate by volume of 22 percent or more increased from TL 327 (approximately \$46.65) to TL 482 (approximately \$68.76). The OTV tax is in addition to the VAT and tariffs on these products, levied on domestic and imported alcohol, and accounts for approximately 65 percent of the price of beer and distilled spirits in Turkey.

## **Non-Tariff Barriers**

### *Import Restrictions*

Turkey in 2015 banned the import of nearly all refurbished parts, which affects products in several sectors, including computer equipment and medical devices. Turkey also requires that construction equipment, tractors, and agricultural equipment be imported during the year in which individual units are manufactured,

effectively limiting (given long lead times for shipment) the amount of U.S. exports of such equipment to Turkey.

### *Import Licensing*

Turkey requires import licenses for some agricultural products and for various products that need after-sales service such as photocopiers, advanced data processing equipment, and diesel generators. U.S. firms complain that a lack of transparency in Turkey's import licensing system results in costly delays, demurrage charges, and other uncertainties that inhibit trade.

### *Customs Barriers and Trade Facilitation*

Turkish documentation requirements for many imports are onerous, inconsistent, and non-transparent, often resulting in shipments delayed at Turkish ports. U.S. exporters of certain industrial goods, and of food products such as rice, dried beans, pulses, sunflower seeds, wheat, and walnuts, have reported concerns with decisions by Turkish customs authorities on the valuation of some of their products. Further, the Ministry of Trade periodically mandates tracking and monitoring requirements for certain imports. In March 2020, the Ministry of Trade expanded its mandatory foreign exporter registration process to a list of 31 agricultural commodities, including almonds, walnuts, peanuts, peanut butter, tea, garlic, bananas, fresh peppers, flaxseed, rapeseed, and sunflower seed products. U.S. exporters of tree nuts are especially affected by this new requirement.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

#### *Pharmaceuticals – Good Manufacturing Practices Certification*

Turkey's amended "Regulation on the Pricing of Medicinal Products for Human Use," which took effect on March 1, 2010, requires foreign pharmaceutical producers to secure a Good Manufacturing Practices (GMP) certificate based on a manufacturing plant inspection by the Turkish Ministry of Health (MOH) officials before their products can be authorized for sale in Turkey.

Prior to 2010, the MOH recognized GMP inspections performed by the U.S. Food and Drug Administration or the European Medicines Agency as sufficient to confirm that Turkey's GMP requirements were met. However, the 2010 regulation requiring that Turkish authorities themselves perform the inspections led to severe delays in obtaining GMP certifications for many pharmaceutical products because of an MOH inspection backlog. The delay in GMP inspections prolonged MOH's already lengthy processes for granting final approvals to place these products on the Turkish market. Following repeated U.S. requests to Turkey that it accelerate the timeframe for market access approval, the MOH, starting in 2016, authorized parallel submission (rather than sequential submission) of GMP inspection and marketing approval applications for MOH-designated "Priority One" (i.e., highly innovative and/or life-saving) pharmaceutical products imported from U.S. and EU firms. While a positive step, the MOH to date has shown no willingness to apply this approach to all pharmaceutical product applications. As a result, U.S. manufacturers report that GMP inspection-related delays have effectively closed the Turkish market to certain new drugs awaiting registration and approval.

#### *Cosmetics*

In December 2018, Turkey issued a notice for comment on draft amendments to its cosmetics regulation. The proposed changes were substantive, including requirements that companies submit confidential

business information and potential trade secrets, not typically required for cosmetics market authorizations. Turkey then implemented these changes in its online cosmetics registration system, without notifying the draft amendments to the WTO or publishing the final regulation. In addition, Turkey introduced a public database, which includes reproducible files of cosmetics product labels and other information of potential use for counterfeiters.

Following concerns raised by the United States bilaterally and at the WTO Committee on Technical Barriers to Trade, Turkey agreed to suspend implementation of the measure, notify the draft amendments, and conduct additional public consultations. In December 2020, Turkey published an updated draft amendment to its cosmetics regulation and a new notice for domestic comment, followed by a notification of a new draft to the WTO in June 2021. U.S. industry has indicated that the draft amendment represents a positive change and may help to avoid creation of unnecessary obstacles to trade.

#### *Food and Feed Products – Mandatory Biotechnology Labeling*

In 2010, Turkey enacted a comprehensive Biosafety Law, which, *inter alia*, mandates the labeling of food or feed derived from agricultural biotechnology if the presence of genetically engineered (GE) ingredients exceed a certain threshold. Turkey asserts that the labeling requirement's objective is to protect public health and the environment.

The Biosafety Law also mandates other onerous traceability procedures for movement of biotechnology-derived animal feed, including a requirement that each handler maintain traceability records for 20 years. Those who do not keep such records have been prosecuted by Turkish authorities for both criminal and civil violations.

### **Sanitary and Phytosanitary Barriers**

#### *Agricultural Biotechnology*

Although Turkey notified the Biosafety Law to the WTO Committee on Sanitary and Phytosanitary Measures prior to its original enactment, the Turkish Government has failed to notify a subsequent revision of the law, its implementing regulations, or its various regulatory controls. U.S. agricultural biotechnology developers have expressed reluctance to seek regulatory approvals in Turkey for individual biotechnology products due to onerous liability requirements imposed by the Biosafety Law, unclear procedures for the assessment required to receive approval, and concerns regarding the protection of applicants' confidential information.

Following the Turkish Government's move to an Executive Presidency system in 2018, the Biosafety Board established under the Biosafety Law was abolished. The authority for biotechnology approvals now rests with the Ministry of Agriculture and Forestry, which grants final approvals after a biotechnology product is assessed by both a Risk Assessment Committee and a Socio-economic Assessment Committee under the Ministry's Agricultural Research and Policies Directorate General (TAGEM). In the past, the now-abolished Biosafety Board rejected applications submitted by Turkish importers for approval of several biotechnology corn and soybean products without providing scientific justification. No agricultural biotechnology products have been approved for food use or cultivation. The lack of approvals for new biotechnology products from August 2017 until January 2021 has led to severe market access problems for U.S. exports, with U.S. soybean shipments to Turkey falling to effectively zero. In January and February 2021, the Turkish Government approved three new soybean products and two new corn products, and renewed approval for three existing soybean products that were set to expire. The Ministry of Agriculture and Forestry subsequently cancelled the approval of five corn products set to expire December 24, 2021. On January 7, 2022, the Ministry announced the additional approval of one new soy product and one new

corn product, and cancelled two corn products containing stacked biotechnology traits that expired on December 24, 2021. As of January 2022, a total of 36 products, of which 14 are soybean and 22 are corn, have been approved for use in animal feed in Turkey. Turkish officials have said they want to keep the total number of approved products at this level, without providing justification. Nine additional applications remain outstanding and have been pending since 2015, despite the law's official 270-day approval timeline. Some of the Turkish agricultural associations that previously submitted applications for the approval of these products have declined to sponsor their renewals, citing the dysfunctional and non-science-based approval system.

Turkey's delays in reaching approval decisions are exacerbated by its impractical low-level presence policy. If a shipment tests positive for the presence of an unapproved biotechnology product or ingredient at any level, the cargo is rejected and cannot be used for feed or food. There is an exception to this prohibition for unapproved products with pending biotechnology approval applications for use in feed; such products are allowed to be present up to a 0.1 percent threshold. For cargo intended to be used for feed there is tolerance for up to a 0.9 percent presence in a shipment for approved (but not declared) biotechnology products. If the cargo contains the presence of an approved product at greater than 0.9 percent, labeling is required.

Turkey has also imposed onerous and unpredictable testing requirements for agricultural biotechnology for certain U.S. food and feed imports, including wheat, rice and other commodities. Turkish authorities began requiring testing of every shipment of U.S. wheat imports in 2013, following a single detection of an unapproved biotechnology product in a shipment from the United States. The testing has been limited to U.S. wheat imports, even though wheat imports from any other country would be equally as likely to test positive for trace amounts of unapproved biotechnology products, and there is currently no biotechnology wheat in commercial production in the United States. The testing requirements have effectively precluded U.S. wheat shipments to Turkey. Turkey also requires certifications from the country of origin that products exported to Turkey have not been produced using biotechnology microorganisms. Many products have been rejected at Turkish ports for lack of the required certifications.

### *Food Safety*

Turkey's efforts to harmonize its national food safety laws with EU requirements have the potential to impede U.S. trade where these requirements are not based on international standards or science-based decision-making. For example, U.S. producers of table grapes have expressed concerns that Turkey's efforts to harmonize its pesticide maximum residue levels (MRLs) with EU MRLs have the potential to put imports from the United States at a disadvantage compared to imports from EU suppliers. The Ministry of Agriculture and Forestry (MAF) is already planning to adopt a pesticide reduction schedule outlined in the EU's Farm to-Fork and European Green Deal Strategies. Additionally, on October 2, 2020, a Turkish court ordered MAF to cancel its regulatory approval of the commonly used herbicide glyphosate due to unproven safety concerns. MAF is currently appealing the decision and has announced no plans to repeal the approval in the interim. However, officials have stated that Turkish policy on this issue will be shaped by EU approvals and the outcome of pending civil liability trials in the United States, rather than on scientific risk assessments.

The importation of live animals, certain animal products, and certain plant materials requires a control certificate from the MAF. The issuance of this certificate is not automatic.

### *Plant Health*

Turkey has sporadically rejected imports of U.S. unmilled rice due to detection of white tip nematode. Turkey considers white tip nematode to be a quarantine pest even though 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.

In 2021, Turkish customs officials denied at least one dozen containers of U.S. cotton for the presence of unauthorized plant materials (*e.g.*, cotton seed particles) in the bales. Pictures and other statements sent by Turkey to U.S. Department of Agriculture Animal and Plant Health Inspection Service officials showed a normal number of small seed particles and materials in the raw cotton, left behind by the ginning process. Despite protests from Turkish importers that the small particles are routine in imports from all supplying countries and the cotton meets industry standards, those shipments have mostly been destroyed or exported to third countries.

### *Animal Health*

Turkey is an important transit point for U.S. poultry shipped to Iraq and the Middle East. Turkey's policy of banning the transit of poultry meat imports from high pathogenic avian influenza (HPAI) affected U.S. states, as well as U.S. states with identified cases of avian influenza in wild birds or identified cases of low pathogenic avian influenza, raises concerns under the science-based recommendations of the World Organization for Animal Health. Although Turkey implements regionalization within its own country and for its own poultry exports, Turkey does not accept regionalization for imports of live poultry or poultry products. Instead, Turkey bans exports from an entire U.S. state if HPAI or low pathogenic avian influenza (LPAI) occurs in a single area of that state.

## **SUBSIDIES**

Turkey is significantly overdue on its required WTO notifications with regard to agricultural domestic support. Although Turkey has large agricultural support programs in place, which include price support programs and input subsidies, Turkey has only recently started submitting overdue updates on domestic support programs to the WTO. In 2020, the update covered subsidies for the years 2014 to 2016, and during 2021, Turkey provided no additional updates for subsequent years. The United States and other WTO Members continue regularly to raise this transparency and timeliness concern with Turkey at the WTO.

Additionally, U.S. exporters have expressed concerns about Turkey's subsidies and inward processing scheme for wheat. There is no monitoring within the scheme to ensure that the quality and characteristics of imported wheat are the same as the domestic wheat used in exported flour and wheat products. Such monitoring is a required component of an inward processing scheme under the WTO Agreement on Subsidies and Countervailing Measures.

## **GOVERNMENT PROCUREMENT**

Turkey is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since June 1996.

Turkish Government contracting officials are authorized to issue tender documents with provisions that restrict foreign companies' participation and that award price advantages of up to 15 percent (particularly for high technology products) to domestic bidders. Although Turkish government procurement law requires government contracting agencies to consider best value pricing, the lowest-cost bids are selected in most tenders. In a scenario involving the procurement of highly technical goods or services, this may prevent consideration of bids from firms with the highest capacity and best abilities, including U.S. firms, *i.e.*, those that provide a greater number of services, lower life cycle costs, and higher quality products.

Certain other features of the Turkish procurement system have the effect of severely limiting the ability of U.S. companies to participate in government tenders. First, Turkish procurement law mandates the use of model contracts, *i.e.*, standard forms, which many government procuring agencies refuse to modify. These model contracts make it difficult for U.S. companies to formulate proposals that are fully responsive to procuring agencies' requirements. In addition, foreign companies, including those with Turkish subsidiaries, have reported difficulties complying with onerous documentation requirements imposed by contracting agencies. Turkey frequently issues regulations that exempt urgent projects and procurements from requirements of the Turkish Public Tender Law, allowing entities to conduct tenders or negotiations on an invitational basis. While these exempted tenders technically are open to foreign as well as domestic firms, in practice few of these have been awarded to foreign firms unless they were offering goods or services that were urgently needed and not available in Turkey.

Turkish military procurement policy generally mandates the inclusion in contracts of various "commercial offset" requirements. These specifications typically encourage localization commitments by bidding firms, including in the areas of foreign direct investment and technology transfer. Such requirements can dramatically increase costs for bidding firms, and have discouraged participation by some U.S. companies in Turkish commercial defense tenders. Non-military tenders, before 2014, also utilized commercial offset requirements, although not as frequently.

Similar to military procurement, Turkey's "Industrial Cooperation Program," a regulation implemented in 2018, gives civilian ministries the authority to impose commercial offset requirements in procurement contracts. A foreign company that wins a Turkish government procurement contract may be required to produce a certain percentage locally or with a local partner or transfer technology in order to provide its products and services. The Turkish Government has considered such offset requirements in the transportation, and energy sectors, among others.

In July 2019, the Turkish Government published Circular No. 2019/12, which prohibits public institutions and organizations from using cloud-computing services. The Circular also requires these entities to store certain critical information and data, such as health records and biometric data, domestically.

## **INTELLECTUAL PROPERTY PROTECTION**

In 2021, Turkey remained on the Watch List in the [2021 Special 301 Report](#) in light of intellectual property (IP) rights issues that represent barriers to U.S. exports and investment.

U.S. industry sources report significant problems involving the export from and trans-shipment through Turkey of counterfeit goods, as well as software piracy, piracy of printed works, and online piracy. These sources report that the judicial system as a whole, including judges, prosecutors, and police, fails to adequately address IP-related crime. The entry into force of Turkey's Industrial Property Law and implementing decrees brought industrial property rights under a single law and improved the legal framework for technology commercialization and transfer. The law also increased the capacity of the Turkish Patent Office; in 2020, the Office hired 122 additional examiners. However, IP rights enforcement in Turkey still suffers from a lack of awareness and training among judges, as well as a lack of prioritization among government bodies of efforts to combat IP crimes.

U.S. pharmaceutical companies continue to raise concerns that Turkey does not adequately protect against the unfair commercial use, as well as unauthorized disclosure, of test or other data submitted to obtain marketing approval for pharmaceutical products. These stakeholders also stress that Turkey needs to encourage early resolution of pharmaceutical patent disputes. In addition, the [2021 Notorious Markets List](#) notes physical markets as continuing sources of counterfeit products.

## **SERVICES BARRIERS**

### **Professional Services**

Turkish citizenship is required to practice as an accountant, a certified public accountant, or a lawyer representing clients in Turkish courts.

### **Audiovisual Services**

Turkey's Radio and Television Supreme Council (RTUK) published the Regulation on the Transmission of Radio, Television, and On-Demand Services on the Internet on August 1, 2019. The regulation requires providers of Internet streaming services to establish a commercial presence in Turkey and to obtain a broadcasting license. Such licensing requirements are unnecessarily burdensome for Internet streaming services and may limit the ability of foreign firms to supply such services on a cross-border basis. The regulation was published pursuant to Law No. 6112, which gives regulators the ability to prohibit certain content from being made available in Turkey and punish publishers of proscribed content.

### **Financial Services**

Turkey's "Law on Payments and Security Settlement Systems, Payment Services and Electronic Money Institutions" (or "E-Payment Law") requires information systems used by financial firms for keeping documents and records to be located within Turkey. Many U.S. firms, which depend on a globally distributed network data architecture, view these requirements as unworkable given their business models. The strict implementation of the E-Payment Law by Turkey's Banking Regulation and Supervision Agency has had a negative impact on foreign suppliers offering Internet-based payment services and has led one prominent U.S. firm to suspend its operations in Turkey.

## **BARRIERS TO DIGITAL TRADE**

### **Data Localization**

The 2016 Law on the Protection of Personal Data restricts the transfer of personal data outside of Turkey, except to a specific country that the Personal Data Protection Authority (KVKK) has determined as providing adequate data protection under Turkish law (as of yet, the KVKK has not published a list of such adequate countries) or when other specific requirements are met, such as explicit consent from the data subject or specific approval from the KVKK. Restrictions on the flow of data have a significant effect on the conditions for the cross-border supply of numerous services and for enabling the functionality embedded in intelligent goods (*i.e.*, smart devices).

In early 2018, the Capital Markets Board of Turkey published the "Communique on Information Systems Management," which requires publicly traded companies to keep their primary and secondary information systems, data, and infrastructure within Turkey.

### **Internet Services**

The Law on the Regulation of Broadcasts via the Internet and Prevention of Crimes Committed through Such Broadcasts (Law No. 5651) gives the Ministry of Transport and Infrastructure Information and Communication Technologies Authority (BTK) the responsibility to enforce bans on Internet content deemed offensive by the Turkish courts. BTK has used its authority to block access to various Internet-based service suppliers, including U.S. suppliers. As of July 2020, Law No. 5651 also requires social media platforms with more than one million daily visits from users in Turkey to appoint a Turkey-based

representative and rapidly respond to content removal requests. Social media platforms are also required to store user data in Turkey. Penalties for non-compliance include escalating fines, the blocking of advertisement, and bandwidth restrictions.

## **Digital Services Taxation**

The United States and Turkey are among the 137 jurisdictions to have joined the October 8, 2021 OECD/G20 Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. On November 22, 2021, the United States and Turkey issued a joint statement that describes a political compromise reached on a transitional approach to existing Unilateral Measures while implementing Pillar 1. Under the transitional approach in the joint statement, digital services taxation (DST) liability that accrues during the transitional period prior to implementation of Pillar 1 will be creditable in defined circumstances against future income taxes due under Pillar 1. In return, the United States terminated the existing Section 301 trade action on goods of Turkey, and committed not to take further trade actions against Turkey with respect to its existing DST until the earlier of the date the Pillar 1 multilateral convention comes into force or December 31, 2023. USTR, in coordination with the U.S. Department of the Treasury, is monitoring the implementation of the political agreement on an OECD/G20 Two-Pillar Solution as pertaining to DSTs, the commitments under the joint statement, and associated measures.

## **INVESTMENT BARRIERS**

For a number of years after it began implementing significant reforms to banking and other economic policies in the early 2000s, Turkey was able to attract a considerable amount of foreign investment, both direct and indirect. Turkey's generally liberal investment policies, strategic location, and relative overall stability as a strongly performing emerging market made it attractive to many foreign businesses, particularly from Europe, but also from the United States.

Over the past several years, however, as economic and democratic reforms have stalled and, in some cases, have regressed, foreign investors have become much more cautious. According to the United Nations Conference on Trade and Development, annual net foreign direct investment flows into Turkey averaged \$10 billion from 2017 to 2020 (latest data available), down from \$15 billion in the 2012 to 2016 timeframe. U.S. businesses have cited as causes for the drop in FDI flows the opacity of government decision-making, lack of investor confidence in the independence of the Central Bank of the Republic of Turkey, concerns of many observers about the government's commitment to the rule of law, and high levels of foreign exchange-denominated debt held by Turkish non-financial corporations. Recent macroeconomic volatility—the lira depreciated 43 percent against the dollar in 2021 and the annual inflation rate was 54.4 percent as of February 2022—may also weigh on investor sentiment.

## **OTHER BARRIERS**

### **Corruption**

Turkey has ratified the Organization for Economic Cooperation and Development anti-bribery convention and passed implementing legislation making it illegal to bribe foreign and domestic officials. Despite these steps, many foreign firms doing business in Turkey perceive corruption of some government officials and politicians to be a serious problem. Some observers perceive the judicial system to be susceptible to external influence from both inside and outside the government and on occasion to be biased against foreigners.

## **Restrictions on Pharmaceutical Reimbursement and Official Exchange Rate for Government Purchases**

U.S. pharmaceutical companies have expressed concerns that their business operations in Turkey are adversely impacted by the Turkish Government's 2017 decision to restrict reimbursement for pharmaceutical products sold in Turkey and its refusal to adjust adequately the official exchange rate used for government purchases of imported pharmaceutical products.

In 2018, the government released two lists totaling approximately 200 pharmaceutical products for which the government would deny reimbursement unless they were manufactured in Turkey. Since government reimbursement covers the vast majority of pharmaceutical products sold in Turkey, U.S. firms assert that denying reimbursement would seriously undermine their ability to market their products in Turkey if they do not manufacture them locally. The government has also indicated that it plans an additional three tranches of products to "de-list," but has not specified dates nor taken any action to implement these further measures.

In 2009, companies negotiated with the MOH to sell their products in Turkey using an exchange rate of 1.95 Turkish lira/1.00 Euro (€) for government reimbursements for pharmaceutical products. The government codified this arrangement in a 2009 law and agreed in that law to adjust the exchange rate if it went up or down by over 15 percent compared to the 2009 baseline. According to U.S. industry, the exchange rate shift against the lira exceeded 15 percent of the baseline in 2011, resulting in an effective price discount in the Turkish market for their products of over 50 percent. Despite multiple Turkish court rulings against the government that obliged it to respect the rate adjustments provided for in the 2009 law, the government only agreed to implement the rulings in 2015; even then, the government arbitrarily chose to reimburse companies for only 70 percent of the previous year's average daily market exchange rate (reduced to 60 percent in early 2019). The government's January 2017 pharmaceutical regulation fixed the exchange rate for reimbursement at less than half the current market value. Due to this artificially low reimbursement rate, pharmaceutical companies claim they cannot bring some next-generation drugs to the Turkish market.

## **Delayed Reimbursement by Public and University Hospitals for Medical Devices and Pharmaceuticals**

U.S. companies have lodged repeated complaints with the Ministry of Health that it has not paid medical device companies (primarily U.S. companies) for equipment sold to public and university hospitals since 2018. After negotiations with the MOH, most U.S. companies agreed to discounted payments. In October 2020, the Ministry of Treasury and Finance assumed the debt from the MOH and offered to reimburse companies in two installments (October 2020 and January 2021) in exchange for accepting a 25 percent discount for medical devices and an 18 percent discount for pharmaceuticals. The current total debt stands at approximately \$215 million, and the MOH has indicated this debt will be paid in full in 2022. Pharmaceutical wholesalers selling to public hospital pharmacies are in a similar situation.

# UNITED ARAB EMIRATES

## TRADE AGREEMENTS

### The United States-United Arab Emirates Trade and Investment Framework Agreement

The United States and the United Arab Emirates (UAE) signed a Trade and Investment Framework Agreement (TIFA) in March 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and the UAE.

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

As a member of the Gulf Cooperation Council (GCC), the UAE applies the GCC common external *ad valorem* tariff of five percent on the value of most imported products, with several country-specific exceptions. The UAE exempts 811 items from customs duties, including imports by philanthropic societies and the diplomatic corps, military goods, personal goods, used household items, gifts, and returned goods.

In January 2019, the UAE increased its applied MFN tariffs on iron and steel rebar from 5 percent to 10 percent in an apparent step to protect domestic products.

#### *Taxes*

In 2016, GCC Member States agreed to introduce common GCC excise taxes on carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products (100 percent). U.S. beverage producers report that the current tax structure for carbonated drinks, which also applies to sugar-free carbonated beverages, fails to address public health concerns and also disadvantages U.S. products. Sugary juices, many of which are manufactured domestically within GCC countries, remain exempt from the tax. The UAE implemented the tax on carbonated drinks in October 2017, and expanded the tax in 2019 to include a 50 percent excise tax on all beverages with added sugar, except for beverages with naturally occurring sugars. In December 2019, the UAE expanded the list of products covered by the excise tax, instituting rates of 100 percent on electronic smoking devices and 100 percent on liquids used in smoking devices.

### Non-Tariff Barriers

#### *Import Bans/Restrictions*

The UAE restricts the import of a number of products including alcoholic beverages and products, industrial alcohol-denatured, methyl alcohol, methylated and medicated spirits, pork products, medicinal substances, printed matter such as magazines and videos, photographic material, fireworks, firearms and ammunition, explosives, drugs, and agricultural pesticides. In March 2019, the UAE Ministry of Climate Change and Environment (MOCCA) issued decree No. 98 banning the import of all waste-derived fuel.

### *Import Licensing*

Only UAE-registered companies can obtain licenses to import goods. This licensing requirement does not apply to goods imported into free trade zones. Importation of certain goods for personal consumption also does not require an import license.

### *Customs Barriers and Trade Facilitation*

The UAE notified its customs valuation legislation to the WTO in July 2004, but has not yet responded to the WTO Checklist of Issues that describes how the Customs Valuation Agreement is being implemented.

The UAE ratified the WTO Trade Facilitation Agreement (TFA) in April 2016. The UAE has not yet submitted three transparency notifications related to: (1) import, export, and transit regulations; (2) the use of customs brokers; and (3) customs contact points for the exchange of information. These notifications were due to the WTO on February 22, 2017, according to the UAE's self-designated implementation schedule.

### *Documentation Requirements*

The UAE requires that documentation for all non-agricultural products imported from the United States be authenticated by the Embassy of the UAE in the United States, including delivery orders from the shipping or line agents, original supplier commercial invoices, certificates of origin, and packing lists. Stakeholders report that this consularization requirement is burdensome and costly.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### *Restrictions on Hazardous Substances – Electrical Goods*

In March 2018, GCC Member States notified to the WTO a draft Gulf Standardization Organization (GSO) technical regulation that would, among other things, require pre-market testing by accredited labs for certain hazardous substances in electrical goods. The measure would also require each type of good to be registered annually and includes a requirement to submit sample products prior to receiving approval for use in the GCC. The United States has raised concerns that the proposed regulatory requirements would have a significant negative impact on the imports of U.S. electrical and electronic equipment (such as information and communications technology, medical equipment, machinery, and smart fabrics), especially as the trade restrictive third party certification requirements differ from international best practices, which typically permit a supplier's declaration of conformity, supported by documentation requirements, such as test results and manufacturing specifications, in conjunction with integrated enforcement mechanisms, such as regulatory sanctions, liability in tort law, and mechanisms to monitor or remove nonconforming products from the market..

### *Conformity Assessment and Marking Requirements*

The Emirates Conformity Assessment Scheme (ECAS) monitors industry compliance with UAE standards for goods to be sold in the country. ECAS, initially notified to the WTO in 2004, applies to items such as textiles, building materials, energy drinks, dairy, juice, honey and organic products. In addition, obtaining the Emirates Quality Mark (EQM) is mandatory for bottled drinking water, natural mineral water and ice for human consumption. The application of ECAS and EQM to these items creates a potentially significant trade barrier for U.S. exporters and producers and duplicates the regulatory system overseen by MOCCAE.

### *Halal Regulations*

In 2015, the UAE published the regulation “Animal Slaughtering Requirements according to Islamic Rules,” which has been especially onerous for U.S. poultry exporters as it disallows electric stunning. Electric stunning is a standard industry practice with the objective of reducing the suffering of the animal prior to slaughter and is accepted in many overseas halal markets. In June 2019, the UAE notified to the WTO a draft update to the regulation. While the 2019 draft is a marked improvement and largely resolves issues with poultry stunning, it does not solve other issues such as bleed times for ruminants, requirements for a Muslim to operate equipment, random sample and record keeping, allowed travel distances, and slaughtering methods. If implemented as written, the 2019 draft could act as a barrier to trade.

In April 2020, GCC Member States notified to the WTO a draft GSO technical regulation establishing halal requirements and certification for animal feed. The U.S. animal feed, beef, and poultry industries have expressed concerns that the new technical regulation may place additional requirements on U.S. producers without offering additional assurance of meeting Member States’ legitimate regulatory objectives. The United States submitted comments to GCC Member States in July 2020 noting the unprecedented and potentially trade-restrictive nature of the measure.

### *Energy Drinks*

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

## **Sanitary and Phytosanitary Barriers**

### *Livestock*

In March 2020, MOCCAIE issued Resolution 98 on imported livestock. The resolution aims to define and register imported animals, including camels, cattle, sheep, and goats, for the purposes of controlling animal diseases and protecting public health. According to the resolution, the Abu Dhabi Agriculture and Food Safety Authority shall create accounts for all importers of livestock under the identification system of producing animals. Article 4 of the resolution stipulates that an importer must provide identification marks for the imported animals according to MOCCAIE’s import permit system, and MOCCAIE bans any changes or modification to the animal’s identifications. The MOCCAIE specified that live sheep, goats, cows, birds, day-old chicks, and hatching eggs are authorized for import from the United States. Only camels are not authorized for import from the United States.

### *Food Additives*

The UAE policy on food additives restricts the range of U.S. products permitted for export to the UAE market by referencing only Codex Alimentarius Commission (Codex) and European Union (EU) food additive standards. The limitations in food additive uses recognized in the Codex and incongruences in U.S. and EU food standards result in a bar to exports to the UAE of products containing food additives that are widely available, utilized and considered safe within the United States.

Until Codex formally adopts the extensive backlog of food additive dossiers, the United States has requested the UAE recognize food additive standards established in the United States as well as those of the EU.

### *Agricultural Biotechnology*

In May 2020, the UAE issued Federal Law No. 9 regarding the biosafety of agricultural biotechnology products. The law prohibits the import, export, re-export, transit, production, and circulation of any agricultural products with biotechnology content of equal to or higher than 0.9 percent. For agricultural products with a biotechnology content less than this threshold, a permit is required.

## **GOVERNMENT PROCUREMENT**

U.S. companies continue to raise concerns regarding lack of transparency in the UAE's government procurement processes, in addition to lengthy delays and burdensome procedures to receive payment. In response to complaints regarding payment delays, in June 2019, the Abu Dhabi Government announced a rule requiring all public sector and state-owned entities to pay suppliers and contractors within 30 days of receiving invoices.

The UAE generally provides a 10 percent set-aside for domestic small and medium-sized enterprises (SMEs) and a 10 percent price preference for GCC goods in federal government procurement. Additionally, in April 2020, the Abu Dhabi Government earmarked 15 percent of procurement spending annual contracts to micro businesses and SMEs, exempted these bidders from having to provide a bank or bid bond guarantee, and committed to paying balances within 15 days of receiving the invoice. The Dubai Government also provided an additional set-aside for SMEs and required that all Dubai government entities and companies, in which the Dubai Government has at least 25 percent ownership, provide preferential allowances for micro businesses and SMEs that include the following: a registration fee exemption; a 10 percent set-aside; a discounted rent of 5 percent for entities in commercial centers; and a 5 percent price preference. The UAE also provides a 10 percent price preference to environmentally friendly or "green" UAE companies and to "green" commodities and services produced in the UAE.

Foreign defense contractors continue to raise concerns about satisfying contractual obligations through a Tawazun Economic Program Agreement (TEPA) as administered by the Tawazun Economic Council (TEC). The TEPA is colloquially referred to as an "offset agreement" by defense contractors, and despite TEC's recent reforms of the program as reflected in the 2019 Tawazun Economic Program Policy Guidelines, satisfying offsets in the UAE remains a challenge for U.S. defense contractors. TEC requires defense contractors with contracts valued at more than \$10 million to establish commercially viable joint venture projects with UAE companies yielding profits equivalent to 60 percent of the contract value within a seven-year period. Certain projects can be granted a grace period as a result of their complexity, sophistication, or infrastructure requirements. Financial obligations are assessed on the expected growth cycle of a project at the end of each year of the program.

Foreign defense firms must submit a bank guarantee equivalent to 8.5 percent of overall outstanding obligations to cover potential failure to satisfy offset obligations. TEC has announced it will begin evaluating tenders based on the potential offset value associated with a contract. Once approved by TEC, offset projects can fall under the UAE defense conglomerate, EDGE.

The Abu Dhabi National Oil Company (ADNOC)'s In-Country Value (ICV) Program requires suppliers to provide an ICV certificate demonstrating their plans for local content and hiring as part of their bids. ADNOC considers the ICV score when awarding contracts. During 2020 to 2021, the UAE expanded their

ICV program by signing contracts with a number of UAE government-affiliated or UAE Government-owned companies.

A new federal center for ICV strategy was established in July 2020 to expand ICV to federal projects outside of Abu Dhabi. In March 2021, UAE enhanced the ICV program as part of the UAE's ten-year comprehensive strategy, "Operation 300 Billion," implementing programs and initiatives to increase ICV through the promotion of local products on a global level and through building an attractive business environment for local and international investors to boost productivity.

In September 2021, the UAE Government announced that 21 companies were certified to issue ICV certificates to suppliers and signed three separate memorandums of understanding with three large national companies joining the ICV program, including the Emirates Telecommunications Corporation, Emirates Steel, and the Abu Dhabi National Energy Company. Accordingly, these companies would prioritize local ICV-certified suppliers above other entities bidding for commercial contracts. U.S. firms have raised concerns that the ICV program is not transparent and that ICV criteria change frequently.

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

## **INTELLECTUAL PROPERTY PROTECTION**

In 2021, the UAE was removed from the Special 301 Watch List after resolving concerns with intellectual property (IP) protection of pharmaceutical products, making progress on long-standing IP enforcement issues, increasing transparency with stakeholders, and showing improvement with the judicial system's treatment of IP cases. In addition, the UAE significantly increased enforcement actions against sellers of counterfeit goods at the Ajman China Mall, which was removed from the Notorious Markets List in 2021. The Deira District markets in Dubai remain on the [2021 Notorious Markets List](#).

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

## **SERVICES BARRIERS**

### **Distribution Services**

Commercial Agency Law No 18 of 1981 creates an arrangement whereby an international company may appoint a local agent to distribute, offer or negotiate the sale or purchase of goods on its behalf within the onshore UAE market for commission or profit. Federal Law No. 11 (2020) amended the Commercial Agency Law to require that all commercial agents within the UAE must now either be a UAE national, a UAE public joint stock company (PJSC) owned at least 51 percent by UAE nationals, a UAE private entity owned by a PJSC meeting the previous requirements, or a UAE private entity 100 percent owned by UAE nationals.

### **Insurance Services**

Foreign insurance companies are allowed to operate independently in the UAE only as branches. Foreign equity in domestic insurance companies is limited to 49 percent.

A May 2019 resolution on regulations for reinsurance businesses requires that at least 51 percent of the capital of any insurance company incorporated in the UAE be owned by natural persons who are UAE or

GCC nationals, or by legal persons fully owned by UAE or GCC nationals. However, a foreign reinsurance company may seek a license from the regulator to operate as a branch.

In September 2020, the UAE Cabinet amended provisions of the Council of Ministers Resolution No. 31 of 2019 concerning regular Economic Substance Requirements for many financial and commercial firms. This amendment subjects foreign-owned financial firms, including banks, insurers, and purveyors of other financial products, to onerous reporting requirements, while companies that are majority owned by UAE nationals are exempt from these requirements.

### **Telecommunications Services**

The UAE Government maintains majority ownership in Etisalat and du – the only telecommunications service suppliers, Internet service providers, and mobile phone operators in the UAE. In January 2021, both telecommunications providers raised their foreign investment cap to 49 percent, though actual foreign ownership is only 5.29 percent for Etisalat and less than one percent for du.

## **BARRIERS TO DIGITAL TRADE**

### **Data Localization**

In January 2022, the Federal Decree-Law No. 45 of 2021 regarding personal data protection (the Data Protection Law) came into effect. The Data Protection Law restricts the transfer of personal data outside the UAE, except to specific countries or territories that the UAE has determined provide adequate data protection under UAE law, or where the UAE accedes to bilateral or multilateral agreements related to personal data protection with the countries to which the personal data is to be transferred.

### **Internet Services**

Etisalat and du block access to most over-the-top Internet-based communications services, such as Voice over Internet Protocol services, video communication services, and messaging services. UAE regulators have declined to intervene, effectively prohibiting market access for foreign suppliers of such services. In March 2020, the UAE regulators announced the temporary availability of five applications to support distance learning and remote working amid the COVID-19 pandemic. In 2021, UAE regulators continued allowing these applications on a temporary basis.

The National Media Council created an Electronic Media Activity Regulation Resolution establishing a licensing regime governing electronic media. The resolution applies to UAE residents and social media influencers operating in the UAE, including all influencers who use their accounts to promote or sell products. The law requires the account owner to obtain a license for activities that include “any paid or unpaid form of presentation and/or promotion of ideas, goods or services by electronic means, or network applications.” It also requires influencers to identify sponsored or paid content on their social media channels. U.S. stakeholders have raised concerns that the law is selectively enforced and overly broad and that it may inhibit social media influencers based outside of the UAE from participating in the UAE digital economy.

The UAE maintains measures that discriminate against app-based transportation services, including an outright ban on such services in certain emirates. Where they are not banned, such services are subject to requirements that they charge as much as 30 percent more than taxis. In Dubai, any for-hire transportation company must own at least 20 vehicles, 90 percent of which must have a value greater than \$50,000.

The UAE's cybercrime laws include significant penalties for any person who, by creating or running a website, or by other electronic means, derides or damages the reputation or the stature of the UAE, including any of its institutions or senior officials, or who produces, transmits or publishes a wide array of other prohibited content.

## **INVESTMENT BARRIERS**

### **Limitations on Foreign Equity Participation**

In 2021, the UAE began to implement legislative changes that allow 100 percent foreign ownership of certain companies, excluding commercial agencies or companies engaged in 'strategic activities', including the military, banking, insurance and re-insurance and telecommunication sectors, or professional activities such as consultancies. The law also permits the relevant Departments of Economic Development (DED) in each emirate to allow 100 percent foreign ownership of certain companies carrying out projects that the local authority considers significant, and which would support investment and add value to the UAE market. Pursuant to amendments to the UAE Commercial Companies Law in 2020, there is no longer a requirement that UAE nationals own at least 51 percent of the shares of a UAE company, subject to some restrictions. The amendments also removed the requirement for foreign branches of companies to engage a UAE national agent for most activities. The DED in individual emirates have begun issuing lists of approved activities that do not require foreign agents.

Throughout 2021, the UAE has signaled its intention to develop a more commercially friendly legislative environment to strengthen foreign investment. In March 2021, the UAE Government announced that it would allow full foreign ownership in the industrial sector as part of its "Operation 300 Billion" strategy by updating the industrial law to support local entrepreneurs and attract foreign direct investment. The government announced that a new industrial law would include flexible conditions to provide opportunities to small and medium-sized companies and allow 100 percent foreign ownership.

U.S. investors continued to raise concerns regarding the resolution of investment disputes and the difficulty of enforcing arbitration awards. Among other issues, U.S. investors are concerned that pursuing arbitration with a UAE company would jeopardize their business activities in the country.

The UAE restricts foreign ownership of land. In 2019, the Abu Dhabi Government issued Law 13 allowing foreign individuals and companies wholly or partially owned by non-nationals to own freehold interests in land located within certain investment areas of Abu Dhabi. The law also allows public joint stock companies to own a freehold interest in land and property anywhere in Abu Dhabi, provided at least 51 percent of the company is owned by UAE nationals. Outside of these parameters, foreign ownership of land is limited to a long-term lease of up to 99 years, renewable upon the agreement of both parties. In the emirate of Ajman, the Ajman Department of Economic Development may not issue a new license or renew or modify a valid license for a real estate brokerage office unless the applicant is a UAE citizen or GCC national.

# UKRAINE

**NOTE:** *On February 24, 2022, Russia began a premeditated and unprovoked further invasion of the sovereign nation of Ukraine. This chapter of the National Trade Estimate Report reports on the significant trade and investment barriers in Ukraine before that date. The U.S. Government recognizes that the ability of the Government of Ukraine and the U.S. Government to engage on and/or address these barriers remains unpredictable.*

## TRADE AGREEMENTS

### The United States–Ukraine Trade and Investment Cooperation Agreement

The United States and Ukraine signed a Trade and Investment Cooperation Agreement (TICA) on April 1, 2008. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Ukraine. The last meeting of the United States–Ukraine Trade and Investment Council took place in November 2021 in Washington, DC, with numerous officials participating virtually from the United States and Ukraine. The meeting was lauded as one of the most comprehensive since the signing of the TICA in 2008, addressing market access issues, regulatory regimes, intellectual property rights, and the investment climate. In addition, the United States and Ukraine agreed to launch a Labor Working Group and to explore upgrading the TICA. The United States will continue to engage with Ukraine under the TICA and other dialogues to enhance the bilateral trade relationship and to strengthen Ukraine’s investment environment to deliver benefits for both countries.

## IMPORT POLICIES

### Tariffs

Ukraine’s average Most-Favored-Nation (MFN) applied tariff rate was 4.5 percent in 2020 (latest data available). Ukraine’s average MFN applied tariff rate was 9.1 percent for agricultural products and 3.7 percent for non-agricultural products in 2020 (latest data available). Ukraine has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 5.8 percent.

### Taxes

The standard value-added tax (VAT) rate in Ukraine is 20 percent. In 2017, Ukraine introduced an automated VAT refund system. Through this system Ukraine disbursed approximately UAH 143.1 billion (approximately \$5.2 billion) in 2020 and UAH 96.8 billion (approximately \$3.5 billion) between January and August 2021 (latest data available). Despite this success, U.S. companies continue to report that the State Tax Service may delay VAT refunds by many months.

U.S.-owned companies exporting from Ukraine have raised further concerns about Ukraine’s practice of “collective responsibility,” under which downstream users are held accountable for VAT payments of upstream suppliers. This approach tends to put the burden for paying VAT more heavily on foreign-owned companies in Ukraine, notably large U.S. grain traders, which tend to invest in processed goods that are further “downstream” in the product value chain. U.S. stakeholders claim that the State Tax Service increases the frequency of tax audits and the amount of taxes assessed against them in order to cover budget shortfalls caused by upstream suppliers not paying the appropriate VAT amounts. The United States continues to urge Ukraine to reimburse VAT to U.S. companies in a timely manner and to administer the program in a transparent, fair, and equitable manner.

## **Non-Tariff Barriers**

### *Customs Barriers and Trade Facilitation*

While Ukraine's MFN applied tariff rates are relatively low, U.S. businesses have raised concerns that Ukraine's State Customs Service (SCS) assigns higher and seemingly inconsistent customs values to imports than are reflected in the transaction price as provided in the import documentation. Such practices raise concerns under WTO rules and appear contrary to the Ukrainian law that requires the SCS to rely primarily on the transaction price in determining customs value. U.S. businesses also report that the SCS has begun sending goods for laboratory tests or additional risk audits more frequently, delaying shipments and raising costs.

In 2018, Ukraine adopted a law to simplify and streamline the procedures for customs clearance of goods by eliminating several control measures and paper documents. Under this law, the government bodies that issue permits for customs clearance are obliged to submit them electronically to the state information system "Single Window of International Trade." The law also abolished radiological monitoring, which, according to U.S. stakeholders, had been a costly and burdensome process. However, Ukraine's decision in December 2018 to liquidate the State Fiscal Service and to create separate tax and customs services delayed the full implementation of the single window system. As of December 2021, only the first of the single window system's three stages – Paperless Customs – is fully operational. The implementation of the second stage – the Regulatory Single Window – is in progress. In August, 2021, Ukraine notified the details of the operation of its single window to the WTO Committee on Trade Facilitation, bringing it into compliance with its WTO Trade Facilitation Agreement reporting requirements.

### *Other Market Access Barriers*

Importers of U.S. products had complained for many years about inspection officials at ports of entry taking larger numbers of samples than needed for laboratory testing due to a faulty and arbitrary definition of "uniform allotment" (*i.e.*, batches identified for sampling) in a 2002 Cabinet of Ministers Decree. Sampling and testing, particularly of expensive products, such as caviar, fish, or chilled meat, and the associated testing fees therefore posed a significant burden on the importer. In 2018, Ukraine adopted legislation establishing the main principles for a governmental food and feed control system, including rules governing sampling at the border. Although basic risk-based principles were introduced by Ukraine, stakeholders claim that testing continues to be excessive. U.S. industry and the United States have asked that Ukraine ensure these regulations are consistent with Ukraine's WTO obligations.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY MEASURES**

### **Technical Barriers to Trade**

#### *Conformity Assessment Procedures – EU Technical Regulations and Regimes*

As part of its Association Agreement with the European Union (EU), including the provisions to establish a Deep and Comprehensive Free Trade Area (DCFTA), Ukraine is moving to approximate EU technical regulations and the EU's regulatory regime (including the EU's conformity assessment procedures). Some U.S. industry stakeholders have expressed concerns that this process may lead Ukraine to adopt measures that raise technical barriers to trade concerns. Additionally, U.S. trade could be negatively affected if Ukraine adopts EU regional standards as a basis for its technical regulations instead of international standards. The United States has continued to press Ukraine to ensure that as it approximates its legislation to that of the EU, it does so consistent with its WTO obligations and in a manner that does not unnecessarily burden U.S. exports. Further, the U.S. Government has urged Ukraine to make full use of the WTO

notification procedure to ensure that new regulations and conformity assessment practices are transparent and comply with Ukraine's international obligations. Separately, Ukraine has launched a pilot program to create an electronic platform to publicize draft regulatory measures, accept public comments, and provide its responses to those comments.

### *Conformity Assessment Procedures – Agricultural Equipment*

Since 2017, Ukraine has required that U.S.- and foreign-manufactured agricultural equipment manufacturers provide type-approval certificates be issued by a conformity assessment body inside Ukraine, renew the certificates every five years, and have the equipment inspected every two years. U.S. stakeholders contend that these requirements are unnecessarily burdensome. U.S. industry has expressed concern about the lack of transparency in the process and has urged the acceptance of international certificates without further assessment in Ukraine. In 2020, Ukraine eliminated the five-year validity period for type-approval certificates and cancelled the biennial inspection requirements, but continues to require that a conformity assessment body provide type-approval certificates for foreign manufactured equipment. The United States continues to press Ukraine to eliminate requirements for type-approval certificates.

### *Product Labeling*

U.S. exporters of non-food consumer items (such as personal care products) had expressed concern about Ukraine's labeling law and regulations, most importantly whether Ukraine would accept the international system of units of measurement, which allow the simultaneous usage of Latin, Greek and Cyrillic alphabets on labels on products for the Ukrainian market. In June 2020, the Cabinet of Ministers adopted a resolution, which addressed industry's concerns by permitting the use of the international designation of units of measurement in the labeling of products in Ukraine and giving business entities the discretion to make decisions on the sequence of unit designations.

In 2019, Ukraine adopted the Law of Ukraine No. 2639-19, for the labeling of food products that closely match EU practices. U.S. stakeholders have raised concerns about potential conflicts between these requirements and other measures and, in particular, whether the new requirements would allow imports from the United States to carry the U.S. standard "per serving" dietary information. Imported products available in the market routinely include the "per serving" dietary information but must also include the dietary information per 100 grams.

### *Toys*

Ukraine restricts the use of recycled material in toys. U.S. stakeholders assert this restriction is at odds with global toy safety standards, weakens the growing focus on sustainability, and is unnecessary in light of Ukraine's existing regulations that address the physical and chemical safety of toys.

## **Sanitary and Phytosanitary Barriers**

### *Import Certification*

In November 2019, Ukraine implemented new import requirements for products of animal origin (Order 553), including live animals, reproductive materials, seafood, composite products, and animal feed. To enforce these new import requirements, Ukraine adopted 72 generic veterinary certificates for the relevant products of animal origin. The certificates capture numerous product-specific requirements outlined in Order 553 that do not appear to be science-based, and that require U.S. regulators to certify that exports are in compliance with "Ukrainian legislation" rather than in compliance with the attestations contained within the certificate itself. Requiring certification to a foreign country's legislation without citing the applicable

legislation within the certificate is contrary to international practice. Order 553 was initially interpreted to provide that, unless the exporting country and Ukraine have mutually recognized systems equivalence, Ukraine's food safety agency cannot negotiate veterinary certificates that differ from Ukraine's generic forms. The government of Ukraine has agreed, however, to accept as valid previously negotiated U.S.–Ukrainian export certificates for products of animal origin. If Ukraine refused to recognize the existing export certificates and the United States were forced to trade under Ukraine's generic certificates, U.S. exports of the relevant animal-based products could be shut out of the Ukrainian market. The United States continues to work with Ukraine to ensure that market access for U.S. agricultural exports is not disrupted as Ukraine continues to implement its new import regulations.

### *Approved Exporters List*

Ukraine maintains a list of foreign establishments eligible to export to Ukraine animal-based products, including live animals, reproductive materials, composite products, animal feed, and seafood. Foreign establishments may be added to Ukraine's list if the facility/farm/genetics center exported to Ukraine between April 4, 2013 and April 4, 2018 (*i.e.*, a historical exporter), or if the establishment is already approved to export to the EU. Ukraine has not published a formal procedure for adding “historical exporters,” making the process lengthy and problematic.

If an establishment does not meet Ukraine's listing criteria, such as a new-to-market facility, the establishment must undergo an audit. Although basic principles of foreign individual audits are published, specific rules and requirements for the procedure are unclear and the process itself is cost-prohibitive for small and medium-size producers. As a result, some U.S. establishments will be unable to export to Ukraine until they complete an expensive and time-consuming EU approval process, or the United States undergoes a country-wide food safety systems audit. The United States is working with Ukraine to resolve this issue.

With existing bilateral veterinary certificates, Ukraine accepts shipments of U.S. beef and pork from all U.S. federally inspected facilities, and there is no requirement for facility registration, including for new suppliers.

### *Food Safety Standards*

Ukrainian law recognizes three categories of food safety regulations: domestic requirements, international standards, and EU standards. Ukraine relies first on domestic requirements but, if none exist, its regulators will use international standards. In the absence of both a specific Ukrainian and international regulation, EU standards are used. However, there have been several instances where Ukraine used EU standards instead of available international food safety regulations. U.S. exporters (primarily exporters of products of animal origin) are concerned that Ukraine's adoption of EU standards as its national standards, particularly those that are not in line with international standards or based on a risk assessment, could make it significantly more difficult to export certain products to Ukraine. The United States has encouraged Ukraine to make full use of the WTO sanitary and phytosanitary (SPS) notification procedure to ensure that Ukraine's process for adopting new SPS measures is transparent and complies with Ukraine's international obligations.

Between 2018 and 2021, Ukraine adopted several food safety requirements that mimic EU standards but appear to lack scientific justification. These new Ukrainian requirements are related to biological and other contaminants, agrochemicals, veterinary drugs, hygiene requirements, and many others. The United States is working with Ukraine to introduce science-based international practices into Ukraine's rule-making process.

## *Agricultural Biotechnology*

U.S. industry has raised concerns about many aspects of Ukraine's biotechnology regime, especially because Ukraine's regulatory system for genetically engineered (GE) products is still not fully developed. While Ukraine has adopted biosafety legislation outlining basic principles governing GE products, it has not yet implemented a holistic regulatory regime for registration of GE products for cultivation or for trade of food and feed. Further, cultivation of GE products, by law, is limited to only registered agricultural biotechnology products. As of January 2022, Ukraine's official registry of GE products does not contain any entries. As a result, no GE product can be legally cultivated in Ukraine or exported to Ukraine from the United States or any other third country.

Ukraine has indicated its intent to develop legislation that would introduce a registration system mirroring the EU's controls on GE crops. A draft law in the Ukrainian Parliament provides greater clarity on the biotech registration procedure compared to the law as of March 2022, but would still not guarantee legal production of GE crops in Ukraine or allow for GE products to be imported or exported. Moreover, even if the draft bill were adopted into law, the ability to produce and trade GE products would depend largely on how the Ministry of Economy interprets and implements the law in future regulatory documents and procedures. Ukraine announced its intention to begin consultations with interested parties to discuss the legal cultivation of GE crops, but it must balance the interests of Ukrainian farmers that would substantially benefit from the legal cultivation of GE crops and the interests of those who are concerned that GE cultivation could harm non-GE suppliers and the production of organics.

Ukraine's commitments on biotechnology under its DCFTA with the EU raise concerns. Ukraine's approximation of its biotechnology policy to conform to the EU's could result in additional barriers to market access for U.S. exports of biotechnology products. (*For further information on the EU's agricultural biotechnology policies, see the Sanitary and Phytosanitary Barriers section of the EU Chapter of this NTE Report.*) The United States continues to work with the Government of Ukraine to facilitate the development of an effective, risk-based GE framework that meets economic and sustainability goals, especially since GE crops can help farmers adapt to climate change and increase yields on existing farmland.

## **GOVERNMENT PROCUREMENT**

Government procurement of goods and services has long been associated with alleged corruption in Ukraine, impeding increased trade and investment in the sector. By most accounts, the public electronic procurement system, ProZorro, which replaced the previous paper tendering process in 2016, has improved transparency and reduced corruption in the procurement process. In addition, since the establishment of the Central Procurement Organization in 2016, the public procurement of medicines has improved but concerns remain centered on the outdated patient reimbursement list that does not consider new products.

In December 2021, the Ukrainian Parliament adopted legislation that gives domestic producers preference in government tenders if they can demonstrate at least 30 percent local content. However, following consultations with the U.S. Government, and consistent with Ukraine's WTO commitments, the law exempts from the local content provisions those procurements subject to the GPA. Concerns among U.S. stakeholders remain, however, that the opaque mechanism for determining the degree of localization could increase the risk of corruption in the procurement process.

Ukraine is a Party to the WTO Agreement on Government Procurement.

## INTELLECTUAL PROPERTY PROTECTION

Ukraine remained on the Priority Watch List in the [2021 Special 301 Report](#). This designation reflects the continuing need, despite some progress, including agreement to pursue an IP work plan, for Ukraine to address the inadequate protection and enforcement of IP and remedy the related market access barriers to U.S. exports and investment.

In 2017, the United States announced the partial suspension of Generalized System of Preferences (GSP) benefits to Ukraine due to inadequate protection and enforcement of IP. The announcement specifically referenced the importance of improving Ukraine's system for collective management organizations (CMOs). In July 2018, Ukraine enacted legislation that fundamentally reformed its CMO system. In 2019, the United States announced the partial restoration of GSP benefits due to tangible steps Ukraine has taken to reform its CMO regime. The United States will continue to work with Ukraine to assist in the development of a transparent, fair, and predictable system for the collective management of copyrights.

Online piracy and trademark counterfeiting remain a significant problem in Ukraine. Although the Cyber Police launched criminal investigations into the operations of several major illicit websites in 2019 and 2020, effective enforcement with deterrent effect remains elusive in Ukraine. Physical and online markets that facilitate significant copyright piracy and trademark counterfeiting continue to operate in Ukraine. The United States will continue to engage with Ukraine on legislative and operational efforts to address this longstanding IP enforcement concern.

Concerns also remain regarding the use of unlicensed software by government agencies. The Cabinet of Ministers adopted a resolution in 2018 requiring government agencies to stop using unlicensed software by the end of 2019. While right holders report that implementation of this resolution has been slow, Ukraine committed in November 2021 to develop and implement a program to eliminate use of unlicensed software by government agencies.

Additionally, the United States will continue to engage with Ukraine regarding implementation of its patent law, copyright law reforms, and the operation of its new National IP Authority.

## SERVICES

### Audiovisual Services

U.S. stakeholders have raised concerns about a recent law that requires dubbing instead of subtitling of foreign-language films to be shown on television or through video-on-demand (VOD), limits screening of foreign-language films to ten percent of all screenings per month per movie theatre, and applies a 20 percent VAT to the screenings of foreign-language films with subtitles. In addition, Ukrainian law requires film prints to be produced in Ukraine. With respect to cable television, U.S. stakeholders have asserted that a lack of transparency and oversight has allowed cable operators to underreport the number of their subscribers, which allows the operators to underpay for the channels they carry. The United States is working with Ukraine on these issues.

In early 2020, the Ukrainian Parliament considered the draft law "On Media Registration and Regulation" mandating that traditional and on-demand content providers meet minimum local- or European-content thresholds, register with Ukraine's National Council of Television and Radio Broadcasting, and submit new content to the Ministry of Culture to ensure it complies with a series of restrictions on materials deemed culturally and politically subversive. However, the draft law contains language that would have the effect of providing an exemption for U.S. studios and VOD suppliers operating as investors. The U.S. Government is working with the Government of Ukraine to preserve this exemption.

## **INVESTMENT**

### **Privatization**

The State Property Fund of Ukraine (SPFU) oversees the technical aspects of the privatization process in Ukraine, while the Cabinet of Ministers handles the strategic aspects of this process. In March 2018, Ukraine passed a new privatization law that was widely welcomed as a substantial improvement over previous legislation. The 2018 law ensures that in nearly all cases, the government will hire reputable international advisory firms to run the privatization process in a transparent manner. The Ukrainian government has indicated that it will implement a series of major privatization reforms, including a dramatic reduction of the number of state-owned enterprises previously deemed strategic and exempt from sale.

In March 2021, Ukraine passed a law to facilitate progress towards large-scale privatization following a freeze on the process due to the COVID-19 pandemic. At the end of October 2021, the SPFU sold the First Kyiv Machine Building Plant (Bolshevik plant) at auction for \$53 million. However, shortly following this sale, the head of the SPFU resigned and future large-scale privatization plans were put on hold. The United States has provided significant technical assistance to Ukraine to support an open and transparent privatization process.

## **OTHER BARRIERS**

### **Corruption**

Businesses in Ukraine have long suffered from abusive investigative activities by Ukrainian law enforcement personnel, and Ukraine's court system offers little protection from corruption and abuse. Business complaints mainly concern the illegality of law enforcement agencies' actions, including abuse of power, corruption, and unlawful pressure.

To address those concerns, Ukraine established the Bureau of Economic Security (BES), a single unified body to replace the notoriously corrupt Tax Police and take over investigations of economic crimes from the Security Service of Ukraine and the National Police. As envisioned, the BES will have exclusive jurisdiction over economic crimes unless such offenses fall under the jurisdiction of the National Anti-Corruption Bureau (NABU). Crimes over which the BES will have jurisdiction include tax evasion, falsifying financial reports, securities fraud, illegal use of trademarks, violations of banking secrecy, illegally dealing in excisable goods, falsifying business documents, and illegal privatization. However, the efficacy and credibility of the BES will hinge on whether it can operate independently and professionally.

Based on questions from the business community stemming from the August 2021 appointment of a 16-year veteran of the Tax Police as the new BES Director, the United States will monitor whether the new body represents a break with the past.

In June 2018, the Government of Ukraine established the High Anti-Corruption Court (HACC) – a standalone court to decide high-level corruption cases. As of September 2021, the HACC had sentenced 36 officials, including 10 judges for a range of corruption related offenses. The HACC was the final piece of Ukraine's post-2014 anticorruption architecture that also includes: NABU, the Special Anti-Corruption Prosecutor's Office, the National Agency on Corruption Prevention, and the Asset Recovery and Management Agency. While anticorruption efforts have been successful, wins in high-level cases remain largely elusive, with entrenched elites resisting reforms through spurious cases in courts and by manipulating the selection processes for key officials.

## **Export Policies**

A variety of products remain subject to licensing by the Ministry of Economy prior to export. Products that require such a license include: precious metals (silver and gold) and their scrap; ozone-depleting substances; pharmaceuticals; paints and lacquers; dyes; cosmetic products; pedicure and manicure products; hygiene products including shampoos, toothpaste, detergents, shaving aerosols, and deodorants; lubricants; waxes; shoe polishes; insecticides; solvents; silicone; fire extinguishers and the chemicals that fill extinguishers; refrigerators and freezers; air conditioners; humidifiers; aerosols used for self-defense; fungicides; and, other selected industrial chemical products. Since May 2017, Ukraine has required an export license for anthracite coal exports because Ukrainian thermal power plants consume primarily this coal grade and the majority of domestic coal production remains in Russia-controlled territories in Ukraine.

The Ukrainian Government has eliminated most export duties, with the notable exception of duties on natural gas, livestock, raw hides, some oilseeds (in particular sunflower seed, flaxseed, and linseed), ferrous scrap metal, and raw timber.

# UNITED KINGDOM

## TRADE AGREEMENTS

Following a June 2016 referendum, the United Kingdom (UK) formally left the European Union (EU) on January 31, 2020. To avoid any break in existing legal coverage and mechanisms, the UK passed legislation (The European Union (Withdrawal) Act 2018) to incorporate EU laws and regulations into domestic UK law, replacing references to EU entities and laws and regulations with corresponding UK references. As a result, beginning January 1, 2021, the UK and EU had virtually identical legal and regulatory structures, although the UK is generally free to change its laws and regulations independent of the EU.

The UK and EU negotiated a new trade agreement, the UK–EU Trade and Cooperation Agreement (TCA), that as of January 1, 2021, continues tariff-free and quota-free access to each other’s markets without binding each other’s regulatory regimes. Under the TCA, if domestic regulatory systems diverge in ways that significantly affect trade, either side may seek to rebalance the agreement by modifying market access commitments.

Changes to applicable UK laws and regulations have, at least initially, largely replicated those of the EU. In September 2021, the UK Government announced a plan for regulatory reforms, a comprehensive review of the status and content of all EU law retained by the UK, and the creation of a new standing commission to review proposals for further regulatory reforms.

On December 31, 2020, the United States and the UK completed the transition of five existing United States–EU agreements to new United States–UK agreements. These five agreements covered aspects of bilateral trade in wine, distilled spirits, marine equipment, telecommunication equipment, electromagnetic capability, pharmaceutical products (good manufacturing practices), and covered insurance and reinsurance. Additional information regarding the agreements can be found on the Office of the U.S. Trade Representative’s [website](#). The United States and the UK have also ensured the transition of mechanisms supporting trade in organic products and recognition of veterinary health certificates.

## IMPORT POLICIES

### Tariffs

#### *United Kingdom Global Tariff*

In May 2020, the UK announced its Most-Favored-Nation (MFN) tariff regime (UK Global Tariff), which replaced the EU Common Customs Tariff as of January 1, 2021. According to the UK Government, the average MFN tariff rate under the UK Global Tariff regime is 5.7 percent. The UK Global Tariff nearly doubles the number of products that are tariff free compared to the EU Common Customs Tariff. The UK Global Tariff eliminates tariffs on approximately 500 goods that previously had EU tariffs of less than 2 percent, including cement, refrigerator freezers, and food processing machinery. It eliminates close to an additional 1,500 tariffs on key inputs to support UK manufacturing, including wood, machinery inputs, and plastics; goods where the UK has zero or limited production, including cotton yarn, bicycle parts, and footwear; and goods to support UK green growth industries, including turbine parts, waste containers, and trees. The UK also eliminated use of the Meursing table, which the EU used to calculate additional tariffs on certain foodstuffs based on the content of milk fat, sugar, and starch ingredients.

The UK retained duties on approximately 5,000 tariff lines, including on certain agricultural products, ceramics, chemicals, bioethanol, and vehicles. Tariffs also were retained on some products such as bananas,

raw cane sugar, and apparel, to maintain preferential access for imports from developing countries into the UK. It retained some high tariffs that affect U.S. exports, such as rates of up to 25 percent for fish and seafood, 10 percent for trucks, 10 percent for passenger vehicles, and 6 percent for fertilizers and plastics.

As of 2018, U.S. exports of certain whiskey, cosmetics, clothing, and other products have been subject to additional import duties of 25 percent, imposed following U.S. action against UK steel and aluminum under Section 232 of the Trade Expansion Act.

### *Tariff-Rate Quotas*

Under the UK Global Tariff, some products are covered by a tariff-rate quota (TRQ). As a result of the UK leaving the EU, the EU and the UK argued that the TRQs in the existing EU WTO schedule should be divided among the EU and UK in their new tariff schedules based on historic trade flows.

In 2021, the United States concluded bilateral negotiations with the UK under Article XXVIII of the General Agreement on Tariffs and Trade 1994 on TRQ commitments to account for the withdrawal of the UK from the EU. The negotiations apportioned between the UK and EU certain pre-Brexit TRQ quantities that were in the EU's tariff schedule. The outcome of these negotiations provides certainty to U.S. exporters regarding access to the UK market and resulted in favorable outcomes on U.S. access to the UK market for products such as pork and beef. The UK implemented its TRQs with respect to U.S. exports in June 2021 and January 2022 based on timeframes it has traditionally used to administer various TRQs.

## **Non-Tariff Barriers**

### *Customs Barriers and Trade Facilitation*

The UK previously participated in the WTO Trade Facilitation Agreement (TFA) as a Member State of the EU. The UK confirmed its continued acceptance of the TFA following the end of the transition period on December 31, 2020.

U.S. exports shipped directly to the UK face essentially the same customs and border requirements as when the UK was an EU Member State. However, U.S. goods entering the UK from the EU may face different requirements as the UK establishes new border controls with the EU market.

As of January 1, 2021, traders importing standard goods must follow basic customs requirements, such as providing proof of origin and keeping sufficient records of imported goods. Traders also need to consider how they account for and pay value-added tax (VAT) on imported goods. Traders then have up to six months to complete customs declarations. While tariffs are payable where due on relevant goods, payments can be deferred until the customs declaration has been made. Standard customs declarations have been needed as of January 1, 2021, for controlled goods and excise goods like alcohol and tobacco products. There are also physical checks at the point of destination or other approved premises on all high-risk live animals and high-priority plants and a requirement to pre-notify for certain movements.

Since the UK border control measures are new, there is uncertainty regarding how they will operate and whether there will be extensions of phase-in periods, including with respect to U.S. goods that flow to the UK through the EU or vice versa. Several UK Government information technology systems also remain under development, and infrastructure is still being built at several border locations. All of these changes could lengthen the amount of time required for U.S. goods to enter or depart the UK.

### *New Border Controls for Goods Entering Great Britain from the EU*

As of January 1, 2021, the UK is operating an external border with the EU. The UK has repeatedly delayed the phased introduction of these new border controls for the movement of goods between Great Britain (*i.e.*, England, Wales, and Scotland) and the EU. On September 14, 2021, the UK issued a revised timetable through November 2022, citing the desire to give businesses more time to adjust to the new controls and the continuing effect of the global COVID-19 pandemic on supply chains.

### *Northern Ireland-specific Border Controls*

Northern Ireland is subject to separate arrangements under the Protocol on Ireland/Northern Ireland that accompanied the agreement between the UK and the EU addressing the UK's withdrawal from the EU. Checks on goods moving from Great Britain into Northern Ireland began on January 1, 2021, although certain food products and medicines received grace periods before checks came into force. In September 2021, the UK Government announced it would extend those grace periods indefinitely, pending the outcome of negotiations with the EU on implementation of the Protocol on Ireland/Northern Ireland. Agricultural goods shipped from Great Britain into Northern Ireland will be checked for compliance with EU SPS measures, including any required EU certifications.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

As of January 1, 2021, compliance with UK law and procedures is necessary in order to place goods for sale in Great Britain (*i.e.*, England, Wales, and Scotland), whereas compliance with EU law and procedures will continue to apply to goods placed for sale in Northern Ireland consistent with the Protocol on Ireland/Northern Ireland. A new marking requirement for products entering Northern Ireland, a UKNI conformity mark, also came into effect as of January 1, 2021. Manufacturers of products that currently require self-declaration, or products for which manufacturers have utilized an EU-recognized Notified Body to perform third party conformity assessment, can continue to follow existing EU conformity marking requirements, the EU CE mark, for products placed on the market in Northern Ireland. Products certified by a UK-based Notified Body, however, must display the UKNI conformity mark in addition to the CE mark.

Upon withdrawal from the EU, the UK transposed existing EU technical regulations and requirements into UK law, thus ensuring close alignment between UK and EU technical regulations and requirements during the transition. Specific trade concerns outlined in the TBT section of the EU Chapter in this National Trade Estimate Report thus remain concerns with respect to the UK. In the future there are likely to be divergences between the two regimes, as future changes to EU regulations will not be automatically reflected in the UK regulatory regime and vice versa. Goods placed on the market in Great Britain may continue to use the European CE mark or the UK's new UK conformity assessment (UKCA) mark until the end of 2022. Beginning in 2023, regulated goods placed on the market in Great Britain must be marked UKCA.

### **Sanitary and Phytosanitary Barriers**

Although the UK is no longer a member of the EU single market and customs union, UK Sanitary and Phytosanitary (SPS) measures are currently aligned with EU SPS measures because the UK incorporated those measures into UK domestic law as of January 1, 2021. The UK is able to establish domestic regulatory policies and SPS standards independently from the EU. However, under the Protocol on Ireland/Northern Ireland, the UK has committed to apply EU customs and regulatory requirements on goods, including agricultural goods, in Northern Ireland, even if UK requirements diverge from those of

the EU. As noted in the SPS section of the EU Chapter in this National Trade Estimate Report, the United States remains concerned about several SPS measures the EU maintains absent scientific justification that negatively impact market access for U.S. agricultural products. Specifically, the UK remains closely aligned to EU policy on pesticide approvals, regulation, and maximum residue levels.

In the past as an EU Member State, the UK promoted science-based decision-making during the EU rulemaking process, encouraging other EU Member States to support science and risk-based decision-making. With its departure from the EU, the UK may choose to review certain EU SPS measures incorporated into its legislation. In September 2021, the UK Government announced an array of current and prospective regulatory reforms; a comprehensive review of the status and content of all EU law retained by the UK; and, a new standing commission to receive ideas for further regulatory reforms, including of agricultural and environmental regulations.

### *Border Inspections*

As of January 1, 2022, all products of animal origin and all regulated plants and plant products require pre-notification. This requirement was originally scheduled for implementation on April 1, 2021, and then October 1, 2021. Any physical checks will continue to be conducted at the point of destination until July 1, 2022. The requirement for full safety and security declarations, and for commodities subject to SPS controls to be presented at specific border control posts, will now be implemented on July 1, 2022. From this time, SPS checks for all products of animal origin and all regulated plants and plant products will take place at Great Britain Border Control Posts and not at the point of destination. Export health certification, also originally scheduled for implementation from April 1, 2021, and then delayed until October 1, 2021, will not be required until July 1, 2022. There will be no additional SPS border checks on products shipped from Northern Ireland into Great Britain (*i.e.*, England, Wales, and Scotland).

### *Agricultural Biotechnology*

The UK now has the autonomy to establish its own regulatory and policy approach for agricultural biotechnology products, including crops and animals. The UK is aiming to transition away from the retained EU policy approach for agricultural biotechnology products within the next one to two years. In early 2021, the UK launched a regulatory review that proposes a tiered approach to food and animal feed approvals based on product characteristics rather than on the technology involved in its production. This applies to products of genome editing that are indistinguishable from those produced with conventional breeding techniques. This approach also paves the way for modernization of the UK's full suite of agricultural biotechnology regulations. A timeline of five to seven years has been proposed for this work.

## **GOVERNMENT PROCUREMENT**

The UK previously participated in the WTO Agreement on Government Procurement (GPA) as a member of the EU. Following an agreement by the Parties to the GPA, the UK remained covered by the GPA as an EU Member State after its withdrawal from the EU through the end of the transition period on December 31, 2020, and acceded as a Party in its own right to the GPA on January 1, 2021.

### *UK Space Agency*

Participation in European Space Agency (ESA) procurements, to which the UK contributes funding, is generally only open to economic operators in ESA Member States. U.S. companies are generally prohibited from competing on ESA contracts. A significant amount of money is allocated by the UK to ESA. For example, the UK Space Agency allocated £384.3 million (approximately \$523.7 million) to ESA in its 2020–2021 budget, which is approximately 75 percent of the UK Space Agency's total budget.

## **INTELLECTUAL PROPERTY PROTECTION**

The UK generally maintains high levels of intellectual property (IP) protection and enforcement. However, U.S. stakeholders have expressed concern that the UK music copyright collective fails to remunerate U.S. artists for radio broadcasts and public performances of their music in the UK. The United States will continue to monitor developments with the UK's IP system.

### *Geographical Indications*

From January 1, 2021, the UK will set up its own geographical indications (GI) scheme, which will limit the use of the geographical names for food, drink, and agricultural products (including beer, cider, and perry), spirit drinks, wine, and aromatized wine.

The new UK schemes will use these designations:

- Protected Designation of Origin (PDO)
- Protected Geographical Indication (PGI)
- Traditional Speciality Guaranteed (TSG)

The UK schemes will be open to producers from the UK and other countries. All existing products registered under the EU GI schemes as of December 31, 2020, will remain covered under the new UK GI schemes, including both UK and EU GIs.

From January 1, 2021, producers seeking the exclusive use of geographical names will need to apply to the UK scheme to protect a new product name in Great Britain or to the EU scheme to protect a new product name in Northern Ireland and the EU. Great Britain producers will need to secure protection under the UK scheme before applying to the EU scheme. Northern Ireland producers do not need to secure protection under the EU scheme before applying to the UK scheme. The United States will monitor the impact that the UK's new scheme for the protection of GIs has on prior trademark rights and on market access for U.S. goods that rely on the use of common names.

## **SERVICES BARRIERS**

### *Professional Qualifications*

There is generally no reciprocity with the UK for medical certifications, qualifications, and degrees. There is also a cap of 7.5 percent on foreign medical students allowed in the UK, which effectively limits the number of U.S. students studying medicine in the UK.

Permission to act as a chartered accountant requires the applicant to have professional experience in the UK, thus preventing experienced U.S. certified public accountants (CPAs) from obtaining authorization to practice in the UK. Efforts are being made to address this through professional bilateral arrangements. For example, U.S. accountancy bodies have entered into a mutual recognition agreement with the Institute of Chartered Accountants of Scotland (ICAS), which streamlines many of the requirements for U.S. CPAs to obtain ICAS authorization. Under the agreement, ICAS will seek dispensation from its oversight regulator, the UK Financial Reporting Council, to recognize auditing experience obtained in the United States toward ICAS's practical auditing experience requirement.

## **BARRIERS TO DIGITAL TRADE**

### **Data Localization**

The UK Data Protection Act, which is modeled after the EU General Data Protection Regulation, took effect in May 2018. Because of the UK's assertion of extraterritorial jurisdiction for the Act, in addition to the Act's broad impact on many areas of the economy, U.S. companies have expressed concerns that there remains a need for clear and consistent guidance in its implementation and enforcement. The Act restricts the transfer of the personal data of UK data subjects (any natural person whose personal data is being processed) outside of the UK, except to specific countries that the UK has determined provide adequate data protection under UK law or when other specific requirements are met, such as the use of standard contract clauses or binding corporate rules. The United States will continue to engage with the UK to promote interoperability between UK and U.S. approaches to data protection to ensure the cross-border flow of data between the UK and the United States.

### **Interactive Computer Services**

#### *Online Harms*

On May 12, 2021, the UK Government published a draft "Online Safety" bill. If enacted, this legislation may impose a new "duty of care" on a wide range of online service providers to reduce the distribution of harmful online content. This legislation also may place additional obligations on larger companies that the UK determines provide "high risk" services.

### **Digital Services Taxation**

The United States and the United Kingdom are among the 137 member jurisdictions to have joined the October 8, 2021, "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy" adopted by the Organization for Economic Co-operation and Development (OECD) and the Group of Twenty (G20). On October 21, 2021, the United States, Austria, France, Italy, Spain, and the UK issued a joint statement that describes a political compromise reached among these countries "on a transitional approach to existing Unilateral Measures while implementing Pillar 1." According to the joint statement, (digital services taxation) DST liability that accrues to Austria, France, Italy, Spain, and the UK during a transitional period prior to implementation of Pillar 1 will be creditable in defined circumstances against future income taxes due under Pillar 1. In return, the United States terminated the existing Section 301 trade actions on goods of Austria, France, Italy, Spain, and the UK and committed not to take further trade actions against these countries with respect to their existing DSTs until the earlier of the date the Pillar 1 multilateral convention comes into force or December 31, 2023. USTR, in coordination with the U.S. Department of the Treasury, is monitoring the implementation of the political agreement on the OECD/G20 Two-Pillar Solution as pertaining to DSTs, the commitments under the joint statement, and associated measures.

## **SUBSIDIES**

### *Government Support for Airbus*

After 15 years of litigation, in October 2019, the WTO authorized the United States to take \$7.5 billion in countermeasures in the dispute against the EU, France, Germany, Spain, and the UK regarding their illegal subsidies for the Airbus consortium.

On June 17, 2021, the United States and the UK announced a cooperative framework to address the large civil aircraft disputes and agreed to future cooperation to overcome any disagreements in the sector. Over many years, the UK, together with other EU Member States, have provided subsidies to their Airbus-affiliated companies to aid in the development, production, and marketing of Airbus's large civil aircraft. As part of the cooperative framework, the United States and UK will not impose countermeasures in the form of tariffs for five years and will work together to address non-market practices in the aircraft sector. The United States and the UK established a working group to address these issues on an ongoing basis.

### *Agricultural Subsidies*

The UK's departure from the EU also means the UK's departure from the EU Common Agricultural Policy (CAP). The UK Government passed its own Agriculture Bill in November 2020, which provides the legislative framework for agricultural support schemes and a range of powers to implement new approaches to farm payments and land management. In contrast to the production support focus of the EU CAP, UK farmers will be paid to produce "public goods" such as environmental or animal welfare improvements.

In the UK, agriculture is a devolved competence, which means that while the UK's agricultural budget is provided centrally, the devolved administrations in Scotland, Wales, and Northern Ireland each determine budget allocations within their respective jurisdictions. The new farm support schemes laid out in the Agriculture Bill thus mainly apply to England. Public consultations on the budget allocations took place in all four nations and led to different preferences being expressed, so some variation in application is expected.

Any level of variation will be constrained by the UK Internal Market Act, which passed in December 2020. The Internal Market Act prevents any UK nation from passing policy that distorts internal trade and places limits on subsidy allocation. Powers are included in the Agriculture Act for Northern Ireland to enable preparation of replacement schemes. Wales and Scotland are in the process of introducing their own legislation. Uptake of pilot schemes in England has been muted, and the expectation is that participation costs will discourage some producers, despite agricultural support being an important source of income for many. Aside from farm support, some measures, such as those on food security and fair dealing in the supply chain, do apply to the four nations, and all measures are subject to WTO obligations.

# URUGUAY

## TRADE AGREEMENTS

The United States and Uruguay signed a Trade and Investment Framework Agreement (TIFA) on January 25, 2007. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Uruguay. Following the TIFA meeting in August 2021, Uruguay and the United States began negotiations on a new protocol to update the TIFA.

## IMPORT POLICIES

### Tariffs

Uruguay's average Most-Favored-Nation (MFN) applied tariff rate was 10.3 percent in 2020 (latest data available). Uruguay's average MFN applied tariff rate was 10 percent for agricultural products and 10.3 percent for non-agricultural products in 2020 (latest data available). Uruguay has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 31.6 percent.

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

MERCOSUR provisions allow its members to maintain a limited number of national and sectoral list exceptions to the CET for an established period. Uruguay's national exceptions, mostly inputs for domestic industries that produce for the local market, include 256 tariff lines that expire in December 2022. MERCOSUR's sectoral lists allow special regimes for imports of capital goods and imports of computer and telecommunications goods from non-MERCOSUR countries. Uruguay's list of capital goods includes 1,297 tariff subheadings that expire in December 2030. Uruguay's list of computer and telecommunications goods includes 260 tariff lines that are scheduled to expire in December 2029. Modifications to MERCOSUR tariff rates are made through resolutions and are published on the MERCOSUR website.

According to MERCOSUR procedures, any good imported into any member country (not including free trade zones) is subject to the payment of the CET to that country's customs authorities. If the product is then re-exported to any other MERCOSUR country, the CET must be paid again to the second country.

In 2010, MERCOSUR took a step toward the establishment of a customs union by approving a Common Customs Code (CCC) and launching a plan to eliminate the double application of the CET within MERCOSUR. All MERCOSUR members must ratify the CCC for it to take effect, but only Argentina has done so.

Uruguay has bilateral agreements with Argentina and Brazil to provide preferential treatment for automobiles and automotive parts.

### Non-Tariff Barriers

#### *Import Licensing*

Uruguay applies automatic or non-automatic import licenses to 378 products. Automatic licenses are used for statistical purposes (*e.g.*, textiles, footwear, and oils), granting preferences (*e.g.*, vehicles and paper for

publishing), or monitoring prices. Non-automatic licenses are used to grant tariff exemptions to domestic users (e.g., sugar).

#### *Customs Barriers and Trade Facilitation*

In addition to tariffs, Uruguay charges additional fees and taxes on imports. The consular fee on imports remains a concern for traders. It is 5 percent *ad valorem*, up from 2 percent in 2018. In addition, traders pay charges to customs clearing agents and port authorities, and an *ad valorem* tax on imports of newsprint.

U.S. express delivery service suppliers have raised concerns about restrictions on packages imported to Uruguay, including low-value packages under the \$200 *de minimis* threshold. These shipments are restricted to non-commercial shipments and cannot exceed three shipments per recipient per year.

### **GOVERNMENT PROCUREMENT**

Uruguay uses government procurement as a tool for promoting local industry, especially micro, small, and medium enterprises (MSMEs), and enterprises that innovate in technological and scientific areas. Most government contracts (except for those in areas in which the public and private sectors compete) prioritize goods, services, and civil engineering works produced or supplied by domestic MSMEs. The most commonly used preferential regime grants an 8 percent price preference to goods and services produced domestically, regardless of the firm's size. MSME programs grant price preferences ranging from 12 percent to 16 percent for MSMEs competing against foreign firms.

Uruguay is neither a party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

### **INTELLECTUAL PROPERTY PROTECTION**

The United States will continue to encourage Uruguay to provide transparency and procedural fairness to all interested parties in connection with potential recognition or protection of geographical indications, including in connection with trade agreement negotiations.

# VIETNAM

## TRADE AGREEMENTS

### The United States–Vietnam Trade and Investment Framework Agreement

The United States and Vietnam signed a Trade and Investment Framework Agreement (TIFA) in June 2007. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Vietnam.

## IMPORT POLICIES

### Tariffs and Taxes

#### *Tariffs*

Vietnam's average Most-Favored-Nation (MFN) applied tariff rate was 9.5 percent in 2020 (latest data available). Vietnam's average MFN applied tariff rate was 16.5 percent for agricultural products and 8.4 percent for non-agricultural products in 2020 (latest data available). Vietnam has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 11.7 percent. Vietnam also maintains import tariff-rate quota regimes for salt, tobacco, eggs, and sugar.

Vietnam's Law on Tariffs (No. 107), which includes an applied tariff schedule (Decree 122/2016/ND-CP), has been in effect since September 2016. Inputs imported for software production, medical equipment production, shipbuilding, and petroleum activities that cannot be produced domestically are eligible for tariff exemptions. Tariff exemptions and refunds are also applied to the following: animal breeds, plant varieties, fertilizers, and plant protection products that are not produced domestically; machinery, inputs, and spare parts used for money printing; and, goods imported or exported for the purpose of environmental protection.

Although the majority of U.S. exports to Vietnam face tariffs of 15 percent or less, consumer-oriented food and agricultural products continue to face higher rates. In recent years, Vietnam has increased MFN applied tariff rates on a number of products, including sweeteners (such as fructose and glucose), shelled walnuts, ketchup and other tomato sauces, inkjet printers, soda ash, and stainless-steel bars and rods. Most of the products for which tariffs have increased are also produced by companies in Vietnam.

Decree 125 increased the number of MFN duty-free tariff lines by 149 lines, from 3,133 to 3,282, effective January 2018. The decree also doubled tariff rates for used passenger vehicles. In addition, Decree 125 reduced tariff rates to zero percent for automotive parts that cannot be produced domestically (HS subheading 98.49), applicable until 2022. In July 2020, Decree 57/2020/ND-CP came into effect, which revised and supplemented Decree 125. It applies a zero percent tariff rate through 2024 for materials, inputs, and spare parts (Harmonized System subheading 98.49) to be used for car production and assembly that domestic companies are not able to manufacture.

#### *Taxes*

Vietnam's Law 106 of 2016 increased the special consumption taxable base for imported alcoholic beverages from the import price to the sales price received by the importer, thereby significantly increasing the tax burden on importers relative to domestic producers.

## **Non-Tariff Barriers**

### *Import Bans and Restrictions*

Vietnam prohibits the commercial importation of some products, including certain children's toys, second-hand consumer goods, used parts for vehicles, used internal combustion engines of less than 30 horsepower, certain encryption devices and encryption software, refurbished medical devices, and certain cultural products.

Ministry of Industry and Trade (MOIT) Circular 05/2014 set out a list of items subject to permanent and temporary bans on importation for re-export under Directive 23 of 2012, including chemicals, plastics and plastic waste, and certain types of machinery and equipment. In addition, Ministry of Construction Circular 25 prohibits the importation of asbestos of the amphibole group.

Vietnam maintains import prohibitions on certain used information technology (IT) products. Government Decision 18 of 2016 eases import prohibitions on some used IT products, if these products meet various technical regulations and standards. The products covered under the decision include used IT goods that are: (1) imported in conjunction with the relocation of means of production of a single organization; (2) imported for the control, operation, and inspection of activities in one or all parts of a system or production line; (3) imported for software production, business outsourcing, or data processing for foreign partners; or, (4) re-imported after overseas repairs under warranty. The decision also covers refurbished goods and components out of production imported to replace or repair those being used domestically.

### *Import Licensing*

The Law on Network Information Safety No. 86/2015/QH13, which came into effect on July 1, 2016, includes provisions related to spam, unauthorized collection and distribution of personal information, hackers, and other subjects. The law defined "network information safety" as the protection of network information and network information systems from unauthorized access, use, disclosure, interruption, amendment or sabotage in order to ensure the confidentiality and usability of the information on the network system. Companies that produce information and communications technology products have expressed concerns about uncertainties created by ambiguities contained in this law and its implementing decrees. Specifically, companies have raised concerns with Decree 108/2016/ND-CP, on conditions for trading in network information security products and services, and Decree 58/2016/ND-CP (Decree 58).

Decree 58 requires an import license for some products with cryptographic functions (encryption). U.S. stakeholders have reported that Vietnam Customs has blocked imports of certain network equipment products containing encryption that did not previously require an import license. The import license requirement in Decree 58 seems to have been broadened to cover products where encryption is an "important" function, rather than just those meeting the "core" function standard.

### *Customs Barriers and Trade Facilitation*

Vietnam notified its customs valuation legislation to the WTO in May 2021, but has not responded to the Checklist of Issues describing how the WTO Customs Valuation Agreement is being implemented.

### *Trading Rights*

Companies are allowed to import all goods, except for a limited number of products that may only be imported by state trading enterprises. These products include cigars and cigarettes, materials for gold bar production, fireworks, newspapers, journals and periodicals, and recorded media for sound or pictures (with

certain exclusions). Vietnamese law provides that foreign-invested enterprises with export trading licenses may buy agricultural products only from local traders.

### *Price Registration and Stabilization*

Under Vietnam's Price Law, the Ministry of Finance (MOF) has the authority to apply price controls on a set list of products, including petroleum products, electricity, liquefied petroleum gas, nitrogen fertilizers, pesticides, animal vaccines, salt, milk products for children under the age of six, sugar, rice, and basic human medications.

### *Product Registration Requirements – Imported Pharmaceuticals*

Some U.S. stakeholders continue to express concerns about the impact on foreign firms of product registration requirements for imported pharmaceuticals. Decree 54 of 2017 permits foreign pharmaceutical companies to establish importing entities. The international business and pharmaceutical community welcomed this step but continue to have concerns about warehousing, distribution, and licensing requirements, as well as the lack of a transition period for companies to establish a foreign-invested entity.

Circular 32/2018/TT-BYT (Circular 32), in force since September 2019, regulates the drug registration process in Vietnam. It requires the Drug Administration of Vietnam to coordinate with diplomatic missions and foreign regulating agencies to verify the authenticity of legal documentation of pharmaceutical products, including the Certificate of Pharmaceutical Product (CPP), in drug registration dossiers necessary for the issuance or renewal of the marketing authorization for a drug. However, Circular 32 requires CPPs to contain some content that foreign regulators are unable to verify. This has resulted in a backlog of approximately 12,000 drug registration renewals and applications, ultimately leading them to expire. To ease this backlog, Vietnam has issued one-year extensions for the market authorization validity in 2019, 2020, and most recently December 30, 2021 with Resolution 12/2021/UBTVQH15 and a forthcoming decree to extend validity to December 31, 2022.

### *Medical Devices*

In November 2021, Vietnam issued Decree No. 98/2021/ND-CP, which superseded several decrees dating back to 2016 related to the management and product clearance of medical devices. Industry reports that a backlog of more than 10,000 product dossiers has accumulated at the Department of Medical Equipment and Construction (DMEC) under the Ministry of Health, in part due to DMEC not accepting product clearances already completed by regulatory authorities in other countries. Although the new decree should help reduce the backlog, industry has raised new concerns about the decree's price reporting provisions. The United States will continue monitoring developments related to the implementation of the new decree.

## **TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS**

### **Technical Barriers to Trade**

#### *Automobiles and Automotive Parts*

In February 2020, Vietnam enacted Decree 17/2020/ND-CP, which revised Decree 116/2017/ND-CP. Decree 116/2017/ND-CP established conditions for automotive manufacture, assembly, importation, service, and automobile warranties. Decree 17/2020/ND-CP removed requirements for new cars imported from countries with self-certification systems from emission and safety pre-checks. Imported cars of any self-certified model can freely enter Vietnam with sample testing every three years. The vehicles are also subject to random emissions and safety tests, which is standard for the industry in the United States. The

United States will continue to monitor Vietnam's implementation of the revised measure. Beginning on January 1, 2022, Circular 06/2021/TT-BGTVT regulates that new imported cars must meet the "Euro 5" level of emission standards that the European Union applies.

### *Glyphosate*

In April 2020, the Ministry of Agriculture and Rural Development (MARD) issued Circular 06/2020 to extend the use of crop protection products containing glyphosate in Vietnam to June 30, 2021. Despite the United States' request that Vietnam conduct a thorough scientific review of the chemical, Vietnam banned the use of glyphosate on July 1, 2021.

## **Sanitary and Phytosanitary Barriers**

### *Importation Approvals for Genetically Engineered Products*

As of October 2021, Vietnam completed the approval of the final seven remaining biotechnology products for corn, soybeans, cotton, and alfalfa. These approvals bring the total number of biotechnology products approved for food and feed import in Vietnam up to 52. Vietnam has become one of the main markets in which developers are seeking approvals in advance of the commercialization of biotechnology products like corn and soybeans. However, Vietnam's approval process for food and feed imports continues to raise concerns about unpredictable procedures.

### *Commercialization of Genetically Engineered Crops and Varieties*

Vietnam continued to suspend the cultivation approval of new genetically engineered (GE) corn hybrids in 2021. Although the Government of Vietnam issued Decree 118/2020 to supplement its regulations on risk assessment for GE crops, MARD continues to block the review of pending field-testing reports. MARD has yet to re-establish the GE Crop Risk Assessment Committee, which is responsible for reviewing the results of field testing, even though the last Committee term ended in September 2020. MARD has also delayed issuing guidance for examining resistant traits in testing of new varieties. These delays present a challenge for biotechnology developers who seek to register new biotechnology hybrids under the Crop Production Law.

### *Plant Quarantine Restrictions*

Vietnam requires pre-shipment fumigation for shipments of corn, *distiller's dried grains with solubles* and wheat due to the presence of quarantine and non-quarantine pests. The United States will continue to engage Vietnam to implement transparent policies that allow for fumigation on arrival.

### *Specialized Inspection Procedures*

On September 20, 2021, MARD issued Circular 11/2021/TT-BNNPTNT on the promulgation of Harmonized System (HS) codes for the import and export of goods subject to its management. This Circular makes 1,639 HS codes subject to MARD's specialized inspection procedure prior to customs clearance, including terrestrial animals and products thereof; aquatic animals and products thereof; plant and plant products, animal feed and feed ingredients; and makes three HS codes, including bovine semen, subject to MARD's specialized post clearance inspection procedure. This Circular entered into force on November 6, 2021, and replaced MARD's Circular 15/2018.

### *Food Safety Procedures*

In February 2018, Vietnam adopted Decree 15 on the enforcement of the Food Safety Law, which provides guidance on self-declaration, labeling, import inspection, and registration for export to Vietnam of food products of plant and animal origin. Although Decree 15 simplified the self-declaration for importation of food products, some aspects of the decree created uncertainty, with different line ministries, and even departments within MARD, appearing to contradict each other regarding its interpretation. For example, MARD and MOH provided contradictory interpretations regarding the definition of “processed products,” which are exempt from the facility registration process under Decree 15. Despite requests by the United States and other trading partners, Vietnam refused to notify Decree 15 to the WTO.

In October 2020, the Vietnam General Department of Customs (GDVC) submitted a proposal to the Government of Vietnam to reform the food safety and quality inspection process for imported goods, under which the GDVC would become the primary authority. In March 2021, the GDVC issued a new draft decree to revise Decree 15. The new draft decree covers foods and agricultural products, and would create a two-step registration for import inspection by merging the self-declaration (for food safety) and conformity announcement (for quality inspection) into the registration for import inspection. As requested by the United States, Vietnam notified this draft decree to the WTO members in July 2021. As of March 2022, the Government of Vietnam has not yet approved the draft decree. The United States continues to monitor the development of this draft decree to avoid any potential impacts on trade of food and agricultural products.

### *Ban on Offal Products*

Despite MARD lifting Vietnam’s ban on the importation of so-called “white offal” such as poultry gizzards, beef and pork stomach and intestines in September 2013, Vietnam has not approved new U.S. facilities to export these products. Plans for Vietnam to conduct an onsite audit of U.S. facilities were indefinitely postponed due to the outbreak of African Swine Fever in Vietnam.

### *Products of Plant Origin*

In January 2015, Vietnam implemented a new Plant Health Law and decrees updating its regulatory regime in the areas of plant health quarantine, pesticide regulation, and import and export of plant origin products. These measures included Circular 30/2014/TT-BNNPTNT, which contains a list of articles for which pest risk assessments (PRAs) must be provided before the article can be imported into Vietnam.

Under this circular, MARD initially gave the United States a six-month deadline to submit hundreds of PRAs on a variety of traditionally traded commodities. Since the MARD directive was issued, the United States has submitted PRA information for a range of commodities, including citrus and stone fruit. In some instances, the PRA approval process has been slow, which has delayed approvals for potential U.S. exports of products of plant origin.

In December 2020, Vietnam issued Circular 15/2020 promulgating the National Technical Regulations (NTR) 192 on the phytosanitary requirements for imported regulated articles. NTR 192 sets a zero tolerance on all quarantine pests regulated under Circular 35/2014/TT-BNNPTNT issued in 2014, including Canadian thistle (*Cirsium arvense*). Circular 15 took effect on June 25, 2021.

## **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 the Vietnamese government procurement market.

Vietnam is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since 2012.

## **INTELLECTUAL PROPERTY PROTECTION**

Vietnam remained on the Watch List in the [2021 Special 301 Report](#). Despite positive developments in 2020 and 2021, such as the issuance of the national intellectual property (IP) strategy, continued public awareness campaigns and training activities, and reported improvements on border enforcement in some parts of the country, the United States remains concerned about IP protection and enforcement in Vietnam, including in the digital environment. Capacity and resource constraints, corruption, and poor coordination among enforcement agencies continue to pose challenges to effective IP enforcement. Piracy and sales of counterfeit goods online and in physical markets continue to be a concern. Two physical markets in Vietnam, Ben Thanh Market in Ho Chi Minh City and Dong Xuan Market in Hanoi, continue to be included on the [2021 Notorious Markets List](#). Vietnam continues to rely heavily on administrative actions and penalties to enforce IP, but these have failed to deter counterfeiting and piracy. In addition, the United States has concerns about the lack of clarity in Vietnam's system for protecting against the unfair commercial use as well as the unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. The United States continues to discuss these issues with Vietnam. The United States also continues to monitor the implementation of IP provisions pursuant to Vietnam's commitments under trade agreements with third parties.

## **SERVICES BARRIERS**

### **Audiovisual Services**

Decree 06/2016 on the Management, Provision and Use of Radio and Television Services, enacted in March 2016, requires that foreign channels on pay-television services account for no more than 30 percent of the total number of channels the service carries. Vietnam also requires that foreign pay-television providers use a local agent to translate into Vietnamese all movies and programming on science, education, sports, entertainment, and music before they are screened. Vietnam requires foreign content providers to secure the services of a local editing company for post-production work, including translation, content review, and payment of a placement fee for advertisements to be approved for placement in a Vietnamese broadcast.

Since 2019, the Authority of Broadcasting and Electronic Information (ABEI) under the Ministry of Information and Communications (MIC) has been drafting revisions to Decree 06/2016 to extend Vietnam's broadcasting regulatory regime to Internet-enabled subscription video services. The United States has raised several concerns, including concerns with proposed local-content, translation, and pre-review censorship requirements.

In December 2020, the Ministry of Culture, Sports and Tourism (MOCST) published for comment a draft revised Cinema Law that would extend certain film-licensing requirements for theatrical screenings, including a 15-day review process, to all films offered online, as well as require all suppliers of online film screening services to have a local presence. The United States has raised several concerns, including the ability of regulators to efficiently process the very large number of films in, and regularly added to, online catalogs and continues to monitor the development of the measure.

## **Retail Services**

Foreign investors who seek to open additional retail establishments beyond the first store in Vietnam are subject to an economic needs test, which is conducted by local authorities and approved by MOIT. Retail outlets of less than 500 square meters located in shopping malls and that are not classified as convenience stores or mini supermarkets are exempt from the economic needs test requirement.

## **Financial Services**

Foreign investors may establish 100 percent foreign-owned bank subsidiaries or may take ownership interests in domestic “joint stock” banks (*i.e.*, commercial banks with any percentage of private ownership) or “joint venture” banks (*i.e.*, banks set up by joint venture agreement, typically between domestic and foreign partners). Total equity held by foreign institutions and individual investors in domestic joint stock banks is limited to 30 percent, while total equity held by a foreign strategic investor (defined as a foreign credit institution meeting certain criteria related to capacity to help develop the Vietnamese banking partner) is limited to 20 percent. Foreign equity in joint venture banks is limited to 50 percent. Over the last two years, foreign banks have raised concerns about provisions in the Law on Credit Institutions, which limits the lending of foreign bank branches in Vietnam based on their local charter capital, rather than on the global capital of the parent bank.

### *Electronic Payment Services*

In 2016, two Vietnamese payment processing networks were consolidated into a *de facto* monopoly, the National Payments Corporation of Vietnam (NAPAS), which is partially owned by the State Bank of Vietnam. Vietnam then issued Circular 19/2016/TT-NHNN (Circular 19) mandating that all domestic and cross-border retail credit and debit transactions be processed through NAPAS starting in January 2018, although Vietnam subsequently extended the implementation deadline. Circular 19’s requirements would have prohibited foreign electronic payment services suppliers from supplying services on a fully cross-border basis (*i.e.*, without involving NAPAS, a local service supplier). In December 2019, Vietnam issued Circular 28, which amended Circular 19 to apply only to domestic retail electronic payment transactions when a payment card, including an internationally-branded payment card, is presented at the merchant point of sale (excluding domestic online transactions) and extended the deadline for implementation to January 1, 2021.

### *Insurance*

In January 2021, the Ministry of Finance released draft amendments to the Insurance Law, and the United States submitted comments in February 2021. The United States understands that revisions to the draft are pending and that those revisions likely will address many of the concerns the United States raised, including limitations on the cross-border supply of certain insurance services, uncertainty concerning the types of juridical forms available for foreign insurance companies, and limitations on use of third-party services as well as data localization requirements. The United States continues to monitor this issue.

## **Telecommunications Services**

Vietnam permits foreign participation in the telecommunications sector, with varying equity limitations depending on the sub-sector. According to the Law on Telecommunication 41/2009/QH12, for domestic companies that provide basic telecommunication services with infrastructure, foreign ownership is generally capped at 49 percent; for companies that supply telecommunications services without infrastructure, foreign ownership is capped at 65 percent. Vietnam allows foreign ownership of up to 70 percent for virtual private network (VPN) suppliers and for ASEAN-nationality companies providing value-

added telecommunication services without infrastructure. Facilities-based operators are required to be state-controlled firms, meaning that the state, through the relevant line ministry, must hold 51 percent or more of equity. In October 2021, the MIC released for public comment a draft revision to the Law on Telecommunication 41/2009/QH12, which proposed to expand the scope of the law to include data centers, Internet of Things (IoTs), e-identity, and Infrastructure-as-a-Service (IaaS). The revised Law on Telecommunication is expected to be ratified by the National Assembly in 2022. The United States will work with Vietnam to ensure that the inclusion of these additional information and communications technology services within the scope of the Law on Telecommunications is consistent with Vietnam's trade commitments with respect to computer and related services, which allow for full foreign participation.

## **BARRIERS TO DIGITAL TRADE**

### *Law on Cybersecurity*

Vietnam's Law on Cybersecurity (No. 24/2018/QH14) took effect in June 2018. Article 26 of the Law stipulates that domestic and foreign enterprises that provide services on telecommunications networks or the Internet, or other value-added services in cyberspace in Vietnam, and that conduct activities of collecting, exploiting, analyzing and processing data must store such data physically within the borders of Vietnam in a period of time specified by the government. Such data include personal information, data about service users' relationships, or data generated by service users. Foreign service suppliers must establish a branch or representative office in Vietnam.

However, this law has not been fully enforced as there has not been an official implementation guidance decree. Vietnam's Ministry of Public Security (MPS) has been working on several guidance decree drafts since 2018 and, based on its December 2020 draft, appears to be considering the adjustment or removal of certain unnecessarily restrictive elements.

In September 2021, MPS released an additional draft Decree on Penalties for Administrative Violations in Cybersecurity, which also addresses sanctions for failing to satisfy requirements on personal data protection outlined in the draft Personal Data Protection decree described below.

## **Internet Services**

### *Online Advertising Services*

Decree 70/2021/ND-CP amending Decree No. 181/2013/ND-CP (Decree 181) on advertising went into effect on September 15, 2021. The new decree eliminates requirements for cross-border advertising service providers to offer their services through a local advertising agency. Under the updated decree, suppliers of cross-border advertising services still must inform Vietnamese authorities in writing 15 days before running an advertisement in Vietnam.

### *Internet-Based Content Services*

Vietnam continues to allow access to the Internet only through a limited number of Internet service providers, all of which are state-controlled companies or companies with substantial state control. Vietnam restricts or blocks access to certain websites that it deems politically or culturally inappropriate. Decree 72/2013/ND-CP (Decree 72) on the management, provision, and use of Internet services and online information prohibits the use of Internet services to: oppose the government; harm national security, social order, and safety; or, propagandize war, terrorism, hatred, violence, or superstition. In March 2018, Vietnam issued Decree 27/2018/ND-CP (Decree 27) to amend and supplement Decree 72. Decree 27

consolidates existing content, server localization, and data retention requirements for social networks and information websites.

MIC's Circular 38/2016/TT-BTTTT (Circular 38) on Cross-border provision of General Information, which implements Decree 72, requires offshore service providers with a certain number of users in Vietnam to comply with online content restrictions. Specific requirements under Circular 38 apply to offshore entities that provide public information into Vietnam (including websites, social networks, online applications, search engines, and other similar forms of services) and either (a) have more than one million hits from Vietnam per month or (b) lease a data center to store digital information in Vietnam in order to provide services.

In July 2021, MIC/ABEI released a draft amendment to Decree 72 (and Decree 27) that would impose burdensome, impractical, or technically infeasible requirements on a wide range of suppliers of Internet services and content providers. These include unreasonably short takedown timeframes and insufficient due process for companies providing “public information across the border” to contest any allegation of illegality; impractical licensing, data localization, and local presence requirements for social media services; infeasible content filtering responsibilities; and unnecessary registration and licensing procedures. MIC also proposed to require local Internet service and infrastructure providers to assist in enforcing the requirements. The United States submitted comments on the draft in September 2021. ABEI submitted an updated draft Decree 72 to the Ministry of Justice in November 2021, which removed the data localization and local presence requirements and introduced a new rule to address user complaints within 48 hours as well as annual and ad-hoc reporting requirements. The United States continues to monitor this issue closely.

### *Personal Data Protection Regulation*

On February 9, 2021, MPS issued a draft Personal Data Protection decree. The draft would impose registration requirements for processing sensitive personal data, and requires companies to store “original” personal data in Vietnam, seek approval to transfer personal data cross-border, and maintain a three-year history of data transfer. Many of these requirements appear infeasible for companies seeking to supply services in Vietnam on a cross-border basis. The draft also proposes creating a Personal Data Protection Commission within MPS responsible for approving a company's data protection measures and for annually reviewing a company's data privacy practices. In the event of a data breach, a company's ability to transfer data cross-border could be terminated. Under the draft rules, violations could result in fines of up to five percent of a company's revenues. The United States has highlighted a number of its concerns with the draft measure, including through comments submitted to Vietnam in April 2021. In January 2022, the National Master Plan for Citizen Data Management and Application was adopted, which directs MPS to complete the draft Personal Data Protection decree by May 2022.

## **ENVIRONMENT**

In September 2020, Vietnam issued Decree 102/2020/ND-CP, which establishes a timber legality assurance system. The Decree, which took effect in October 2020, sets out regulations for importing and exporting timber following a risk-based approach. The Decree includes provisions regulating the management of imported timber into Vietnam. Timber exporting countries are categorized into positive or non-positive geographic regions. Criteria are also outlined to identify the types of timber that are considered high risk to import into Vietnam. The list of countries in positive geographic areas will be updated and published periodically in accordance with relevant international agreements. The list of types of high risk timber will be updated and published every six months. Although Vietnam categorized the United States as a positive geographic region in November 2020, it is not yet clear what effect the Decree will have on U.S. timber exports.

In October 2020, the U.S. Trade Representative initiated a Section 301 investigation into Vietnam's acts, policies, and practices related to the import and use of illegal timber, and in particular to examine reports that Vietnam's wood processing industry relies upon imported timber that may have been illegally harvested or traded. On October 1, 2021, the United States and Vietnam signed an agreement that addresses U.S. concerns in the investigation. The agreement secures commitments that will help keep illegally harvested or traded timber out of the supply chain and protect the environment and natural resources. The U.S. Trade Representative will monitor Vietnam's implementation of its commitments.

## **OTHER BARRIERS**

U.S. stakeholders continue to have concerns about the lack of transparency and accountability, and other governance issues in Vietnam. The United States will continue to work with Vietnam to support reform efforts and to promote greater transparency.

### **Export Policies**

#### *Export Bans*

Under MARD Circular 24 of 2016, Vietnam bans the export of certain wood products. These products include round timber and sawn timber made from natural wood, firewood, and charcoal made from timber, and firewood made from natural wood.

#### *Export Taxes*

Vietnam imposes export taxes (ranging from 5 percent to 40 percent) on goods indicated in Decree 125/2017/ND-CP, which are primarily goods produced from minerals and natural resources in which the cost of energy, minerals, and natural resources is more than 51 percent of the value of the product. These goods include: plants and botanical parts, ores, coal, crude oil, chemicals, skins, wood, charcoal, gems, silver and gold, jewelry, and metals and metal products. Decree 57/2020/ND-CP revising and supplementing Decree 125 increased export tax rates for copper tubes and pipes (HS subheading 74.11) from zero percent to five percent.

# 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,<sup>1</sup> the Office of the U.S. Trade Representative (USTR) prepared a report that identified trade barriers that U.S. exporters of GHGIRTs face in the top 25 greenhouse gas (GHG) emitting developing countries and described the steps the United States is taking to reduce these and other barriers to trade. The Act also calls for USTR to report annually on progress made with respect to removing the barriers identified in the initial report. USTR submitted the first [annual progress report](#) in October 2007. USTR will continue to submit further annual progress reports as part of the NTE Report.

As described in the initial 2006 GHGIRT report,<sup>2</sup> barriers to the exports of GHGIRTs are generally similar to those identified in the NTE Report with respect to other exports to the 25 developing countries: *e.g.*, lack of adequate and effective intellectual property rights protections; lack of regulatory transparency and sound legal infrastructure; state-controlled oil and energy sectors, that are often slower to invest in new technologies; cumbersome and unpredictable customs procedures; corruption; import licensing schemes; local content requirements; investment restrictions, including requirements to partner with domestic firms; and, in some countries, high applied tariff rates. Progress in removing such barriers is noted in the appropriate country chapters of this NTE Report. USTR's Special 301 Report, pursuant to section 182 of the Trade Act of 1974, identifies those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access for persons that rely on intellectual property protection. The 2022 Special 301 Report will be released later this year.

Global trade in environmental goods, including GHGIRTs, is estimated to be over \$2.1 trillion annually, and the United States exported \$276 billion of environmental goods in 2021.<sup>3</sup> China has remained the top GHG emitting developing country since the first GHGIRTs report in 2006.

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<sup>1</sup> Section 1611 of the Act amends the Global Environmental Protection Assistance Act of 1989 (Public Law 101-240) to add new Sections 731-39. Section 732(a)(2)(A) directs the Department of State to identify the top 25 GHG emitting developing countries for the purpose of promoting climate change technology. Section 734 calls on the United States Trade Representative “(as appropriate and consistent with applicable bilateral, regional, and mutual trade agreements) [to] (1) identify trade-relations barriers maintained by foreign countries to the export of greenhouse gas intensity reducing technologies and practices from the United States to the developing countries identified in the report submitted under section 732(a)(2)(A); and (2) negotiate with foreign countries for the removal of those barriers.”

<sup>2</sup> The Department of State's 2006 “Report to Congress on Developing Country Emissions of Greenhouse Gases and Climate Change Technology Deployment” identified the following 25 countries: Algeria; Argentina; Azerbaijan; Bangladesh; Brazil; Chile; China; Colombia; Egypt; India; Indonesia; Iraq; Kazakhstan; Libya; Malaysia; Mexico; Nigeria; Pakistan; Philippines; South Africa; Thailand; Turkmenistan; Uzbekistan; Venezuela; and Vietnam.

<sup>3</sup> Based on 2021 UNComtrade data and includes U.S. exports and re-exports. Re-exports defined as exports of foreign goods in the same state as previously imported.

# APPENDIX II

# APPENDIX II

**U.S. Goods Trade for Select Trade Partners in Rank Order of U.S. Goods Exports, 2020-2021**  
(Values in Millions of Dollars)

Country	Goods Balance		Change	Exports	Exports	Change 2020-21		Imports	Imports	Change 2020-21	
	2020	2021	2020/21	2020	2021	Value	Percent	2020	2021	Value	Percent
World	-922,026	-1,075,368	-153,341	1,428,798	1,757,578	328,779	23.0	2,350,825	2,832,946	482,121	20.5
Canada	-14,921	-49,549	-34,628	255,392	307,611	52,218	20.4	270,313	357,160	86,846	32.1
Mexico	-113,731	-108,247	5,484	211,481	276,459	64,978	30.7	325,212	384,705	59,494	18.3
China	-310,264	-355,302	-45,038	124,485	151,065	26,580	21.4	434,749	506,367	71,618	16.5
Japan	-55,743	-60,163	-4,420	63,756	74,970	11,214	17.6	119,499	135,133	15,634	13.1
Korea	-25,092	-29,183	-4,091	50,965	65,772	14,807	29.1	76,057	94,955	18,898	24.8
Germany	-57,636	-70,050	-12,414	57,433	65,174	7,741	13.5	115,069	135,224	20,155	17.5
United Kingdom	8,125	5,094	-3,030	58,430	61,463	3,033	5.2	50,305	56,369	6,064	12.1
Netherlands	17,897	18,240	342	45,305	53,580	8,275	18.3	27,407	35,341	7,933	28.9
Brazil	11,198	15,597	4,399	34,595	46,882	12,287	35.5	23,397	31,285	7,888	33.7
India	-24,124	-33,131	-9,007	27,080	40,130	13,050	48.2	51,204	73,261	22,057	43.1
Taiwan	-30,209	-40,193	-9,985	30,219	36,944	6,725	22.3	60,428	77,138	16,710	27.7
Singapore	-3,896	6,329	10,225	26,929	35,763	8,833	32.8	30,825	29,434	-1,392	-4.5
Belgium	6,758	12,683	5,924	27,568	33,654	6,086	22.1	20,810	20,971	161	0.8
France	-15,635	-20,344	-4,709	27,303	29,990	2,687	9.8	42,938	50,334	7,396	17.2
Hong Kong	15,953	25,833	9,879	23,849	29,958	6,109	25.6	7,896	4,125	-3,770	-47.8
Australia	8,954	13,965	5,011	23,382	26,433	3,052	13.1	14,428	12,469	-1,959	-13.6
Switzerland	-56,775	-39,010	17,764	18,066	23,971	5,906	32.7	74,840	62,982	-11,859	-15.8
Italy	-29,529	-39,282	-9,753	19,885	21,713	1,829	9.2	49,414	60,995	11,581	23.4
Chile	2,375	2,295	-81	12,483	17,340	4,857	38.9	10,107	15,045	4,938	48.9
UAE	11,668	11,128	-540	14,721	17,079	2,358	16.0	3,054	5,951	2,898	94.9
Colombia	1,116	3,299	2,184	11,914	16,451	4,538	38.1	10,798	13,152	2,354	21.8
Spain	-2,449	-2,538	-89	12,856	16,062	3,206	24.9	15,305	18,600	3,295	21.5
Malaysia	-31,836	-41,023	-9,187	12,296	15,171	2,876	23.4	44,132	56,194	12,062	27.3
Ireland	-56,441	-60,162	-3,720	9,575	13,556	3,981	41.6	66,017	73,718	7,701	11.7
Israel	-5,059	-5,830	-771	10,188	12,820	2,632	25.8	15,247	18,650	3,403	22.3
Thailand	-26,334	-34,669	-8,335	11,277	12,697	1,421	12.6	37,611	47,367	9,756	25.9
Turkey	-1,014	-4,015	-3,000	9,986	11,895	1,908	19.1	11,001	15,909	4,909	44.6
Saudi Arabia	2,118	-2,389	-4,507	11,109	11,138	29	0.3	8,992	13,527	4,535	50.4
Vietnam	-69,707	-90,961	-21,254	9,912	10,947	1,035	10.4	79,619	101,908	22,289	28.0
Dominican Republic	2,327	4,098	1,771	7,515	10,444	2,930	39.0	5,188	6,347	1,159	22.3
Peru	2,054	3,356	1,302	7,576	10,242	2,667	35.2	5,522	6,887	1,365	24.7
Indonesia	-12,819	-17,591	-4,772	7,396	9,479	2,083	28.2	20,215	27,070	6,855	33.9
Philippines	-3,401	-4,754	-1,354	7,739	9,269	1,530	19.8	11,139	14,023	2,884	25.9
Panama	4,951	7,517	2,566	5,660	8,273	2,613	46.2	709	756	47	6.7
Guatemala	1,991	3,331	1,340	5,835	7,997	2,162	37.0	3,844	4,666	822	21.4
Argentina	1,725	2,624	899	5,915	7,739	1,824	30.8	4,190	5,116	925	22.1
Costa Rica	331	774	443	5,690	7,312	1,622	28.5	5,359	6,537	1,179	22.0
Honduras	344	1,295	951	4,203	6,512	2,310	55.0	3,858	5,217	1,359	35.2
Russia	-12,014	-23,307	-11,293	4,887	6,388	1,501	30.7	16,901	29,695	12,794	75.7
Poland	-3,649	-3,851	-202	4,955	5,908	952	19.2	8,605	9,759	1,154	13.4
Egypt	2,485	2,481	-3	4,663	5,786	1,123	24.1	2,179	3,305	1,126	51.7
South Africa	-6,994	-10,242	-3,248	4,374	5,501	1,127	25.8	11,368	15,743	4,375	38.5
Sweden	-7,607	-9,881	-2,275	4,771	5,140	369	7.7	12,378	15,021	2,643	21.4
Ecuador	-1,807	-3,142	-1,335	4,133	5,019	887	21.5	5,940	8,161	2,222	37.4
El Salvador	661	1,610	949	2,584	4,127	1,544	59.7	1,923	2,517	594	30.9
Austria	-8,191	-11,204	-3,013	3,430	3,955	525	15.3	11,621	15,159	3,538	30.4
Nigeria	1,317	386	-932	2,802	3,866	1,064	38.0	1,485	3,480	1,995	134.4
Norway	-1,165	-2,954	-1,789	2,781	3,780	999	35.9	3,946	6,734	2,788	70.7
New Zealand	-1,013	-1,229	-216	3,195	3,725	530	16.6	4,208	4,954	746	17.7

**U.S. Goods Trade for Select Trade Partners in Rank Order of U.S. Goods Exports, 2020-2021**  
(Values in Millions of Dollars)

Country	Goods Balance		Change	Exports	Exports	Change 2020-21		Imports	Imports	Change 2020-21	
	2020	2021	2020/21	2020	2021	Value	Percent	2020	2021	Value	Percent
Czech Republic	-2,561	-2,718	-157	2,973	3,658	686	23.1	5,533	6,376	843	15.2
Denmark	-8,685	-8,534	151	2,941	3,616	675	23.0	11,626	12,150	524	4.5
Pakistan	-988	-1,737	-749	2,912	3,546	634	21.8	3,900	5,283	1,384	35.5
Kuwait	1,504	2,001	497	2,219	3,062	843	38.0	714	1,060	346	48.4
Hungary	-3,180	-4,171	-991	2,111	2,910	799	37.8	5,291	7,081	1,790	33.8
Morocco	1,253	1,489	236	2,301	2,760	458	19.9	1,048	1,270	222	21.2
Qatar	2,230	733	-1,498	3,411	2,588	-823	-24.1	1,181	1,855	674	57.1
Ukraine	601	639	38	1,908	2,528	620	32.5	1,307	1,889	582	44.6
Bangladesh	-4,219	-5,966	-1,747	1,852	2,337	486	26.2	6,071	8,304	2,233	36.8
Portugal	-2,121	-2,629	-509	1,658	2,318	660	39.8	3,779	4,947	1,169	30.9
Nicaragua	-2,139	-2,548	-410	1,424	2,103	679	47.7	3,563	4,651	1,088	30.5
Paraguay	1,118	1,892	774	1,267	2,080	812	64.1	150	188	38	25.4
Finland	-3,352	-5,070	-1,718	1,576	1,712	137	8.7	4,928	6,782	1,854	37.6
Greece	74	-91	-166	1,374	1,591	218	15.8	1,299	1,683	383	29.5
Luxembourg	859	941	82	1,352	1,533	181	13.4	493	593	99	20.2
Romania	-1,210	-1,505	-295	922	1,415	493	53.4	2,132	2,920	788	37.0
Oman	315	-456	-771	1,130	1,399	270	23.9	815	1,855	1,041	127.7
Lithuania	-321	-850	-529	1,021	1,238	217	21.3	1,342	2,088	746	55.6
Jordan	-551	-1,511	-961	1,319	1,234	-85	-6.4	1,870	2,745	876	46.8
Ghana	112	-737	-849	829	983	154	18.6	717	1,720	1,003	139.9
Bahrain	248	-221	-469	885	936	51	5.8	636	1,157	521	81.8
Kazakhstan	-395	-919	-524	509	807	298	58.6	904	1,727	822	90.9
Algeria	243	-1,041	-1,284	725	784	58	8.1	482	1,825	1,342	278.4
Croatia	-285	-62	223	316	758	442	139.7	601	820	218	36.3
Ethiopia	386	-16	-403	911	585	-326	-35.7	525	602	77	14.7
Kenya	-197	-134	62	372	551	179	48.1	569	685	116	20.5
Bolivia	67	32	-35	447	528	81	18.1	380	496	116	30.4
Tunisia	-140	-264	-124	429	454	25	5.9	569	718	149	26.3
Angola	-2	-613	-611	470	449	-21	-4.4	472	1,062	591	125.2
Estonia	-727	-1,465	-738	345	445	100	29.0	1,072	1,910	838	78.2
Latvia	-214	-266	-52	306	415	108	35.4	520	681	161	30.9
Cambodia	-6,219	-8,332	-2,113	344	414	70	20.3	6,562	8,745	2,183	33.3
Sri Lanka	-2,084	-2,463	-378	359	391	32	8.9	2,444	2,854	410	16.8
Bulgaria	-473	-815	-342	375	339	-36	-9.5	848	1,155	307	36.2
Slovakia	-4,691	-4,726	-35	333	336	3	0.9	5,024	5,062	38	0.8
Cote d'Ivoire	-662	-907	-245	219	319	100	45.7	881	1,226	345	39.2
Slovenia	-894	-1,330	-436	298	243	-55	-18.6	1,193	1,573	381	31.9
Cyprus	44	159	115	103	224	121	117.8	59	65	6	10.3
Burma	-688	-720	-32	339	215	-124	-36.6	1,027	935	-92	-9.0
Malta	-33	-119	-86	138	130	-8	-5.7	172	249	78	45.3
Brunei	37	81	44	120	99	-21	-17.3	83	19	-64	-77.6
Laos	-80	-185	-105	25	34	9	36.6	105	218	114	108.9
European Union - 27	-184,250	-219,642	-35,391	231,223	271,614	40,391	17.5	415,473	491,262	75,789	18.2

**U.S. Services Trade for Select Trade Partners in Rank Order of U.S. Services Exports, 2019-2020 (latest data available)**  
(Values in Millions of Dollars)

Country	Services Balance		Change	Exports	Exports	Change 2019-2020		Imports	Imports	Change 2019-2020	
	2019	2020	2019/20	2019	2020	Value	Percent	2019	2020	Value	Percent
World	285,174	245,342	-39,832	876,295	705,643	-170,652	-19.5	591,121	460,301	-130,820	-22.1
United Kingdom	14,886	10,192	-4,694	77,703	62,691	-15,012	-19.3	62,817	52,500	-10,317	-16.4
Ireland	34,630	43,059	8,429	57,438	61,949	4,511	7.9	22,808	18,890	-3,918	-17.2
Canada	30,795	24,415	-6,380	69,512	53,685	-15,827	-22.8	38,717	29,270	-9,447	-24.4
Switzerland	20,306	17,138	-3,168	45,319	42,016	-3,303	-7.3	25,013	24,878	-135	-0.5
China	39,543	24,785	-14,758	59,354	40,394	-18,960	-31.9	19,811	15,610	-4,201	-21.2
Japan	13,714	6,962	-6,752	49,679	37,817	-11,862	-23.9	35,965	30,855	-5,110	-14.2
Germany	510	-1,960	-2,470	36,227	29,594	-6,633	-18.3	35,718	31,554	-4,164	-11.7
Singapore	14,349	13,464	-885	25,398	24,695	-703	-2.8	11,049	11,231	182	1.6
Mexico	2,228	6,211	3,983	32,738	23,433	-9,305	-28.4	30,510	17,222	-13,288	-43.6
Netherlands	5,446	5,466	20	20,138	18,090	-2,048	-10.2	14,692	12,624	-2,068	-14.1
Korea	12,493	8,146	-4,347	23,449	17,823	-5,626	-24.0	10,957	9,677	-1,280	-11.7
India	-6,111	-9,503	-3,392	23,584	16,377	-7,207	-30.6	29,695	25,880	-3,815	-12.8
France	1,941	2,203	262	22,306	15,492	-6,814	-30.5	20,365	13,289	-7,076	-34.7
Australia	13,424	9,349	-4,075	21,850	15,114	-6,736	-30.8	8,427	5,765	-2,662	-31.6
Brazil	17,752	10,206	-7,546	24,258	14,941	-9,317	-38.4	6,506	4,735	-1,771	-27.2
Hong Kong	2,318	2,728	410	13,713	12,452	-1,261	-9.2	11,395	9,724	-1,671	-14.7
Saudi Arabia	7,992	9,147	1,155	9,477	10,369	892	9.4	1,485	1,222	-263	-17.7
Taiwan	3,123	2,616	-507	10,573	8,924	-1,649	-15.6	7,450	6,309	-1,141	-15.3
Luxembourg	5,890	4,982	-908	7,692	7,100	-592	-7.7	1,802	2,117	315	17.5
Denmark	2,381	-93	-2,474	8,059	6,697	-1,362	-16.9	5,678	6,790	1,112	19.6
Belgium	1,211	1,693	482	5,630	5,823	193	3.4	4,420	4,130	-290	-6.6
Italy	-2,470	1,290	3,760	9,530	5,807	-3,723	-39.1	12,000	4,517	-7,483	-62.4
Spain	868	1,458	590	8,725	5,048	-3,677	-42.1	7,856	3,590	-4,266	-54.3
Sweden	3,307	1,977	-1,330	6,561	4,956	-1,605	-24.5	3,255	2,979	-276	-8.5
Colombia	2,362	2,512	150	7,236	4,840	-2,396	-33.1	4,874	2,328	-2,546	-52.2
Chile	2,276	2,794	518	5,524	4,444	-1,080	-19.6	3,248	1,649	-1,599	-49.2
Israel	-1,592	-2,005	-413	5,753	4,182	-1,571	-27.3	7,345	6,187	-1,158	-15.8
Argentina	5,157	2,419	-2,738	7,588	4,155	-3,433	-45.2	2,432	1,737	-695	-28.6
Russia	3,457	2,671	-786	5,223	3,990	-1,233	-23.6	1,766	1,319	-447	-25.3
Peru	2,653	2,318	-335	4,039	3,051	-988	-24.5	1,385	733	-652	-47.1
Turkey	2,004	1,445	-559	4,206	2,796	-1,410	-33.5	2,201	1,351	-850	-38.6
Thailand	947	1,357	410	3,428	2,383	-1,045	-30.5	2,482	1,027	-1,455	-58.6
Philippines	-2,149	-1,884	265	3,466	2,258	-1,208	-34.9	5,615	4,142	-1,473	-26.2
Panama	462	1,169	707	2,648	2,196	-452	-17.1	2,186	1,027	-1,159	-53.0
Vietnam	1,423	1,724	301	2,666	2,184	-482	-18.1	1,243	461	-782	-62.9
Malaysia	752	504	-248	3,083	2,081	-1,002	-32.5	2,331	1,578	-753	-32.3
South Africa	776	1,023	247	2,651	1,902	-749	-28.3	1,875	879	-996	-53.1
Indonesia	1,729	1,363	-366	2,844	1,880	-964	-33.9	1,115	518	-597	-53.5
New Zealand	502	332	-170	3,220	1,846	-1,374	-42.7	2,718	1,514	-1,204	-44.3
Norway	-51	120	171	2,952	1,825	-1,127	-38.2	3,003	1,705	-1,298	-43.2
Poland	460	-26	-486	2,560	1,769	-791	-30.9	2,100	1,795	-305	-14.5
Dominican Republic	-2,783	-921	1,862	2,716	1,754	-962	-35.4	5,499	2,675	-2,824	-51.4
Finland	430	211	-219	1,936	1,472	-464	-24.0	1,505	1,261	-244	-16.2
Nigeria	1,685	1,035	-650	2,139	1,325	-814	-38.1	454	290	-164	-36.1
Costa Rica	-1,213	-789	424	1,972	1,209	-763	-38.7	3,185	1,997	-1,188	-37.3
Czech Republic	-105	354	459	1,424	1,200	-224	-15.7	1,529	846	-683	-44.7
Greece	-2,364	-736	1,628	1,653	1,168	-485	-29.3	4,017	1,903	-2,114	-52.6
Cyprus	8	-41	-49	684	1,100	416	60.8	676	1,142	466	68.9
Austria	215	225	10	1,776	1,057	-719	-40.5	1,561	832	-729	-46.7
Guatemala	257	-11	-268	1,634	941	-693	-42.4	1,377	952	-425	-30.9
Hungary	405	494	89	1,310	933	-377	-28.8	905	439	-466	-51.5
El Salvador	709	352	-357	1,488	835	-653	-43.9	780	483	-297	-38.1

**U.S. Services Trade for Select Trade Partners in Rank Order of U.S. Services Exports, 2019-2020 (latest data available)**  
(Values in Millions of Dollars)

Country	Services Balance		Change	Exports	Exports	Change 2019-2020		Imports	Imports	Change 2019-2020	
	2019	2020	2019/20	2019	2020	Value	Percent	2019	2020	Value	Percent
Portugal	-147	255	402	1,584	718	-866	-54.7	1,731	464	-1,267	-73.2
Honduras	512	235	-277	1,270	685	-585	-46.1	758	451	-307	-40.5
Bahrain	-48	-136	-88	733	574	-159	-21.7	781	710	-71	-9.1
Jordan	107	205	98	762	542	-220	-28.9	655	337	-318	-48.5
Romania	203	33	-170	812	522	-290	-35.7	610	489	-121	-19.8
Malta	214	-75	-289	888	485	-403	-45.4	674	561	-113	-16.8
Oman	395	283	-112	573	445	-128	-22.3	178	162	-16	-9.0
Morocco	77	181	104	787	421	-366	-46.5	710	240	-470	-66.2
Bulgaria	59	-34	-93	360	362	2	0.6	301	396	95	31.6
Nicaragua	-157	-132	25	406	251	-155	-38.2	563	383	-180	-32.0
Slovakia	190	48	-142	371	246	-125	-33.7	181	197	16	8.8
Croatia	-77	70	147	277	178	-99	-35.7	354	108	-246	-69.5
Lithuania	154	-53	-207	244	132	-112	-45.9	89	185	96	107.9
Estonia	60	52	-8	166	116	-50	-30.1	105	63	-42	-40.0
Slovenia	109	72	-37	175	114	-61	-34.9	67	42	-25	-37.3
Latvia	117	50	-67	207	109	-98	-47.3	90	59	-31	-34.4
Brunei	56	47	-9	67	53	-14	-20.9	12	6	-6	-50.0
European Union - 27	53,645	60,974	7,329	198,733	172,237	-26,496	-13.3	145,089	111,262	-33,827	-23.3

**U.S. FDI Abroad for Select Trade Partners in Rank Order of FDI, 2019-2020 (latest data available)**  
(Values in Millions of Dollars)

Country	FDI Stock		% Change	Leading FDI Categories Reported
	2019	2020	2019-20	
World	5,907,424	6,152,301	4.1	Nonbank holding companies, manufacturing, and finance and insurance.
United Kingdom	830,438	890,086	7.2	Nonbank holding companies, finance and insurance, and manufacturing.
Netherlands	810,986	843,954	4.1	Nonbank holding companies, manufacturing, and finance and insurance.
Luxembourg	751,657	759,360	1.0	Nonbank holding companies, finance and insurance, and manufacturing.
Canada	404,589	422,160	4.3	Nonbank holding companies, manufacturing, and finance and insurance.
Ireland	398,749	390,274	-2.1	Nonbank holding companies, information services, and manufacturing.
Singapore	260,642	270,807	3.9	Nonbank holding companies, manufacturing, and wholesale trade.
Switzerland	192,847	211,936	9.9	Nonbank holding companies, manufacturing, and information services.
Australia	161,200	163,466	1.4	Nonbank holding companies, finance and insurance, and manufacturing.
Germany	151,278	162,387	7.3	Nonbank holding companies, manufacturing, and wholesale trade.
Japan	128,539	131,643	2.4	Finance and insurance, manufacturing, and wholesale trade.
China	113,189	123,875	9.4	Manufacturing, wholesale trade, and finance and insurance.
Mexico	98,010	101,057	3.1	Manufacturing, nonbank holding companies, and finance and insurance.
Hong Kong	89,346	92,487	3.5	Nonbank holding companies, manufacturing, and information services.
France	88,425	91,153	3.1	Manufacturing, finance and insurance, and nonbank holding companies.
Brazil	80,864	70,742	-12.5	Manufacturing, finance and insurance, and mining.
Belgium	64,633	69,539	7.6	Manufacturing, finance and insurance, and wholesale trade.
Sweden	42,722	63,847	49.4	Nonbank holding companies, manufacturing, and finance and insurance.
India	41,982	41,904	-0.2	Professional, scientific, and technical services, manufacturing, and finance and insurance.
Israel	32,984	40,437	22.6	Manufacturing, information services, and professional, scientific, and technical services.
Spain	35,787	38,533	7.7	Manufacturing, nonbank holding companies, and professional, scientific, and technical services.
Korea	38,476	33,888	-11.9	Manufacturing, wholesale trade, and finance and insurance.
Taiwan	29,002	31,544	8.8	Manufacturing, finance and insurance, and wholesale trade.
Italy	28,270	31,093	10.0	Manufacturing, wholesale trade, and finance and insurance.
Chile	24,912	23,011	-7.6	Mining, manufacturing, and finance and insurance.
Norway	24,632	21,484	-12.8	Nonbank holding companies, mining, and information services.
UAE	18,441	19,468	5.6	Mining, wholesale trade, and professional, scientific, and technical services.
Indonesia	19,324	18,715	-3.2	Mining, professional, scientific, and technical services, and manufacturing.
Thailand	17,628	17,450	-1.0	Manufacturing, wholesale trade, and professional, scientific, and technical services.
Qatar	14,905	15,494	4.0	
Malaysia	12,139	13,529	11.5	Manufacturing, nonbank holding companies, and wholesale trade.
Hungary	12,166	13,295	9.3	Information services, manufacturing, and finance and insurance.
New Zealand	11,869	12,903	8.7	Manufacturing, finance and insurance, and wholesale trade.
Russia	13,597	12,538	-7.8	Manufacturing, wholesale trade, and information services.
Saudi Arabia	11,117	11,386	2.4	Nonbank holding companies, wholesale trade, and mining.
Egypt	11,133	11,206	0.7	
Poland	10,720	11,127	3.8	Manufacturing, professional, scientific, and technical services, and finance and insurance.
South Africa	9,167	10,023	9.3	Manufacturing, nonbank holding companies, and wholesale trade.
Denmark	9,108	9,874	8.4	Nonbank holding companies, manufacturing, and wholesale trade.
Argentina	9,974	8,730	-12.5	Information services, nonbank holding companies, and manufacturing.
Colombia	7,286	7,767	6.6	Mining, manufacturing, and finance and insurance.
Peru	6,470	7,394	14.3	Mining, manufacturing, and wholesale trade.
Nigeria	6,572	6,811	3.6	Mining, manufacturing, and information services.
Turkey	3,834	5,814	51.6	Manufacturing, wholesale trade, and depository institutions.
Czech Republic	5,456	5,629	3.2	Manufacturing, information services, and wholesale trade.
Finland	4,504	5,269	17.0	Manufacturing, information services, and professional, scientific, and technical services.
Philippines	5,612	5,199	-7.4	Manufacturing, professional, scientific, and technical services, and wholesale trade.
Austria	6,921	4,947	-28.5	Manufacturing, wholesale trade, and nonbank holding companies.
Cyprus	5,165	4,860	-5.9	
Panama	5,785	4,583	-20.8	Nonbank holding companies, wholesale trade, and finance and insurance.
Romania	3,636	3,934	8.2	
El Salvador	3,409	3,413	0.1	
Vietnam	2,883	2,820	-2.2	
Dominican Republic	2,710	2,806	3.5	Manufacturing, information services, and wholesale trade.
Portugal	2,437	2,538	4.1	Wholesale trade, manufacturing, and professional, scientific, and technical services.

**U.S. FDI Abroad for Select Trade Partners in Rank Order of FDI, 2019-2020 (latest data available)**  
(Values in Millions of Dollars)

Country	FDI Stock		% Change 2019-20	Leading FDI Categories Reported
	2019	2020		
Costa Rica	2,014	1,988	-1.3	Manufacturing, wholesale trade, and professional, scientific, and technical services.
Algeria	2,715	1,953	-28.1	
Malta	1,637	1,471	-10.1	
Honduras	1,362	1,111	-18.4	Manufacturing.
Guatemala	744	789	6.0	
Slovakia	787	778	-1.1	
Ukraine	925	761	-17.7	
Bangladesh	493	723	46.7	
Kuwait	514	656	27.6	
Bulgaria	528	608	15.2	
Bahrain	519	571	10.0	
Bolivia	(D)	534		
Morocco	377	457	21.2	
Ghana	1,653	429	-74.0	
Kenya	375	339	-9.6	
Pakistan	326	304	-6.7	
Slovenia	285	265	-7.0	
Tunisia	218	258	18.3	
Oman	(D)	197		
Paraguay	210	197	-6.2	
Croatia	184	192	4.3	
Lithuania	172	182	5.8	
Sri Lanka	165	165	0.0	
Jordan	179	156	-12.8	
Greece	90	74	-17.8	Manufacturing and wholesale trade.
Estonia	68	74	8.8	
Latvia	38	37	-2.6	
Ecuador	681	29	-95.7	Finance and insurance, wholesale trade, and mining.
Brunei	15	11	-26.7	
Nicaragua	80	NA	-103.8	
Angola	NA	NA	16.1	
Ethiopia	(D)	(D)		
Kazakhstan	(D)	(D)		
Cambodia	(D)	(D)		
Cote d'Ivoire	NA	(D)		
Burma	(D)	(D)		
Laos	(*)	(*)		
European Union - 27	2,436,409	2,515,294	3.2	Nonbank holding companies, manufacturing, and finance and insurance.

(D) indicates that the data in the cell have been suppressed to avoid disclosure of data of individual companies.

(\*) A nonzero value that rounds to zero.

**UNITED STATES TRADE REPRESENTATIVE**

EXECUTIVE OFFICE OF THE PRESIDENT

WASHINGTON, D.C. 20508

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