

2014 National Trade Estimate Report on
**FOREIGN TRADE
BARRIERS**



UNITED STATES TRADE REPRESENTATIVE

MESSAGE FROM THE USTR

Trade has been an important part of the United States' economic recovery, and it is a critical component of President Obama's forward-looking strategy to unlock opportunities that will create jobs, promote growth and strengthen the middle class.

Since 2009, U.S. exports of goods and services have increased by almost 50 percent, growing roughly three times faster than the economy as a whole, and contributing a third of our total economic growth. Nearly 300,000 American companies now export goods to foreign markets, supporting jobs domestically. Additionally, 98 percent of these companies are small and medium size businesses.

These increases in U.S. exports support real job growth for Americans. Each billion dollars of increased exports supports between 5,400 and 5,900 jobs, on average. And over the last four years, exports have supported 1.6 million additional private sector jobs – jobs that pay 13 percent to 18 percent more on average than non-export related jobs.

The United States is one of the most open economies in the world. With an average applied tariff of 1.3 percent, a fair and transparent regulatory environment, and an open investment regime, U.S. barriers to imports and investment from abroad are among the lowest in the world. But U.S. exports destined for other countries continue to face an array of tariff and nontariff barriers. These barriers constrain our ability to support job growth, and in some cases threaten the livelihoods of hard working American workers and manufacturers, farmers and ranchers, and American entrepreneurs and investors whose businesses depend on their ability to sell their high-quality goods and services to the world.

The top trade priority for this Administration is to negotiate trade agreements that will open markets and unlock opportunity for American goods and services exporters, and to vigorously monitor and enforce those trade agreements in order to fully protect our hard-earned trade rights.

In order for our workers and businesses to benefit fully from the trade agreements we negotiate, our trading partners must play by the rules to which they have agreed. Over the last five years, the United States has redoubled its trade enforcement efforts and has taken a whole-of-government approach to enforcement, and USTR works with agencies throughout the Government to level the playing field for American workers and businesses. Every office at USTR plays a vital role in our efforts to monitor and enforce our trade agreements. In addition, in 2012, President Obama created the Interagency Trade Enforcement Center (ITEC) to support those efforts. ITEC brings together staff from multiple agencies with a diverse set of skills and expertise, and is designed to buttress and broaden even further the capacity of the Obama Administration to pursue the strongest possible trade enforcement agenda. Working hand in hand with USTR staff, ITEC has played a vital role in multiple enforcement actions regarding China, Argentina, India and Indonesia. The information contained in the NTE represents one of the important sources upon which USTR and ITEC can draw in their efforts to enforce our trade rights, strengthen the rules-based trading system, and identify and resolve barriers to U.S. exports.

The NTE report plays an important role by shining a spotlight on significant trade barriers that our goods and services exporters face. This report provides, where feasible, quantitative estimates of the impact of these foreign practices on the value of U.S. exports. Information is also included on selected actions taken to eliminate damaging foreign trade barriers.

Ambassador Michael Froman
United States Trade Representative
March 31, 2014

ACKNOWLEDGEMENTS

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In preparing the report, substantial information was solicited from U.S. Embassies around the world and from interested stakeholders. The draft of this report was circulated through the interagency Trade Policy Staff Committee.

March 2014

LIST OF FREQUENTLY USED ACRONYMS AND ABBREVIATIONS

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

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

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FOREWORD

SCOPE AND COVERAGE

The 2014 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the 29th in an annual series that highlights significant foreign barriers to U.S. exports. This document is a companion piece to the President's Trade Policy Agenda published by USTR in March.

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

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

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

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

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

- Investment barriers (*e.g.*, limitations on foreign equity participation and on access to foreign government-funded research and development programs, local content requirements, technology transfer requirements and export performance requirements, and restrictions on repatriation of earnings, capital, fees and royalties);
- Government-tolerated anticompetitive conduct of state-owned or private firms that restricts the sale or purchase of U.S. goods or services in the foreign country's markets;
- Trade restrictions affecting electronic commerce (*e.g.*, tariff and nontariff measures, burdensome and discriminatory regulations and standards, and discriminatory taxation); and
- Other barriers (barriers that encompass more than one category, *e.g.*, bribery and corruption,ⁱ or that affect a single sector).

Significant foreign government barriers to U.S. exports that prior to the 2010 NTE reports were addressed under the rubric of “standards, testing, labeling, and certification” measures are now treated separately in two specialized reports. One report is dedicated to identifying unwarranted barriers in the form of standards-related measures (such as product standards and testing requirements). A second report addresses unwarranted barriers to U.S. exports of food and agricultural products that arise from sanitary and phytosanitary (SPS) measures related to human, animal, and plant health and safety. Together, the three reports provide the inventory of trade barriers called for under U.S. law.

The two specialized reports were first issued in March 2010. USTR will issue new, up-to-date versions of these two reports in conjunction with the release of this report to continue to highlight the increasingly critical nature of standards-related measures and sanitary and phytosanitary issues to U.S. trade policy. The reports will identify and call attention to problems resolved during 2012, in part as models for resolving ongoing issues and to signal new or existing areas in which more progress needs to be made.

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

USTR continues to vigorously scrutinize foreign labor practices and to redress substandard practices that impinge on labor obligations in U.S. free trade agreements (FTAs) and deny foreign workers their internationally recognized labor rights. USTR has also introduced new mechanisms to enhance its monitoring of the steps that U.S. FTA partners have taken to implement and comply with their obligations under the environment chapters of those agreements. To further these initiatives, USTR has implemented interagency processes for systematic information gathering and review of labor rights practices and

environmental enforcement measures in FTA countries, and USTR staff regularly works with FTA countries to monitor practices and directly engages governments and other actors. The Administration has reported on these activities in the 2014 Trade Policy Agenda and 2013 Annual Report of the President on the Trade Agreements Program.

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

This report discusses the largest export markets for the United States, including 58 countries, the European Union, Taiwan, Hong Kong, and one regional body. This year, sections on Iraq and Uzbekistan have been added to the coverage of NTE. The inclusion of Iraq reflects the growing importance of this market for U.S. exports and services, and the trade policy issues of concern as Iraq continues to integrate into the global economy. Similarly, Uzbekistan, the most populous country in Central Asia, was added to increase understanding of the trade barriers in that emerging country and in that region overall. A section on Bolivia does not appear in this year's report. There were no public submissions received regarding Bolivia as well as reduced government to government engagement on trade-related matters over the last year. In this year's chapter on China, the discussion of Chinese trade barriers has been re-structured and re-focused to align more closely with other Congressional reports prepared by USTR on U.S.-China trade issues. The China chapter includes cross-references to other USTR reports where appropriate. Some countries were excluded from this report due primarily to the relatively small size of their markets or the absence of major trade complaints from representatives of U.S. goods and services sectors. However, the omission of particular countries and barriers does not imply that they are not of concern to the United States.

NTE sections report the most recent data on U.S. bilateral trade in goods and services and compare the data to the preceding period. This information is reported to provide context for the reader. In more than half of the specified cases, U.S. bilateral goods trade continued to increase in 2013 compared to the preceding period. The merchandise trade data contained in the NTE are based on total U.S. exports, free alongside (f.a.s.)ⁱⁱ value, and general U.S. imports, customs value, as reported by the Bureau of the Census, Department of Commerce (NOTE: These data are ranked in an Appendix according to the size of the export market). The services data are drawn from the October 2013 Survey of Current Business, compiled by the Bureau of Economic Analysis in the Department of Commerce (BEA). The direct investment data are drawn from the September 2013 Survey of Current Business, also from BEA.

TRADE IMPACT ESTIMATES AND FOREIGN BARRIERS

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

The estimates included in this report constitute an attempt to assess quantitatively the potential effect of removing certain foreign trade barriers on particular U.S. exports. However, the estimates cannot be used

to determine the total effect on U.S. exports either to the country in which a barrier has been identified or to the world in general. In other words, the estimates contained in this report cannot be aggregated in order to derive a total estimate of gain in U.S. exports to a given country or the world.

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

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

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

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

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

With respect to investment barriers, there are no accepted techniques for estimating the impact of such barriers on U.S. investment flows. For this reason, no such estimates are given in this report. The NTE includes generic government regulations and practices which are not product specific. These are among the most difficult types of foreign practices for which to estimate trade effects.

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

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

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Endnotes

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

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

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

The United States led efforts to launch the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Antibribery Convention). In November 1997, the United States and 33 other nations adopted the Antibribery Convention, which currently is in force for 40 countries, including the United States. The Antibribery Convention obligates its parties to criminalize the bribery of foreign public officials in the conduct of international business. It is aimed at proscribing the activities of those who offer, promise, or pay a bribe (for additional information, see <http://www.export.gov/tcc> and <http://www.oecd.org>).

The United States also played a critical role in the successful conclusion of negotiations that produced the United Nations Convention Against Corruption, the first global anticorruption instrument. The Convention was opened for signature in December 2003, and entered into force December 14, 2005. The Convention contains many provisions on preventive measures countries can take to stop corruption, and requires countries to adopt additional measures as may be necessary to criminalize fundamental anticorruption offenses, including bribery of domestic as well as foreign public officials. As of December 2013, there were 170 parties, including the United States.

In March 1996, countries in the Western Hemisphere concluded negotiation of the Inter-American Convention Against Corruption (Inter-American Convention). The Inter-American Convention, a direct result of the Summit of the Americas Plan of Action, requires that parties criminalize bribery and corruption. The Inter-American Convention entered into force in March 1997. The United States signed the Inter-American Convention on June 2, 1996 and deposited its instrument of ratification with the Organization of American States (OAS) on September 29, 2000. Thirty-one of the thirty-three parties to the Inter-American Convention, including the United States, participate

in a Follow-up Mechanism conducted under the auspices of the OAS to monitor implementation of the Convention. The Inter-American Convention addresses a broad range of corrupt acts including domestic corruption and transnational bribery. Signatories agree to enact legislation making it a crime for individuals to offer bribes to public officials and for public officials to solicit and accept bribes, and to implement various preventive measures.

The United States continues to push its anticorruption agenda forward. The United States seeks binding commitments in FTAs that promote transparency and that specifically address corruption of public officials. The United States also led other countries in concluding multilateral negotiations on the World Trade Organization (WTO) Trade Facilitation Agreement which contains provisions on transparency in customs operations and avoiding conflicts of interest in customs penalties. The United States has also advocated for transparency of government procurement regimes in FTA negotiations. In the Trans-Pacific Partnership and Transatlantic Trade and Investment Partnership negotiations, the United States is seeking expanded transparency and anticorruption disciplines. The United States is also playing a leadership role on these issues in APEC and other fora.

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

ANGOLA

TRADE SUMMARY

U.S. goods exports in 2013 were \$1.5 billion, down 2.7 percent from the previous year. Corresponding U.S. imports from Angola were \$8.7 billion, down 11.0 percent. The U.S. goods trade deficit with Angola was \$7.3 billion in 2013, down \$1.0 billion from 2012. Angola is currently the 71st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Angola was \$1.2 billion in 2012 (latest data available), down from \$5.5 billion in 2011.

IMPORT POLICIES

Tariffs

Angola is a Member of the WTO and the Southern African Development Community (SADC). However, Angola has delayed implementation of the 2003 SADC Protocol on Trade, which provides for reduced tariffs.

In November 2013, the Angolan government published a new tariff schedule that, effective January 2014, updates the 2008 tariff schedule. Through the new schedule, the government aims to protect and stimulate domestic industry by raising import and consumption duties on items that Angolan companies already produce, even if the domestic production cannot meet domestic demand. Some of the most notable changes are a 50 percent import duty on beer, a 50 percent import duty on fruit juices, and a 50 percent import duty on vegetables like tomatoes, onions, garlic, beans, and potatoes. The tariff on chicken product imports, which comprise the bulk of U.S. food exports to Angola, remains unchanged, however. The import taxes for roofing materials and bricks have increased to 50 percent. Import duties on a few products, including palm oil, railway materials, and wheat flour, have decreased minimally. In addition to changes in import duty rates, another prominent feature of the new tariff schedule is a policy that allows Angolan industry to enjoy import tax exemptions on inputs that are used to manufacture Angolan made products.

Tariff obligations in the oil sector primarily are determined by individually negotiated contracts between international oil companies and the Angolan government. Because most U.S. exports to Angola consist of specialized oil industry equipment, which is largely exempt from tariffs, the annual impact of tariffs on U.S. exports is relatively low. If companies operating in the oil and mining industries present a letter from the Minister of Petroleum or the Minister of Geology and Mines, they may import equipment to be used exclusively for oil and mineral exploration without duty.

Customs Procedures

The Angolan customs code follows the guidelines of the World Customs Organization, the WTO, and the SADC.

Administration of Angola's customs service has improved in the last few years, but customs issues still impede market access. The construction of two dry ports for container storage in the Luanda capital area and the diversion of some marine traffic to the Port of Lobito have improved customs clearance.

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According to Presidential Decree No. 63/13 of June 11, 2013, pre-shipment inspections are no longer mandatory, as of June 12, 2013, but traders must hire pre-shipment inspection services from private inspection agencies if they wish to benefit from “green channel” access or if pre-shipment inspection is required by their letter of credit agreement. The decree amended articles 10, 11, and 12 of Decree No. 41/06 of 17 June 2006, which required pre-shipment inspection of goods imported into the national territory. The government decided to relax pre-shipment inspection requirements based on its belief that Angolan laboratories have enough capacity to test the quality and safety of food imports. A new private laboratory, Bromangol, has a *de facto* monopoly on the food safety testing of all food imports that enter Luanda. Some importers find that the fees charged by Bromangol are excessive, and they also question whether the testing is actually completed.

Required customs paperwork includes the “Documento Único” (single document) for the calculation of customs duties, proof of ownership of the good(s), bill of lading, commercial invoice, packing list, and specific shipment documents verifying the right to import or export the product. Any shipment of goods of value equal to or exceeding \$1,000 requires the use of a clearing agent. The number of clearing agents increased from 55 in 2006 to 223 in 2013, but competition among clearing agents has not reduced fees, which typically range from 1 percent to 2 percent of the value of the declaration.

The importation of certain goods may require specific authorization from various government ministries. This often leads to bureaucratic bottlenecks that can result in delays and extra costs. Goods that require ministerial authorization include the following: pharmaceutical substances, saccharine and products derived from saccharine (Ministry of Health); radios, transmitters, receivers, and other devices (Ministry of Post and Telecommunications); weapons, ammunition, fireworks, and explosives (Ministry of Interior); plants, roots, bulbs, microbial cultures, buds, fruits, seeds, and crates and other packages containing these products (Ministry of Agriculture); fiscal or postal stamps (Ministry of Post and Telecommunications); poisonous and toxic substances and drugs (Ministries of Agriculture, Industry, and Health); and samples or other goods imported to be given away (Customs).

GOVERNMENT PROCUREMENT

The government procurement process is not competitive and often lacks transparency. Information about government projects and procurements is often not readily available from the appropriate authorities and interested parties must spend considerable time to obtain the necessary information. Calls for bids for government procurements are sometimes published in the government newspaper *Jornal de Angola*, but many times the contracting agency already has a preference for a specific business. Under the Promotion of Angolan Private Entrepreneurs Law, the government gives Angolan companies preferential treatment in the procurement of goods, services, and public works contracts. These Angolan companies often then source goods and contract services from foreign companies.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Angola is a party to the World Intellectual Property Organization (WIPO) Convention, the Paris Convention for the Protection of Industrial Property, and the WIPO Patent Cooperation Treaty. Intellectual property is protected by Law 3/92 for industrial property and Law 4/90 for the attribution and protection of copyrights. Intellectual property rights (IPR) are administered by the Ministry of Industry (trademarks, patents, and designs) and by the Ministry of Culture (authorship, literary, and artistic rights).

FOREIGN TRADE BARRIERS

Although Angolan law provides basic protection for IPR and the National Assembly is working to strengthen existing legislation, IPR protection remains weak in practice due to a lack of enforcement capacity. The government has worked with international computer companies on anti-piracy measures. No legal actions involving IPR owned by U.S. citizens or companies are known to have been filed in Angola.

INVESTMENT BARRIERS

Angola is formally open to foreign investment, but its legal infrastructure provides insufficient protection to foreign investors. A private investment law, passed in May 2011, altered benefits and incentives available for investors. The minimum investment required to qualify for incentives was increased from \$100,000 under the previous law to \$1 million under the new law. Further, to qualify for incentives, an investor must enter into an investment contract with the Angolan state, represented by the National Agency for Private Investment (ANIP), which establishes the conditions for the investment as well as the applicable incentives. ANIP offices are located in Luanda and Washington, D.C. The incentives and benefits, which can include preferential treatment when repatriating funds out of Angola, tax deductions and exemptions, are negotiated with ANIP and other ministries of the Angolan government on a case-by-case basis. In determining whether to grant incentives, consideration is given to the economic and social impact of the investment, taking into account the government's economic development strategy. Larger incentives of longer duration are offered to companies that invest in lesser developed areas outside of the greater Luanda capital region.

In addition to the process described above, investments with a value between \$10 million and \$50 million must be approved by the Council of Ministers, and investments above \$50 million require the approval of an *ad hoc* presidential committee. By law, the Council of Ministers has 30 days to review an application, although in practice decisions are often subject to lengthy delays.

The Angolan justice system is slow, arduous, and reportedly not always impartial. The World Bank's "Doing Business in 2014" survey estimates that commercial contract enforcement, measured by the amount of time elapsed between the filing of a complaint for breach of contract and the enforcement of judgment by the court generally takes 1,296 days in Angola, whereas the average period in Sub-Saharan Africa is 652 days. While existing law includes the concept of domestic and international arbitration, it is still not widely utilized as a method of dispute resolution in Angola.

Angola's private investment law expressly prohibits private investment in the areas of defense, internal public order, and state security; in banking activities relating to the operations of the Central Bank and the Mint; in the administration of ports and airports; and in other areas where the law gives the state exclusive responsibility.

Although the 2011 private investment law is part of an overall effort by the Angolan government to create a more investor-friendly environment, many laws governing the economy have vague provisions that permit wide interpretation and inconsistent application across sectors. Investment in the petroleum, diamond, and financial sectors continue to be governed by sector-specific legislation. Foreign investors can establish fully-owned subsidiaries in many sectors, but frequently are strongly encouraged (though not formally required) to take on a local partner.

FOREIGN TRADE BARRIERS

Obtaining the proper permits and business licenses to operate in Angola is time-consuming and adds to the cost of investment. The World Bank “Doing Business in 2014” report noted that it takes an average of 66 days in Angola compared to a regional average of 29.7 days to start a business.

The government is gradually implementing legislation for the petroleum sector, originally enacted in November 2003 (Order 127/03 of the Ministry of Petroleum). The legislation requires many foreign oil services companies currently supplying the petroleum sector to form joint-venture partnerships with local companies on any new ventures. For the provision of goods and services not requiring heavy capital investment or specialized expertise, foreign companies may only participate as a contractor or sell manufactured products to Angolan companies for later resale. For activities requiring a medium level of capital investment and a higher level of expertise (not necessarily specialized), foreign companies may only participate in association with Angolan companies.

A new Foreign Exchange Law for the petroleum requires that all oil and gas companies make all payments, including payments to suppliers and contractors located outside of Angola, through local Angolan domiciled banks. Furthermore, payments for goods and services provided by foreign exchange resident service providers must be made in local currency.

Some American businesses have reported difficulties repatriating profits out of Angola. Transfers above a certain amount require Central Bank approval and commercial banks may be reluctant to go through the required bureaucratic process. Transfers of funds out of Angola to purchase merchandise for future sale or use in Angola that can be supported by pro-forma invoices are considerably easier to process.

OTHER BARRIERS

Corruption

Corruption is prevalent in Angola due to an inadequately trained civil service, a highly-centralized bureaucracy, antiquated regulations, and a lack of implementation of anti-corruption laws. There continue to be credible reports that high-level officials receive bribes from private companies that are awarded government contracts. Gratuities and other facilitation fees are often requested in order to secure quicker service and approval. It is also common for Angolan government officials to have substantial private business interests. These interests are not necessarily publicly disclosed and it can be difficult to determine the ownership of some Angolan companies. The business climate continues to favor those connected to the government. There are laws and regulations regarding conflict of interest, but they are not widely enforced. Some investors report pressure to form joint ventures with specific Angolan companies believed to have connections to political figures.

Angola’s public and private companies have not traditionally used transparent accounting systems consistent with international norms, and few companies in Angola adhere to international audit standards. The government approved an audit law in 2002 that sought to require audits for all “large” companies, but this law is not generally enforced.

Investors have, at times, experienced harassment, political interference, and pressure to sell their investments. In some cases, these practices reportedly have involved individuals with powerful positions within the government who exert pressure either directly or through the established bureaucracy. As a result, some investors have experienced significant delays in payments for government contracts and delays in obtaining the proper permits or approval of projects.

ARAB LEAGUE

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

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

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

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

Boycott activity can be classified according to three categories. The primary boycott prohibits the importation of goods and services from Israel into the territory of Arab League members. This prohibition may conflict with the obligation of Arab League members that are also Members of the WTO to treat products of Israel on a most favored nation basis. The secondary boycott prohibits individuals, companies

(both private and public sector), and organizations in Arab League members from engaging in business with U.S. firms and firms from other countries that contribute to Israel's military or economic development. Such foreign firms are placed on a blacklist maintained by the Damascus-based Central Boycott Office (CBO), a specialized bureau of the Arab League; the CBO often provides this list to other Arab League member governments, which decide whether or to what extent to follow it in implementing any national boycotts. The tertiary boycott prohibits business dealings with U.S. and other firms that do business with blacklisted companies.

Individual Arab League member governments are responsible for enforcing the boycott, and enforcement efforts vary widely from country to country. Some Arab League member governments have consistently maintained that only the League as a whole can entirely revoke the boycott. Other member governments support the view that adherence to the boycott is a matter of national discretion; a number of governments have taken steps to dismantle various aspects of it. The U.S. Government has on numerous occasions indicated to Arab League member governments that their officials' attendance at periodic CBO meetings is not conducive to improving trade and investment ties, either with the United States or within the region. Attendance of Arab League member government officials at CBO meetings varies; a number of governments have responded to U.S. officials that they only send representatives to CBO meetings in an observer capacity, or to push for additional discretion in national enforcement of the CBO-drafted blacklisted company lists. Ongoing political upheaval in Syria in recent years has prevented the CBO from convening meetings on a regular basis.

EGYPT: Egypt has not enforced any aspect of the boycott since 1980, pursuant to its peace treaty with Israel. However, U.S. firms occasionally have found that some government agencies use outdated forms containing boycott language. In past years, Egypt has included boycott language drafted by the Arab League in documentation related to tenders funded by the Arab League. The revolution and resultant political uncertainty in Egypt since early 2011 have left the future of Egyptian approaches to boycott-related issues unclear. As Egypt's government fully establishes lines of authority and formulates basic foreign policy positions, the Administration will monitor closely its actions with regard to the boycott.

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 (essentially Israel's first free trade agreement with an Arab country). While some elements of Jordanian society continue to oppose improving political and commercial ties with Israel, government policy does not condone such positions.

LIBYA: Libya does not maintain diplomatic relations with Israel and has a law in place mandating application of the Arab League boycott. Libya's interim government has not formally articulated its stance *vis-à-vis* the boycott. However, the former regime enforced the boycott and routinely inserted boycott language in contracts with foreign companies. Bills of lading and customs declarations for imports cannot indicate trade with Israel, and shippers are legally required to certify that no goods are of Israeli origin. Foreign ships are prohibited from calling at Libyan ports if they have called at an Israeli port in the past year. The Administration will continue to monitor closely Libya's treatment of boycott issues.

IRAQ: Despite anti-Arab League boycott guidance given on two occasions from the Iraqi Council of Ministers to all ministries, the number of Arab League boycott-related requests from Iraqi entities has been increasing in recent years. In 2013, there were 79 prohibited requests from Iraqi entities reported to the U.S. Department of Commerce. Requests emanated from the Ministry of Health (MOH) and its procurement arm, the Iraqi State Company for Importation of Drugs and Medical Appliances (Kimadia); the Ministry of Planning; the South Oil Company; and the Ministry of Electricity. It is estimated that since

2010, U.S. companies have lost more than \$1 billion in sales opportunities in Iraq due to these Arab League boycott-related requests.

The MOH committed to the United States in June 2013 that it would stop issuing the requests. Since that time, however, the MOH has issued several prohibited requests that negatively affected U.S. suppliers of medical and pharmaceutical products. In January 2014, the head of Kimadia informed the United States that the MOH and Kimadia would move to end the practice of including Arab League boycott-related requirements in tender packages for new procurements. The South Oil Company, which had stopped issuing tenders with boycott language several years ago, recently started issuing tenders containing boycott-related language. Increased requests from the Ministry of Electricity are also very troubling, since Iraq is seeking investment and procurement of key power sector technologies from foreign companies and critical procurement projects currently are underway.

U.S. companies and investors consider the existence of boycott-related requirements in procurement contracts and tenders as additional disincentives for doing business in Iraq. Moreover, bilateral events designed to attract U.S. investment to Iraq, such as the February 2014 Iraq Business Week in Washington, will be negatively impacted as long as Iraqi entities continue to issue Arab League boycott-related requests.

YEMEN: Yemen has not put a law in place regarding the boycott, though it continues to enforce the primary aspect of the boycott and does not trade with Israel. Yemen in the past has stated that, absent an Arab League consensus to end the boycott, it will continue to enforce the primary boycott. However, Yemen also continues to adhere to its 1995 governmental decision to renounce observance of the secondary and tertiary aspects of the boycott and does not maintain an official boycott enforcement office. Yemen has remained a participant in the meetings of the CBO in Damascus, but continuing serious political unrest within the country makes it difficult to predict Yemen's future posture toward boycott-related issues.

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

PALESTINIAN AUTHORITY: The Palestinian Authority (PA) agreed not to enforce the boycott in a 1995 letter to the U.S. Government. Though some Palestinians on occasion have called for *ad hoc* boycotts of goods produced in Israeli West Bank settlements, foreign trade involving Palestinian producers and importers must be managed through Israeli authorities, and the PA has kept to the commitment it undertook in the 1995 letter.

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

MOROCCO: Moroccan law contains no specific references to the Arab League boycott. The government informally recognizes the primary aspect of the boycott due to Morocco's membership in the Arab League, but does not enforce any aspect of it. According to Israeli statistics, Morocco is Israel's seventh largest

trading partner in Africa and third largest in the Arab world, after Jordan and Egypt. Trade with Israel increased 94 percent between 2012 and 2013, resulting in imports from Israel of \$53.7 million and exports from Morocco of \$6.2 million. U.S. firms have not reported boycott-related obstacles to doing business in Morocco. Moroccan officials do not appear to attend CBO meetings in Damascus.

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

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

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

SYRIA: Syria diligently implements laws enforcing the Arab League boycott. Though it is host to the Arab League CBO, Syria maintains its own boycott-related blacklist of firms, separate from the CBO list, which it regards as outdated. Syria's boycott practices have not had a substantive impact on U.S. businesses because of U.S. economic sanctions imposed on the country in 2004; the ongoing and serious political unrest within the country has further reduced U.S. commercial interaction with Syria.

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

GULF COOPERATION COUNCIL (GCC): In September 1994, the GCC member countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates) announced an end to their enforcement of the secondary and tertiary aspects of the boycott, eliminating a significant trade barrier to U.S. firms. In December 1996, the GCC countries recognized the total dismantling of the boycott as a necessary step to advance peace and promote regional cooperation in the Middle East and North Africa. Although all GCC states are complying with these stated plans, some commercial documentation containing boycott language continues to surface on occasion and impact individual business transactions.

The situation in individual GCC member countries is as follows:

Bahrain: Bahrain does not have any restrictions on trade with U.S. companies that have relations with Israeli companies. Outdated tender documents in Bahrain have occasionally referred to the secondary and tertiary aspects of the boycott, but such instances have been remedied quickly when brought to authorities' attention. The government has stated publicly that it recognizes the need to dismantle the primary aspect of the boycott. The U.S. Government has received assurances from the government of Bahrain that it is fully committed to complying with WTO requirements on trade relations with other WTO Members, and Bahrain has no restrictions on U.S. companies trading with Israel or doing business in Israel, regardless of their ownership or other relations with Israeli companies. Although there are no entities present in Bahrain for the purpose of promoting trade with Israel, Israeli-labeled products reportedly can occasionally be found in Bahraini markets.

Kuwait: Kuwait has not applied a secondary or tertiary boycott of firms doing business with Israel since 1991, and continues to adhere to the 1994 GCC decision. Although there is no direct trade between Kuwait and Israel, the government of Kuwait states that foreign firms have not encountered serious boycott-related problems for many years. Kuwait claims to have eliminated all direct references to the boycott in its commercial documents as of 2000 and affirms that it removed all firms and entities that were on the boycott list due to secondary or tertiary aspects of the boycott prior to 1991. Kuwait has a three person boycott office, which is part of the General Administration for Customs. While Kuwaiti officials reportedly regularly attend Arab League boycott meetings, it is unclear if they are active participants.

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

Qatar: Qatar does not maintain a boycott law and does not enforce the boycott. 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 occasionally report receiving boycott requests from public Qatari companies. An Israeli trade office opened in Qatar in May 1996, but Qatar ordered that office closed in January 2009 in protest against the Israeli military action in Gaza. Despite this closure, Qatar continues to allow trade with Israel and allows Israelis to visit the country. Official data from the Qatari government indicated that there was approximately \$3 million in trade between Qatar and Israel in 2009. Actual trade, including Israeli exports of agricultural and other goods shipped via third countries, is likely higher than the official figures. Qatar permits the entry of Israeli business travelers who obtain a visa in advance. The chief executive of Qatar's successful 2022 World Cup bid indicated that Israeli citizens would be welcome to attend the World Cup.

Saudi Arabia: Saudi Arabia, in accordance with the 1994 GCC decision, modified its 1962 law, resulting in the termination of the secondary and tertiary boycott. Senior Saudi government officials from relevant ministries have requested that U.S. officials keep them informed of any allegations that Saudi entities are seeking to enforce these aspects of the boycott. The Ministry of Commerce and Industry has established an office to address any reports of boycott-related violations; reported violations appear to reflect out-of-date language in recycled commercial and tender documents. Saudi companies have usually been willing to void or revise boycott-related language when they are notified of its use.

The United Arab Emirates (UAE): The UAE complies with the 1994 GCC decision and does not implement the secondary and tertiary aspects of the boycott. The UAE has not renounced the primary aspect of the boycott, but the degree to which it is enforced is unclear. According to data from the U.S. Department of Commerce, U.S. firms continue to face a relatively high number of boycott requests in the UAE (this could be attributed to the high volume of U.S.-UAE goods and services trade), which the government explains is mostly due to the use of outdated documentation, especially among private sector entities. The United States has had some success in working with the UAE to resolve specific boycott cases. The U.S. Department of Commerce OAC and Emirati Ministry of Economy officials have held periodic meetings aimed at encouraging the removal of boycott-related terms and conditions from commercial documents. The Emirati government has taken a number of steps to eliminate prohibited boycott requests, including the issuance of a series of circulars to public and private companies explaining that enforcement of the secondary and tertiary aspects of the boycott is a violation of Emirati policy.

Non-Arab League Countries

In recent years, press reports occasionally have surfaced regarding the implementation of officially sanctioned boycotts of trade with Israel by governments of non-Arab League countries, particularly some member states of the 57 member Organization of the Islamic Conference (OIC), headquartered in Saudi Arabia (Arab League and OIC membership overlaps to a considerable degree). Information gathered by U.S. embassies in various non-Arab League OIC member states does not paint a clear picture of whether the OIC institutes its own boycott of Israel (as opposed perhaps to simply lending support to Arab League positions). The degree to which non-Arab League OIC member states enforce any aspect of a boycott against Israel also appears to vary widely. Bangladesh, for example, does impose a primary boycott on trade with Israel. By contrast, OIC members Tajikistan, Turkmenistan, and Kazakhstan impose no boycotts on trade with Israel and in some cases have actively encouraged such trade.

ARGENTINA

TRADE SUMMARY

U.S. goods exports in 2013 were \$10.2 billion, down 0.7 percent from the previous year. Corresponding U.S. imports from Argentina were \$4.6 billion, up 6.7 percent. The U.S. goods trade surplus with Argentina was \$5.6 billion in 2013, a decrease of \$358 million from 2012. Argentina is currently the 31st largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Argentina were \$6.4 billion in 2012 (latest data available), and U.S. imports were \$1.9 billion. Sales of services in Argentina by majority U.S.-owned affiliates were \$8.1 billion in 2011 (latest data available), while sales of services in the United States by majority Argentina-owned firms were \$49 million.

The stock of U.S. foreign direct investment (FDI) in Argentina was \$14.4 billion in 2012 (latest data available), up from \$13.5 billion in 2011. U.S. FDI in Argentina is mostly in manufacturing and nonbank holding sectors.

IMPORT POLICIES

Tariffs

Argentina is a member of the MERCOSUR common market, formed in 1991 and composed of Argentina, Brazil, Paraguay, Uruguay, and Venezuela, which was admitted as a full member in July 2012. MERCOSUR maintains a Common External Tariff (CET) schedule with a limited number of country-specific exceptions, with most favored nation (MFN) applied rates ranging from zero percent to 35 percent *ad valorem*. Argentina's import tariffs follow the MERCOSUR CET with some exceptions. Argentina's MFN applied rate averaged 12.5 percent in 2012. Argentina's average bound tariff rate in the WTO is significantly higher at 31.9 percent. According to current MERCOSUR procedures, any good introduced into any member country must pay the CET to that country's customs authorities. If the product is then re-exported to any other MERCOSUR country, the CET must be paid again to the second country.

At the MERCOSUR Common Market Council (CMC) ministerial meeting in December 2011, MERCOSUR members agreed to increase import duty rates temporarily to a maximum rate of 35 percent on 100 tariff items per member country. Although authorized to implement the decision as early as January 2012, Argentina waited until January 2013 to publish Decree 25/2013 implementing these tariff increases. These tariff increases were valid for one year, with the option to extend them for an additional year. Argentina has extended these tariff increases through December 2014. The list of products affected can be found at <http://infoleg.gov.ar/infolegInternet/anexos/205000-209999/207701/norma.htm>. In June 2012, the MERCOSUR CMC allowed an additional 100 additional country-specific tariff-line exceptions to the CET to be implemented for as long as one year, but ending no later than December 31, 2014. Argentina has not yet implemented this provision.

MERCOSUR member countries are also currently allowed to set import tariffs independently for some types of goods, including computer and telecommunications equipment, sugar, and some capital goods. In July 2012, Argentina partially eliminated its exemptions to the CET on capital goods through Decree 1026/2012. Argentina currently imposes the 14 percent CET rate on imports of capital goods that are produced domestically; imports of certain other capital goods that are not produced domestically are also

FOREIGN TRADE BARRIERS

subject to a reduced *ad valorem* tariff of 2 percent. A list of the goods affected and their respective tariff rates can be found at <http://infoleg.gov.ar/infolegInternet/anexos/195000-199999/199256/norma.htm>.

Argentina has bilateral arrangements with Brazil and Uruguay on automobiles and automotive parts intended to liberalize trade and increase integration in this sector among the three countries. Mexico and Argentina also have a separate bilateral trade agreement regarding automobiles and automotive parts.

Several U.S. industries have raised concerns about prohibitively high tariffs and other taxes in Argentina on certain products, including distilled spirits, restaurant equipment, and motorcycles.

While the majority of tariffs are levied on an *ad valorem* basis, Argentina also charges compound rates consisting of *ad valorem* duties plus specific levies known as “minimum specific import duties” (DIEMs) on products in several sectors, including textiles and apparel, footwear, and toys. These compound import duties do not apply to goods from MERCOSUR countries and cannot exceed an *ad valorem* equivalent of 35 percent. Although the DIEMs purportedly expired on December 31, 2010, and the government of Argentina has not formally extended them, they are still being charged.

MERCOSUR’s CMC advanced toward the establishment of a Customs Union with its approval of a Common Customs Code (CCC) and Decision 5610 (December 2010) to implement a plan to eliminate the double application of the CET within MERCOSUR. The plan was to take effect in three stages with the first phase to have been implemented no later than January 1, 2012. That deadline was not met, however. In November 2012, Argentina became the first MERCOSUR member to ratify the CCC. The CCC must be ratified by all MERCOSUR member countries before it enters into force.

Nontariff Barriers

Argentina imposes a growing number of customs and licensing procedures and requirements, which make importing U.S. products more difficult. The measures include additional inspections, restrictions on entry ports, expanded use of reference prices, import license requirements, and other requirements such as importer invoices being notarized by the nearest Argentine diplomatic mission when imported goods are below reference prices. Many U.S. companies with operations in Argentina have expressed concerns that the measures have delayed exports of U.S. goods to Argentina and, in some cases, stopped exports of certain U.S. goods to Argentina altogether.

Argentina’s increased use of nontariff barriers is a function of the government of Argentina’s increasing reliance on a growth strategy that is based heavily on import substitution. More recently, Argentina’s import restrictions also appear intended to address concerns about declining currency reserves.

Since April 2010, pursuant to Note 232, Argentina has required importers to obtain a “certificate of free circulation” from the National Food Institute (Instituto Nacional de Alimentos) prior to importing food products. This requirement affects all exporters of food products to Argentina and appears to serve as an import licensing requirement. U.S. companies report that this requirement is used to delay or deny the importation, and the issuance of such certificates is often contingent upon the importer undertaking a plan to export goods of an equivalent value.

Argentina prohibits the import of many used capital goods. Domestic legislation requires compliance with strict conditions on the entry of those used capital goods that may be imported, which are also subject to import taxes. On January 9, 2013, Argentina published Decree 2646/2012, implementing changes to the regulations regarding the import of used capital goods. The import of certain capital goods remains

banned, and those allowed are taxed at a 28 percent rate in the case of existing local production, 14 percent in the absence of existing local production, and 6 percent for used capital goods for the aircraft industry. The changes on the conditions to import used capital goods are the following:

- Used capital goods can only be imported directly by the end user;
- Overseas reconditioning of the goods is allowed only if performed by the original manufacturer. Third-party technical appraisals are discontinued;
- Local reconditioning of the good is subject to technical appraisal only to be performed by INTI (state-run Institute of Industrial Technology), except for aircraft related items;
- Regardless of where the reconditioning takes place, the Argentine Customs Authority requires at the time of import the presentation of a “Certificate of Import of Used Capital Goods.” This certificate is issued by the Secretariat of Foreign Trade and Ministry of Industry after the approval by the Secretariat of Industry;
- The time period during which the imported used capital good cannot be transferred (sold or donated) is extended from two years to four years.

The text of the Decree can be found at: <http://infoleg.gov.ar/infolegInternet/anexos/205000-209999/207093/norma.htm>. Argentina created exceptions for some industries (*e.g.*, graphics, printing, machine tools, textiles, and mining), enabling importation of used capital goods at a zero percent import tax. In September 2013, some types of aircraft were added to the list of exceptions. More details can be found at <http://www.infoleg.gov.ar/infolegInternet/anexos/215000-219999/219230/norma.htm>.

The Argentina-Brazil Bilateral Automobile Pact bans the import of used self-propelled agricultural machinery unless it is rebuilt. Argentina 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 goods, such as remanufactured automotive parts, earthmoving equipment, medical equipment, and information and communications technology products.

In December 2010, Argentina reintroduced an import prohibition on used clothing, which is due to expire in 2015. In August 2012, the Argentine tax authority (Administración Federal de Ingresos Públicos or AFIP) issued Resolution 3373, which increased the tax burden for importers because the taxes are charged after import duties are levied. The value-added tax (VAT) advance rate rose from 10 percent to 20 percent on imports of consumer goods, and from 5 percent to 10 percent on imports of capital goods. The income tax advance rate on imports of all goods increased from 3 percent to 6 percent, except when the goods are intended for consumption or for use by the importer, in which case an 11 percent income tax rate applies.

In January 2014, the Argentine government introduced a sliding scale tax on cars. Vehicles valued between 170,000 pesos (approximately \$25,000) and 210,000 pesos (approximately \$30,000) are subject to a 30 percent tax. Vehicles valued at more than 210,000 pesos are subject to a 50 percent tax. The tax is applied on top of the normal import duty.

Argentina maintains certain localization measures aimed at encouraging domestic production. For example, in May 2012, the Argentine National Mining Agency (Agencia Nacional de Minería or ANM) issued Resolutions 12/2012 and 13/2012, requiring mining companies registered in Argentina to use Argentine flagged vessels to transport minerals and their industrial derivatives for export from Argentina. These resolutions also require that mining companies registered in Argentina purchase domestic capital

goods, spare parts, inputs and services. Another example is Law 26,522 of 2010, which requires that radio and television (via airwaves and cable) advertisements have a minimum of 60 percent local content.

Import Licenses

In early January 2012, Argentina announced a measure, effective on February 1, 2012, requiring companies to file an online affidavit, known as the Advanced Sworn Statement on Imports (DJAI) and wait for government review and approval before importing goods. All goods imported for consumption are subject to the DJAI requirement. This requirement creates additional delays and is used to restrict imports. Following the implementation of the DJAI measure, in September 2012, Argentina eliminated the automatic import licensing requirements it previously administered on 2,100 tariff lines, mainly involving consumer products. Argentina also repealed its use of product-specific non-automatic import licenses in January 2013 via Resolution 11/2013. Prior to that, Argentina had used product-specific non-automatic licenses to restrict imports and provide protection in sectors that the Argentine government deemed sensitive. Argentina also uses the DJAI requirement and other licensing requirements to extract commitments from importers to export goods from Argentina, increase investments in Argentina, increase the use of local content, refrain from repatriating profits, and/or limit the volume or value of imports.

In response to U.S. Government inquiries about its import licensing regime, Argentina has asserted that all of these measures are nondiscriminatory and consistent with WTO obligations. On August 21, 2012, the United States requested consultations with Argentina under the dispute settlement provisions of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes concerning the DJAI requirement, the product-specific import licenses (which have since been repealed), and the commitments Argentina requires importers to comply with in order to receive import approvals. The United States, along with Mexico and Japan, held consultations with Argentina in September 2012. After the consultations failed to resolve the issue, the United States requested the establishment of a dispute settlement panel in December 2012. The European Union and Japan joined the United States in its panel request. In January 2013, the WTO's Dispute Settlement Body (DSB) established a panel to examine this dispute. On November 15, 2013, the Chair of the panel informed the DSB that it expects to issue its final report to the parties by the end of May 2014.

Customs Valuation

Argentina continues to apply reference values to several thousand products. The stated purpose of reference pricing is to prevent under-invoicing, and authorities establish benchmark unit prices for customs valuation purposes for certain goods that originate in, or are imported from, specified countries. These benchmarks establish a minimum price for market entry and dutiable value. Importers of affected goods must pay duties calculated on the reference value, unless they can prove that the transaction was conducted at arm's length.

Argentina also requires importers of any goods from designated countries, including the United States, that are invoiced below the reference prices to have the invoice validated by both the exporting country's customs agency and the appropriate Argentine embassy or consulate in that country. The government of Argentina publishes an updated list of reference prices and applicable countries, which is available at: <http://www.afip.gov.ar/aduana/valoracion/valores.criterios.pdf>. In April 2012, Argentina issued General Resolution 3301, which established reference values for certain household articles and toiletry articles of plastics (HS code 3924.90) from several countries, including the United States.

Customs External Notes 87/2008 of October 2008 and 15/2009 of February 2009 established administrative mechanisms that restrict the entry of products deemed sensitive, such as textiles, apparel, footwear, toys, electronic products, and leather goods. While the restrictions are not country specific, they are to be applied more stringently to goods from countries considered “high risk” for under-invoicing, and to products considered at risk for under-invoicing as well as trademark fraud.

Ports of Entry

Argentina restricts entry points for several classes of goods, including sensitive goods classified in 20 Harmonized Tariff Schedule chapters (*e.g.*, textiles; shoes; electrical machinery; iron, steel, metal and other manufactured goods; and watches), through specialized customs procedures for these goods. A list of products affected and the ports of entry applicable to those products is available at: <http://www.infoleg.gov.ar/infolegInternet/anexos/130000-134999/131847/norma.htm>. Depending on their country of origin, many of these products are also subject to selective, rigorous “red channel” inspection procedures, and importers are required to provide guarantees for the difference in duties and taxes if the declared price of an import is lower than its reference price.

Since the first measure regarding the limitation of ports of entry was formally announced in 2005, several provincial and national legislative authorities have requested the elimination or modification of the specialized customs scheme. Through several resolutions issued by the Customs Authority in 2007, 2008, 2010, and 2011, Argentina has increased the number of authorized ports of entry for certain products.

Customs Procedures

Certificates of origin have become a key element in Argentine import procedures in order to enforce antidumping measures, reference prices (referred to as “criterion values”), and certain geographical restrictions. In August 2009, AFIP revised through External Note 4 the certificate of origin requirements for a list of products subject to non-preferential tariff treatment for which a certificate of origin is required. The products affected include 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 most favored nation tariff rate, the certificate of origin must be certified by an Argentine consulate or embassy. For products with many internal components, such as machinery, each individual part is often required to be notarized in its country of origin, which can be very burdensome. Importers have stated that the rules governing these procedures are unclear and can be arbitrarily enforced.

Simplified customs clearance procedures on express delivery shipments are only available for shipments valued at \$1,000 or less. Couriers are now considered importers and exporters of goods, rather than transporters, and also must declare the tax identification codes of the sender and addressee, both of which render the process more time consuming and costly. These regulations increase the cost not only for the courier, but also for users of courier services.

EXPORT POLICIES

Argentina imposes export taxes on all but a few exports, including significant export taxes on key hydrocarbon and agricultural commodities. In many cases, the export tax for raw materials is set higher than the sale price of the processed product to encourage development of domestic value-added production. Crude hydrocarbon export taxes are indexed to world commodity benchmarks.

Despite proposals from within and outside the Argentine Congress to reduce or eliminate export taxes, the taxes continue to be actively supported and managed by the government of Argentina. Export taxes are a major source of fiscal revenue for the government; they advantage downstream processors of the products subject to the export tax; and they serve as an incentive to increase value-added production in Argentina. The following products are currently subject to an export tax: iron ore at 10 percent, soybeans at 35 percent, soybean oil and soybean meal at 32 percent, sunflower seed at 32 percent, sunflower seed meal and sunflower seed oil at 30 percent, wheat at 23 percent, and corn at 20 percent.

On December 3, 2013, in Decree 2014/2013, Argentina increased export taxes for soybean pellets and animal food which contains soybean hulls and waste from 5 percent to 32 percent. (MCN, Mercosur Common Nomenclature positions 2302.50.00, 2308.00.00 and 2309.90.90.)

In August 2012, Argentina increased its export tax on biodiesel from 20 percent to 32 percent and eliminated a 2.5 percent rebate. Biodiesel exports are now affected by a sliding scale tax that is reviewed every 15 days. Since September 2013, the effective export tax has been 21 percent.

In August 2012, pursuant to Decree 1513/2012, Argentina extended the 2009 ban on exports of ferrous scrap for 360 days. The ban expired in August 2013, but a 5 percent export tax remains in place.

The MERCOSUR CCC restricts future export taxes and anticipates a transition to a common export tax policy. As noted above, in November 2012, Argentina became the first MERCOSUR member to ratify the CCC, but the CCC must be ratified by all MERCOSUR member countries before it enters into force.

Export Registrations

In addition to levying high export taxes, Argentina requires major commodities to be registered for export before they can be shipped out of the country. Until 2011, the National Organization of Control of Agricultural Commercialization (ONCCA) administered the Registry of Export Operations for meat, grain (including vegetable oils), and dairy products under the provisions of Resolution 3433/2008. After ONCCA was dismantled in early 2011, part of the administration of the Registry of Export Operations was transferred to the Ministry of Agriculture (related to dairy and meat exports) and to the Ministry of Economy (related to grain exports), but reportedly there have been no major changes to procedures for registering exports. All exports must still be registered, and the government retains the authority to reject or delay exports depending on domestic price and supply conditions. One of the goals of the export registration process has been to control the quantity of goods exported, and thereby guarantee domestic supply. Export registrations of wheat, corn, beef, and dairy products continue to be subject to periodic restrictions due to shortfalls in domestic supplies.

Argentina continues to impose time restrictions on the validity of grain and oilseed export permits depending on when the export tax is paid. Under applicable regulations, export permits are valid for 45 days after registration is approved, if the export tax is paid at the time of export. Export permits may be valid for up to 365 days for corn and wheat and 180 days for soybean and sunflowers products if the exporter pays 90 percent of the export tax at the time the export license is approved.

GOVERNMENT PROCUREMENT

Law 25,551 of 2001 established a national preference for local industry for most government procurement if the domestic supplier's tender, depending on the size of the company, is no more than 5 percent to 7

percent higher than the foreign tender. The preference applies to procurement by all government agencies, public utilities, and concessionaires. There is similar legislation at the provincial level. These preferences serve as barriers to participation by foreign firms.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Argentina continued to be listed on the Priority Watch List in the 2013 Special 301 report. Argentina has made some progress with respect to intellectual property rights (IPR) enforcement, including two noteworthy actions that Argentina's judicial authorities, both civil and criminal, took in 2012 against the unauthorized distribution of pirated content over the Internet. However, significant concerns remain. IPR enforcement needs to be strengthened in order to combat the widespread availability of pirated and counterfeit goods. Although some industries report good cooperation with law enforcement authorities, Argentina's judicial system remains inefficient with respect to IPR enforcement, and there is reluctance to impose deterrent-level criminal sentences. Piracy over the Internet is a concern, and overall levels of copyright piracy, in both the online and hard goods environments, remain high. South America's largest black market for counterfeit and pirated goods, La Salada, located in Buenos Aires, has been named repeatedly in USTR's Notorious Markets List including most recently in February 2014.

In 2012, Argentina amended the criteria for granting pharmaceutical patents through Joint Resolutions 118/2012, 546/2012 and 107/2012, which establish patent examination guidelines for chemical and pharmaceutical inventions. The application of these guidelines has led to the denial of pharmaceutical patents for compositions, dosages, salts, esters and esthers, polymorphs, analogous processes, active metabolites and pro-drugs, enantiomers, selection patents and Markush-type (*i.e.*, multiple functionally equivalent) claims, as well as certain manufacturing processes.

Argentina's patent backlog also remains a key concern. It takes, on average, eight years to nine years for a patent to be granted in the pharmaceutical, chemical, and biotechnology sectors. The lack of adequate protection against unfair commercial use and unauthorized disclosure of undisclosed test and other data also remains a concern. Argentina also does not have an effective system to address patent issues expeditiously in connection with applications to market pharmaceutical products. The United States encourages Argentina to provide for protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test and other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products, and to provide an effective system to address patent issues expeditiously in connection with applications to market pharmaceutical products.

SERVICES BARRIERS

Effective April 1, 2012, pursuant to Resolution 3307, Argentina requires individuals and companies to file an online affidavit known as the Advance Sworn Statement on Services (or by its Spanish acronym "DJAS") and obtain approval prior to offering or purchasing offshore services if the value of the services to be provided exceeds \$100,000. U.S. companies note that the DJAS requirement creates delays and is used to restrict the purchase of foreign services and to restrict dollar-denominated payments abroad. The DJAS requirement applies to a wide range of services including professional and technical services, royalties, as well as personal, cultural and recreational services. This requirement has reportedly resulted in significant delays in purchasing services from U.S. services providers and has hindered the ability of Argentine purchasers to promptly transfer payment to the United States.

FOREIGN TRADE BARRIERS

Audiovisual Services

The Argentine government imposes restrictions on the showing, printing, and dubbing of foreign films in Argentina. As a result, the U.S. film industry must incur added costs associated with exporting movies to Argentina. Argentina also charges *ad valorem* customs duties on U.S. film exports based on the estimated value of the potential royalty generated from the film in Argentina rather than on the value of the physical materials being imported.

Since August 30, 2011, under Resolution 2114/2011, the National Institute of Cinema and Audiovisual Arts has been authorized to tax 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 films will be screened within Argentina. Films that are screened in 15 or fewer movie theaters are exempted.

Insurance Services

The Argentine insurance regulator (SSN) issued an order (Resolution 35,615/2011) effective on September 1, 2011, prohibiting cross-border reinsurance. As a result, Argentine insurers are able to purchase reinsurance only from locally based reinsurers. Foreign companies without local operations are not allowed to enter into reinsurance contracts except when the SSN determines there is no local reinsurance capacity. In 2011, the Argentine insurance regulator issued Resolution 36.162 requiring that “all investments and cash equivalents held by locally registered insurance companies be located in Argentina.”

These regulations do not formally require the exchange of dollars into pesos; companies can convert their holdings to dollar-denominated assets based in Argentina and still be in compliance. Nevertheless, non-Argentine insurance firms – whose liabilities are often denominated in U.S. dollars – have reported pressure by the Argentine government to sell their dollars for pesos. U.S. insurance firms also have reported that complying with the Argentine government’s requests would force them to take losses due to what they believe is an official exchange rate that overvalues the peso. The Argentine government has also blocked payments by subsidiaries of dividends and royalties to parent companies and shareholders abroad.

INVESTMENT BARRIERS

Pension System

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

Foreign Exchange and Capital Controls

Hard currency earnings on exports, both from goods and services, must be converted to pesos in the local foreign exchange market. In November 2011, pursuant to Decree 1722/2011, Argentina eliminated exceptions to the local conversion requirement previously granted to hydrocarbon and mining exporters. Revenues from exporting to Argentine foreign trade zones and from re-exporting some temporary imports are still exempted from this requirement.

Time limits on fulfilling the requirement to convert to pesos range from 60 days to 360 days for goods (depending on the goods involved) and 15 days for services. For certain capital goods and situations where Argentine exports receive longer-term financing, Argentine exporters receive more generous time limits. A portion of foreign currency earned through exports may be used for foreign transactions. The time periods for fulfilling the requirements to convert pesos are frequently changed. For example, in April 2012, Argentina issued Resolution 142/12, which reduces the time limits for companies to convert their export earnings to pesos on the local foreign exchange market to within 15 calendar days. This requirement virtually halted exports in some industries, such as mining, that were unable to comply with the new rule. In response, the Argentine government partially eased the requirement and set differential timeframes ranging from 15 days to 360 days depending on the exported product. Tariff lines and their corresponding timeframes can be found at: <http://www.infoleg.gov.ar/infolegInternet/anexos/195000-199999/196638/texact.htm>

In 2005, the government issued Presidential Decree 616, revising the registration requirements for capital inflows and outflows. The Ministry of Economy implemented Decree 616 through resolutions in 2005 and 2006, which imposed more restrictive controls on the following classes of inbound investments: inflows of foreign funds from private sector debt (excluding foreign trade and initial public offerings of stock and bond issues); inflows for most fiduciary funds; inflows of nonresident funds that are destined for the holding of Argentine pesos or the purchase of private sector financial instruments (excluding foreign direct investment and the primary issuance of stocks and bonds); and investments in public sector securities purchased in the secondary market. These inflows are subject to three restrictions: (1) they may not be transferred out of the country for 365 days after their entry; (2) proceeds from foreign exchange transactions involving these investments must be paid into an account in the local financial system; and (3) a 30 percent unremunerated reserve requirement must be met, meaning that 30 percent of the amount of such transactions must be deposited in a local financial entity for 365 days in an account that must be denominated in dollars and pay no interest. Pursuant to subsequent amendments to the decree, a deposit is not required for capital inflows to finance energy infrastructure, certain purchases of real estate by foreigners, and certain tax payments and social security contributions.

In October 2011, Argentina increased controls on retail foreign exchange. Buyers are required to be approved by AFIP which evaluates each request based on the individual's or company's revenue stream. Local business representatives have reported receiving approvals for amounts much lower than requested. This has hampered the ability of Argentine importers to buy U.S. exports. In July 2012, Argentina also banned retail foreign exchange purchases for purposes of savings, and only allows such purchases, though with significant restrictions, for purposes of payment for tourism services abroad. This limited access to foreign exchange has contributed to the existence of a parallel exchange rate. In August and September 2012, AFIP issued Resolutions 3378 and 3379/2012 that set a 15 percent withholding tax on purchases by non-residents (be it overseas or via the Internet) with debit and credit cards. On March 19, 2013, through Resolution 3450/2013, the tax rate was increased up to 20 percent and extended to airfare tickets and tourism packages. More details are available at: <http://www.infoleg.gob.ar/infolegInternet/verNorma.do;jsessionid=E78A28E1FDF40305464EA9158ED2B88A?id=209507>. On December 3, 2013, the tax was increased to 35 percent (Resolution 3350). This new resolution provides that the purchase of foreign exchange, previously authorized by AFIP, is also subject to this tax. The tax is theoretically refundable when the agent files an income tax return, although in practice the amount received would be depreciated by inflation. This tax reduces U.S. services exports as purchases on credit cards remain the only direct access to foreign exchange for Argentines traveling abroad.

U.S. companies have reported that since 2012 the Argentine government has limited their ability to make payments in foreign currency outside of Argentina. The restrictions are often communicated informally by the Argentine government and may extend to profit remittances, royalty payments, technical assistance fees, and payments for expenses incurred outside of Argentina. Companies also report that the Argentine government may eventually permit remittance of a portion of their Argentine-based revenue, but this amount is often reported to be less than what the company had intended to remit.

ELECTRONIC COMMERCE

On January 20, 2014, Argentina modified its retail mail order import licensing system through AFIP General Resolution 3579. Online purchases of foreign products valued up to \$3,000 and delivered through Argentina's official postal service (EMS) are assessed a charge of 50 percent of the value of the goods. Goods in excess of \$3,000 may not be sent via EMS. In addition, individuals may import up to \$25 in goods duty free by mail once a year. Total mail order transactions via EMS are limited to two per year per individual. The new resolution also requires goods delivered by official mail to be retrieved in person at the post office or customs authority.

Argentina does not allow the use of electronically produced airway bills that would accelerate customs processing and the growth of electronic commerce transactions.

AUSTRALIA

TRADE SUMMARY

U.S. goods exports in 2013 were \$26.0 billion, down 16.4 percent from 2012. Corresponding U.S. imports from Australia were \$9.3 billion, down 2.9 percent. The U.S. goods trade surplus with Australia was \$16.8 billion in 2013, down \$4.8 billion from 2012. Australia is currently the 15th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Australia were \$17.2 billion in 2012 (latest data available), and U.S. imports were \$6.8 billion. Sales of services in Australia by majority U.S.-owned affiliates were \$51.2 billion in 2011 (latest data available), while sales of services in the United States by majority Australia-owned firms were \$12.8 billion.

The stock of U.S. foreign direct investment (FDI) in Australia was \$132.8 billion in 2012 (latest data available), down from \$137.3 billion in 2011. U.S. FDI in Australia is led by the nonbank holding companies, mining, finance and insurance, and manufacturing sectors.

TRADE AGREEMENTS

The United States-Australia Free Trade Agreement (AUSFTA) entered into force on January 1, 2005. Since then the U.S. and Australian Governments have continued to closely monitor FTA implementation and discuss a range of FTA issues. Under the AUSFTA, trade in goods and services and foreign direct investment have continued to expand, and over 99 percent of U.S. exports of consumer and industrial goods are now duty-free.

Australia is a participant in the Trans-Pacific Partnership (TPP) Agreement negotiations, through which the United States and 11 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. Once concluded this agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The United States is proposing to include in the TPP agreement ambitious commitments on goods, services, and other traditional trade and investment matters and a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States and Australia, the TPP negotiating partners currently include Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.

GOVERNMENT PROCUREMENT

Australia is not a signatory to the WTO Agreement on Government Procurement, but it is an observer. Under the Australia-U.S. FTA, the Australian government opened its government procurement market to U.S. suppliers, eliminating preferences for domestic suppliers, and it also committed to use fair and transparent procurement procedures.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

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

SERVICES BARRIERS

Audiovisual Services

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

The Australian Content Standard of 2005 requires commercial television broadcasters to produce and screen Australian content, including 55 percent of transmission between 6:00 a.m. and midnight. In addition, it requires minimum annual sub-quotas for Australian (adult) drama, documentary, and children's programs. A broadcaster must ensure that Australian-produced advertisements occupy at least 80 percent of the total advertising time screened in a year between the hours of 6:00 am and midnight, other than the time occupied by exempt advertisements, which include advertisements for imported cinema films, videos, recordings and live appearances by overseas entertainers, and community service announcements.

The Australian commercial radio industry Code of Practice sets quotas for the broadcast of Australian music on commercial radio. The code requires that up to 25 percent of all music broadcast between 6:00 a.m. and midnight must be performed by Australians. Since January 2008, all recipients of regional commercial radio broadcasting licenses have been required to broadcast minimum levels of local content. Further, in July 2010, the Australian Communications and Media Authority (ACMA) announced a temporary exemption from the Australian music quota for digital-only commercial radio stations (stations not also simulcast in analog). The ACMA will review the exemption in 2014.

Telecommunications

The Australian government-owned NBN Company is implementing a National Broadband Network that is intended to be a neutral provider of wholesale high-speed broadband services nationwide. The NBN structure should provide non-discriminatory access to network services, including for U.S. companies, since NBN will not compete in retail markets, and thus will have no incentive (as incumbent Telstra formerly did) to discriminate in favor of an affiliated retailer. In 2011, Telstra agreed to progressively migrate the company's voice and broadband traffic from its copper and cable networks to the NBN.

INVESTMENT BARRIERS

Foreign direct investment into Australia is regulated by the Foreign Acquisitions and Takeovers Act 1975 and Australia's Foreign Investment Policy. The Foreign Investment Review Board (FIRB), a division of Australia's Treasury, screens potential foreign investments in Australia above a threshold value of A\$244 million (\$253 million). Based on advice from the FIRB, the Treasurer may deny or place conditions on the approval of particular investments above that threshold on national interest grounds.

Under the U.S.-Australia FTA, all U.S. “green field” investments are exempt from FIRB screening. The U.S.-Australia FTA also raised the threshold for screening of most U.S. investments in Australia, which now stands at A\$1,078 million (\$970 million), indexed annually. All foreign persons, including U.S. investors, must notify the Australian government and get prior approval to make investments of 5 percent or more in the media sector, regardless of the value of the investment.

While the FIRB generally approves U.S. investment, in November 2013 the Treasurer intervened to block U.S. agribusiness Archer Daniels Midland’s proposed A\$3.4 billion purchase of Australian company GrainCorp on national interest grounds.

ELECTRONIC COMMERCE

In July 2012, the Personally Controlled Electronic Health Records Act, which prohibits the overseas storage of any Australian electronic health records, went into effect. The U.S. Government and business community continue to advocate for a risk-based approach to ensuring the security of sensitive data as opposed to a geographic one.

OTHER BARRIERS

Blood Plasma Products and Fractionation

In 2010, the National Blood Authority negotiated an eight-year contract with the Australian company CSL Limited for the ongoing fractionation of Australian plasma and manufacture of key blood products, demonstrating its continued preference for handling fractionation of Australian plasma locally and without public tender. The United States remains concerned about the lack of an open and competitive tendering system for blood fractionation in Australia.

BAHRAIN

TRADE SUMMARY

U.S. exports in 2013 were \$1.0 billion, down 15.9 percent from the previous year. Corresponding U.S. imports from Bahrain were \$635 million, down 9.4 percent. The U.S. goods trade surplus with Bahrain was \$383 million in 2013, down \$127 million from 2012. Bahrain is currently the 78th largest export market for U.S. goods.

The United States-Bahrain Free Trade Agreement

Upon entry into force of the United States-Bahrain Free Trade Agreement (FTA) in August 2006, 100 percent of bilateral trade in consumer and industrial products and most agricultural products became duty-free immediately. Bahrain will phase out tariffs on the few remaining agricultural product lines by 2015. Textiles and apparel are duty free, providing opportunities for U.S. and Bahraini fiber, yarn, fabric, and apparel manufacturing. Generally, to benefit from preferential tariffs under the FTA, textiles and apparel must be made from either U.S. or Bahraini yarn and fabric. The FTA provides a 10-year transitional period for textiles and apparel that do not meet these requirements in order to assist U.S. and Bahraini producers in developing and expanding business contacts.

GOVERNMENT PROCUREMENT

In 2002, Bahrain implemented a new government procurement law to ensure transparency and reduce bureaucracy in government tenders and purchases. The law specifies procurements on which international suppliers are allowed to bid. The Tender Board is chaired by the Minister of Housing who oversees all tenders and purchases with a value of BD 10,000 (\$26,525) or more. The Tender Board plays an important role in ensuring a transparent bidding process which Bahrain recognizes is vital to attracting foreign investment. The FTA requires procuring entities in Bahrain to conduct procurements covered by the FTA in a fair, transparent, and nondiscriminatory manner.

The Tender Board awarded tenders worth \$3 billion in 2013, an increase of 53.8 percent over 2012. Bahrain has begun tendering and awarding several major public infrastructure projects including new roads, bridges, public housing, utility upgrades, port upgrades, and the expansion of Bahrain International Airport. In 2011, other Member States of the Gulf Cooperation Council (GCC) announced that they would establish a \$10 billion fund over a 10-year period to promote development in Bahrain. This fund is geared toward infrastructure projects in Bahrain, with donor countries overseeing use of the fund. In 2013, one U.S. company faced prolonged (and to-date unresolved) issues with the tendering process related to a GCC-funded project.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The FTA requires Bahrain to provide strong intellectual property rights (IPR) protection. As part of its FTA obligations, Bahrain passed several key laws to improve protection and enforcement for copyrights, trademarks, and patents. Bahrain's record on IPR protection and enforcement continues to be mixed. Over the past several years, Bahrain has launched several campaigns to combat piracy of cable and satellite

television by blocking illegal signals and prohibiting the sale of decoding devices, and has launched several public awareness campaigns regarding IPR piracy. However, the government's efforts to inspect and seize counterfeit goods from stores have been unsuccessful, and counterfeit consumer goods continue to be sold openly.

As the six Member States of the GCC explore further harmonization of their IPR regimes, the United States will continue to engage with GCC institutions and the Member States and provide technical cooperation on IPR policy and practice.

BRAZIL

TRADE SUMMARY

U.S. goods exports in 2013 were \$44.1 billion, up 0.7 percent from the previous year. Corresponding U.S. imports from Brazil were \$27.6 billion, down 14.2 percent. The U.S. goods trade surplus with Brazil was \$16.6 billion in 2013, an increase of \$4.9 billion from 2012. Brazil is currently the 7th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Brazil were \$23.9 billion in 2012 (latest data available), and U.S. imports were \$6.9 billion. Sales of services in Brazil by majority U.S.-owned affiliates were \$38.0 billion in 2011 (latest data available), while sales of services in the United States by majority Brazil-owned firms were \$1.5 billion.

The stock of U.S. foreign direct investment (FDI) in Brazil was \$79.4 billion in 2012 (latest data available), up from \$73.8 billion in 2011. U.S. FDI in Brazil is led by the manufacturing and finance/insurance sectors.

IMPORT POLICIES

Tariffs

Brazil is a member of the Southern Common Market (MERCOSUR) customs union, formed in 1991 and comprised of Argentina, Brazil, Paraguay, Uruguay, and Venezuela, which was admitted as a full member in July 2012. MERCOSUR maintains a Common External Tariff (CET) schedule with a limited number of country-specific exceptions, with most favored nation (MFN) applied rates ranging from zero percent to 35 percent *ad valorem*. Brazil's import tariffs follow the MERCOSUR CET, with few exceptions. Brazil's MFN applied tariff rate averaged 13.5 percent in 2012. Brazil's average bound tariff rate in the WTO is significantly higher at 31.4 percent. Brazil's maximum bound tariff rate for industrial products is 35 percent, while its maximum bound tariff rate for agricultural products is 55 percent. Given the large disparities between bound and applied rates, U.S. exporters face significant uncertainty in the Brazilian market because the government frequently increases and decreases tariffs to protect domestic industries from import competition and to manage prices and supply. The lack of predictability with regard to tariff rates makes it difficult for U.S. exporters to predict the costs of doing business in Brazil.

Brazil imposes relatively high tariffs on imports across a wide spread of sectors, including automobiles, automotive parts, information technology and electronics, chemicals, plastics, industrial machinery, steel, and textiles and apparel. Under MERCOSUR, Brazil is permitted to maintain 100 exceptions to the CET until December 31, 2015. Using these exceptions, Brazil maintains higher tariffs than its MERCOSUR partners on certain goods, including cellular phones, telecommunications equipment, computers and computer printers, wind turbines, certain chemicals and pharmaceuticals, sardines, and mushrooms. At the MERCOSUR Common Market Council (CMC) ministerial meeting in December 2011, MERCOSUR members agreed to allow member countries to increase import duty rates temporarily to a maximum rate of 35 percent on an additional 100 items per member country. In October 2012, Brazil issued its list of 100 products subject to this tariff increase, which expired in November 2013. The Brazilian government announced that it does not intend to extend these tariffs or implement new tariff hikes under the June 2012 MERCOSUR CMC agreement, which also permits member countries to increase tariffs above the CET on

an additional 100 line item products. Exports of U.S. products in the categories affected by tariff increases totaled approximately \$3.9 billion in 2013.

In August 2010, MERCOSUR's CMC advanced toward the establishment of a Customs Union with its approval of a Common Customs Code (CCC) and Decision 5610 (December 2010) to implement a plan to eliminate the double application of the CET within MERCOSUR. The plan was to take effect in three stages with the first phase to have been implemented no later than January 1, 2012, but the deadline was not met. In November 2012, Argentina became the first MERCOSUR member to ratify the CCC. The CCC still must be ratified by the other four MERCOSUR member countries.

As part of its Uruguay Round commitments, Brazil agreed to establish a 750,000 metric ton (MT) duty-free tariff-rate quota (TRQ) for wheat. Brazil has never opened the TRQ, and therefore no wheat has been shipped under the TRQ. In an April 1996 notification to the WTO, Brazil indicated its intent to withdraw the wheat TRQ in accordance with the process established in Article XXVIII of the GATT 1994. Brazil considers the Article XXVIII process to be ongoing. The Brazilian government considers the current MFN applied tariff rate for wheat of 10 percent, along with *ad hoc* duty-free MFN quotas established to bridge supply gaps, to confer benefits that are commensurate with, or in excess of, the 750,000 MT TRQ. However, because Brazil could increase the 10 percent applied tariff at any time and the *ad hoc* quotas are unpredictable by nature, these arrangements do not offer U.S. wheat exporters the same certainty that a 750,000 MT TRQ would provide. The United States will continue to engage Brazil on this issue.

Nontariff Barriers

Brazil applies to imports federal and state taxes and charges that can effectively double the actual cost of imported products in Brazil. The complexities of the domestic tax system, including multiple cascading taxes and tax disputes among the various states, pose numerous challenges for U.S. companies operating in and exporting to Brazil. For example, effective January 1, 2013, Brazil instituted a "temporary" regime for a reduction in the Industrial Product Tax (IPI) that provides locally produced vehicles preferential tax rates, provided that manufacturers comply with a series of local content and other requirements. This program will remain in effect until 2017. As part of the program, the baseline IPI on all vehicles will be revised upward by 30 percentage points, which is equivalent to the level applied to imported vehicles under the prior program introduced in December 2011. However, it allows those meeting certain levels of local content, fuel efficiency and emissions standards, and required levels of local engineering, research and development, or labeling standards to receive tax breaks that may offset the full amount of the IPI. Imported automobiles face a potential 30 percentage point price disadvantage *vis-à-vis* equivalent vehicles manufactured in Brazil even before import duties are levied.

Brazil prohibits imports of all used consumer goods, including automobiles, clothing, tires, medical equipment, and information and communications technology (ICT) products as well as some blood products. Brazil also restricts the entry of certain types of remanufactured goods (*e.g.*, earthmoving equipment, automotive parts, and medical equipment). In general, Brazil only allows the importation of such goods if an importer can provide evidence that the goods are not or cannot be produced domestically. 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.

Import Licenses/Customs Valuation

All importers in Brazil must register with the Secretariat of Foreign Trade (SECEX) to access the Brazilian Secretary of Foreign Trade's computerized documentation system (SISCOMEX). SISCOMEX registration requirements are onerous, including a minimum capital requirement.

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

U.S. footwear and apparel companies have expressed concern about the extension of non-automatic import licenses and certificate of origin requirements on non-MERCOSUR footwear to include textiles and apparel. They also note the imposition of additional monitoring, enhanced inspection, and delayed release of certain goods, all of which negatively impact the ability to sell U.S.-made and U.S.-branded apparel, footwear, and textiles in the Brazilian market.

In May 2011, the Brazilian government imposed non-automatic import licensing requirements on imported automobiles and automotive parts, including those originating in MERCOSUR countries. Delays in issuing the non-automatic import licenses negatively affect U.S. automobile and automotive parts manufacturers that export vehicles to Brazil, particularly those that manufacture such products in Argentina for export to Brazil.

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

SUBSIDIES

The Plano Brasil Maior (Greater Brazil Plan) industrial policy offers a variety of tax, tariff, and financing incentives to encourage local producers and production for export by firms in Brazil. The *Reintegra* program, launched in December 2011 as part of Plano Brasil Maior, exempted from certain taxes exports of goods covering 8,630 tariff lines. The *Reintegra* program expired at the end of 2013 despite industry pressure to maintain the program. Plano Brasil Maior also calls for the creation of funds designed to aid small and medium-sized exporters and to cover non-payment by customers in countries where the risk of non-payment is high.

Brazil's National Bank for Economic and Social Development (BNDES) provides long-term financing to Brazilian industries through several programs, such as the R\$44 billion (approximately \$22 billion) Investment Maintenance Program. At 3 percent to 5.5 percent, the interest rates charged on financing under this program are substantially lower than the prevailing market interest rates for commercial financing. One BNDES program, FINAME, provides preferential financing for the sale and export of

Brazilian machinery and equipment and provides financing for the purchase of imports of such goods provided that such goods are not produced domestically. These programs can be used for financing capacity expansions and equipment purchases in industries such as steel and agriculture. BNDES also provides preferential financing for wind farm development, contingent upon progressively more stringent local content requirement through 2016. Currently, Brazilian wind turbine suppliers are eligible to receive preferential BNDES financing, provided the wind towers are built with at least 70 percent Brazilian steel.

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

Brazil provides tax reductions and exemptions on many domestically-produced ICT and digital goods that qualify for status under the Basic Production Process (Processo Produtivo Basico, or PPB). The PPB provides benefits on the production and development of goods that incorporate a certain minimum amount of local content. Tax exemptions are also provided for the development and build-out of telecommunications broadband networks that utilize locally-developed products and investments under the Special Taxation Regime for the National Broadband Installation Program for Telecommunication Networks (Regime Especial de Tributação do Programa de Banda Larga para Implantação de Redes de Telecomunicações, or REPNBL-Redes).

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

Brazil also provides a broad range of assistance to its agricultural sector in the form of low interest financing, price support programs, tax exemptions, and tax credits. An example of such assistance is the Equalization Premium Payment to the Producer (Prêmio de Equalização Pago ao Produto or PEPRO), which offers a payment through an auctioning system to producers or cooperatives of certain agricultural commodities including grapes, corn, and cotton based on the difference between the minimum price set by the government and the prevailing market price. Each PEPRO auction notice specifies the commodity to be tendered and the approved destinations for that product, including export destinations. Another example is financing provided by BNDES. Of the R\$146.8 billion (approximately \$73.4 billion) BNDES allocations to the various sectors of the Brazilian economy from January until October 2013, R\$14.8 billion (approximately \$7.4 billion) was set aside for the agriculture and livestock sectors, 73 percent more than the same period of time in 2012. In 2012, BNDES announced the Prorenova credit line of R\$4 billion (approximately \$2 billion) available for the calendar year to finance the renewal and/or expansion of approximately 2.5 million acres (1 million hectares) of sugarcane fields. In January 2013, the program was extended through December 31, 2013 with the same capital grant as in 2012. However, in the first year of operation, the program released R\$1.4 billion, one-third of the total planned.

GOVERNMENT PROCUREMENT

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

In 2010, Brazil passed a law giving procurement preference to firms that produce in Brazil and that fulfill certain economic stimulus requirements such as generating employment or contributing to technological development, even if their bids are up to 25 percent more expensive than bids submitted by foreign firms not producing in Brazil. The law allows for “strategic” information and communications technology (ICT) goods and services procurements to be restricted to those with indigenously developed technology. In August 2011, this system of preference margins was folded into Plano Brasil Maior. Government procurement is just one of many measures under Plano Brasil Maior intended to promote and protect domestic producers, particularly the labor-intensive sectors facing import competition. In November 2011, the Ministry of Development, Industry, and Commerce implemented an 8 percent preference margin for domestic producers in the textile, clothing, and footwear industries when bidding on government contracts. In April 2012, Brazil implemented 5 percent to 25 percent preference margins for domestically produced backhoes, motor graders, and a variety of pharmaceuticals.

Brazil’s regulations regarding the procurement of ICT goods and services require federal agencies and parastatal entities to give preferences to locally produced computer products based on a complicated price/technology matrix. In addition, Brazil has made several attempts over the past decade to enact preferences at the federal, state, and local government levels for the procurement of open-source software over commercial products. Most recently, in December 2011, two Brazilian legislative committees approved draft Law PL 2269/1999, which would require all Brazilian federal government agencies and state-owned entities to favor open-source software in their procurement policies. This legislation is subject to further action in the Brazilian Congress. If enacted, this law would put U.S. software providers at a severe disadvantage *vis-à-vis* Brazilian companies. In addition, in August 2012, the Ministry of Science, Technology and Innovation released a “Bigger IT Plan” intended to bolster the growth and development of the domestic information technology industry. The program focuses heavily on software and related services and establishes a new process for the government to evaluate and certify that software products are locally developed in order to qualify for price preferences that may be as high as 25 percent.

State-controlled oil company Petrobras’ local content requirements are currently established and regulated by Brazil’s National Petroleum Agency (ANP), which is gradually introducing higher local content requirements with each bidding round. In addition, local content requirements vary by block (the geographic area that is awarded by the Brazilian government to oil companies for oil exploration), and within that block the local content requirements differ for equipment, workforce, and services. In the past, local content requirements were as low as 5 percent; however, Brazilian officials have indicated that local content requirements for Petrobras and other oil companies could reach 80 percent to 95 percent by 2020 in certain product categories. Technology-intensive equipment and services will likely be subject to higher local content requirements than low-technology equipment and services. The Oil and Gas Regulatory Framework introduced in December 2010 requires Petrobras to be the majority operator of new projects, and as a result, Petrobras is responsible for ensuring that its workforce and its entire supply chain adhere to these increasingly high local content requirements. ANP fined Petrobras and other oil exploration and production companies over the last few years for noncompliance with local content requirements; for example in September 2011, Petrobras was fined R\$29 million (approximately \$16.85 million) for

noncompliance. In August 2012, ANP announced that it was reviewing 17 local content waiver requests from five unnamed operators, requiring that a company prove in its waiver request that it is unable to acquire the appropriate goods and services locally or that local prices are not in line with international standards.

The United States continues to urge Brazil to become a signatory to the WTO Agreement on Government Procurement in order to ensure that companies in both countries have access to each other's procurement markets.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Brazil remained on the Special 301 Watch List in 2013. Brazil continues to make progress by conducting notable enforcement efforts across the country under the coordination of the National Council to Combat Piracy. However, Brazil continues to experience piracy and counterfeiting, especially pirated books, and the challenge of piracy over the Internet continues to grow. More sustained action and the imposition of deterrent-level penalties could enhance Brazil's border and general enforcement effectiveness. In the area of patents, Brazil has taken steps to address a backlog of pending patent applications but delays still exist. In addition, regulations that provide Brazil's health regulatory agency, ANVISA, with the authority to review pharmaceutical patent applications for meeting patentability requirements appear to contravene an earlier opinion by the Federal Attorney General that clarified that ANVISA does not have this authority. These new regulations create transparency and predictability challenges, as well as additional delays in the patent application review process.

SERVICES BARRIERS

Audiovisual Services and Broadcasting

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

Remittances to foreign producers of audiovisual works are subject to a 25 percent income withholding tax. Brazilian distributors of foreign films are subject to a levy equal to 11 percent of their withholding taxes. This tax, called the CONDECINE (Contribution to the Development of a National Film Industry), is waived for the Brazilian distributor, if the producer of the foreign audiovisual work agrees to invest an amount equal to 70 percent of the income withholding tax on their remittances in co-productions with Brazilian film companies. The CONDECINE tax is also levied on any foreign video and audio advertising.

Brazil also requires that 100 percent of all films and television shows be printed locally. Importation of color prints for the theatrical and television markets is prohibited. Domestic film quotas also exist for theatrical screening and home video distribution.

In September 2011, Brazil enacted law 12.485 covering the subscription television market, including satellite and cable television. The law permits telecommunications companies to offer television packages with their services and also removes the previous 49 percent limit on foreign ownership of cable television companies. However, new content quotas also went into effect in September 2011, which require every channel to air at least three and a half hours per week of Brazilian programming during prime time. Additionally, one third of all channels included in any television package must be Brazilian. The content quotas were phased in over a three-year period, achieving full implementation in September 2013. As

before, foreign cable and satellite television programmers are subject to an 11 percent remittance tax, which does not need to be paid if the programmer invests 3 percent of its remittances in co-production of Brazilian audiovisual services. In addition, the law delegates significant programming and advertising regulatory authority to the national film industry development agency, ANCINE.

Cable and satellite operators are subject to a fixed levy on foreign content and foreign advertising released on their channels. Law 10610 of 2002 limits foreign ownership in media outlets to 30 percent, including the print and “open broadcast” (non-cable) television sectors. Eighty percent of the programming aired on “open broadcast” television channels must be Brazilian.

Express Delivery Services

U.S. express delivery service companies face significant challenges in the Brazilian market due to numerous barriers, such as high import taxes, an automated express delivery clearance system that is only partially functional, and levels for *de minimis* exception from tariffs that are too low to facilitate efficient import of goods.

The Brazilian government charges a flat 60 percent duty for all goods imported through the Simplified Customs Clearance process used for express delivery shipments. U.S. industry contends that this flat rate is higher than duties normally levied on goods arriving via regular mail, putting express delivery companies at a competitive disadvantage. Moreover, Brazilian Customs has established maximum value limits of \$5,000 for exports and \$3,000 for imports sent using express services. These limits severely restrict the Brazilian express delivery market’s growth potential and impede U.S. exporters doing business in Brazil.

Financial Services

In order to enter Brazil’s insurance and reinsurance market, foreign firms must establish a subsidiary, enter into a joint venture, or acquire or partner with a local company. The Brazilian reinsurance market was opened to competition in 2007. However, in December 2010 and March 2011, the Brazilian National Council on Private Insurance (CNSP) reversed its previous market liberalization actions through the issuance of Resolutions 225 and 232, which disproportionately affect foreign insurers operating in the Brazilian market. Resolution 225 requires that 40 percent of all reinsurance risk be placed with Brazilian companies. In addition, Resolution 232 allows insurance companies to place only 20 percent of risk with affiliated reinsurance companies. In December 2011, CNSP passed Resolution 241, which loosens some of the requirements of Resolution 225 such that foreign firms are no longer subject to the 40 percent requirement of Resolution 225, if they can show that there is an insufficient supply on the local reinsurance market.

On August 31, 2012, President Rousseff signed a Provisional Measure decree (MP 564) which allows for the creation of a state-owned enterprise for reinsurance, the so-called “Segurobras.” The purpose of the company would be to provide government-backed reinsurance for large infrastructure projects, such as for World Cup and Olympics construction, which do not have full coverage in the private market. *Segurobras*’ broad mandate could also allow it to acquire and compete with private companies in the housing and vehicle insurance markets.

Telecommunications

As a condition of the June 2012 auction for the 2.5 GHz radio spectrum, the Brazilian National Telecommunications Agency (ANATEL) required wireless carriers to meet specific milestones over time to ensure local content for the infrastructure, including software, was installed to supply the licensed service and to ensure 60 percent local content in 2012, 65 percent in 2015, and 70 percent after 2017. ANATEL also required wireless carriers to use a minimum percentage of technology developed in Brazil, starting with 10 percent in 2012, 15 percent in 2015, and 20 percent after 2017. These requirements also apply to infrastructure in the 450 MHz spectrum. ANATEL has not yet announced the bid requirements for the 700 MHz spectrum related to its planned 2014 auction, but press reports and public statements by the Communications Minister suggest that the local content requirements may be similar.

Pursuant to Resolution 323 of November 2002, ANATEL requires local testing of telecommunications products and equipment by designated testing facilities in Brazil, rather than allowing testing by a facility certified by an independent certification body. The only exception is in cases where the equipment is too large or too costly to transport. As a result of these requirements, U.S. manufacturers and exporters must present virtually all of their information technology and telecommunications equipment for testing at laboratories located in Brazil before that equipment can be placed on the Brazilian market, which causes redundant testing, higher costs and delayed time to market.

In April 2013, Brazil's Ministry of Communications issued Portaria No. 87, which provides an exemption from consumption taxes for smartphones meeting certain requirements, including that they contain a pre-loaded package of locally-developed applications. This tax exemption is expected to lead to a price reduction of up to 30 percent on smartphones containing these applications.

INVESTMENT BARRIERS

Foreign Ownership of Agricultural Land

On December 9, 2011, the National Land Reform and Settlement Institute (INCRA) published a set of new rules covering the purchase of Brazilian agricultural land by foreigners. These rules follow an August 2010 opinion issued by the Attorney General limiting foreign ownership of agricultural land. Under the new rules, the area bought or leased by foreigners cannot account for more than 25 percent of the overall area in its respective municipal district. Additionally, no more than 10 percent of the land in any given municipal district may be owned or leased by foreign nationals from the same country. The rules also make it necessary to obtain congressional approval before large plots of land can be purchased by foreigners, foreign companies, or Brazilian companies with a majority of shareholders from foreign countries. On September 3, 2013, INCRA published a normative instruction to clarify the regulations laid out in new rules. The normative instruction does not change the new set of rules, but spells out the regulation and implementation of the rules, as well as providing guidance for foreign investors. This continues to be a barrier to U.S. investment in Brazilian agricultural land.

BRUNEI DARUSSALAM

TRADE SUMMARY

U.S. goods exports in 2013 were \$559 million, up 254.4 percent from the previous year. Corresponding U.S. imports from Brunei were \$17 million, down 80.1 percent. The U.S. goods trade surplus with Brunei was \$541 million in 2013, an increase of \$470 million from 2012. Brunei is currently the 100th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Brunei was \$116 million in 2012 (latest data available), up from \$99 million in 2011.

Trade Agreements

Brunei is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 11 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world, act as an important tool to expand U.S. trade and investment which are critical to the creation and retention of jobs in the United States, and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment issues. It will also address a range of emerging issues not covered by past agreements, including trade and investment in innovative products, and commitments to help companies operate more effectively in regional markets. In addition to the United States and Brunei, the TPP negotiating partners currently include Australia, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

IMPORT POLICIES

Tariffs

Brunei has bound 95.3 percent of its tariff lines in the WTO. Brunei's average bound MFN tariff rate is 25.4 percent and applied rates averaged 2.5 percent in 2013. With the exception of a few products, including coffee, tea, tobacco, and alcohol, tariffs on agricultural products are zero. Alcoholic beverages, tobacco, coffee, tea, petroleum oils, and lubricants are among the products included in the 55 tariff lines subject to specific rates of duty and greater overall protection. Brunei reduced the tariff rate for machinery and electrical equipment from 20 percent to 5 percent in 2013 but continues to apply high duties of up to 20 percent on automotive parts.

Brunei offers preferential tariff rates to many Asia-Pacific countries under various trade agreements. As a member of ASEAN, Brunei is reducing intraregional tariffs as agreed under the ASEAN Free Trade Agreement. Brunei also accords preferential access to its market to Australia, New Zealand, China, India, South Korea, and Japan (as part of free trade agreements concluded by ASEAN); to Chile, Singapore, and New Zealand (as part of the Trans-Pacific Strategic Economic Partnership); and to Japan (under a bilateral Economic Partnership Agreement).

GOVERNMENT PROCUREMENT

All government procurement is conducted by Ministries, Departments, and the State Tender Board of the Ministry of Finance. Most invitations for tenders or quotations below B\$250,000 (approximately \$200,000) are published in a bi-weekly government newspaper but often are selectively tendered only to locally registered companies. The relevant ministry may approve purchases up to a B\$250,000 threshold, but tender awards above B\$250,000 must be approved by the Sultan in his capacity as Minister of Finance based on the recommendation of the State Tender Board. A project performance bond is required at the tender approval stage to guarantee the delivery of a project in accordance with the project specifications. The bond is returned to the companies involved after the project is successfully completed. Brunei is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Brunei was removed from the Special 301 Watch List in 2013 in light of its increased focus on IPR protection and enforcement in recent years. For example, in collaboration with the Attorney General's Office, the Brunei Economic Development Board established the Brunei Intellectual Property Office (BruIPO) on June 1, 2013 to restructure the Intellectual Property (IP) administration in Brunei Darussalam. Brunei has also made notable progress in 2013 by conducting nationwide raids against vendors of pirated recordings and by prosecuting vendors of pirated goods. Brunei's enforcement efforts have contributed to a general decline in the physical piracy of music, now estimated by industry to be about 30 percent. However, concerns remain in some areas, including with respect to whether Brunei provides effective protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products and IPR border enforcement, particularly against transshipments. The United States Government also continues to urge the Bruneian government to proceed with taking steps to join the WIPO Internet Treaties. The United States will continue to work closely with Brunei to ensure that progress is sustained and to address remaining areas of concern, including through the Trans-Pacific Partnership negotiations.

OTHER BARRIERS

Transparency is lacking in many areas of Brunei's economy. Brunei operates state-owned monopolies in key sectors of the economy, such as oil and gas, telecommunications, transport, and energy generation and distribution. Brunei has not yet notified its state trading enterprises to the WTO Working Party on State Trading Enterprises. In addition, Brunei's foreign direct investment policies are not transparent, particularly with respect to limits on foreign equity participation, partnership requirements, and the identification of sectors in which foreign direct investment is restricted.

Brunei has recently established a localization initiative called the Local Business Development (LBD) Framework for the oil and gas industry in an effort to facilitate the development of local supply chain companies in the oil and gas industry. The framework places priorities in the use of local workers and supply companies as well as encourages local financial institutions and local investors to fund projects and purchase of assets. The framework requires oil and gas companies to formulate a Local Content Opportunity Framing report for major projects, contracts, and agreements to ensure that local content and local employment are increased. The oil and gas operators are required to adopt an LBD Allocation of Contract for their allocation of contracting activities for goods and services, which prescribes local content and employment targets based on the size of the contract and the technology intensity of the project.

FOREIGN TRADE BARRIERS

CAMBODIA

TRADE SUMMARY

U.S. goods exports in 2013 were \$241 million, up 6.5 percent from the previous year. Corresponding U.S. imports from Cambodia were \$2.8 billion, up 3.0 percent. The U.S. goods trade deficit with Cambodia was \$2.5 billion in 2013, up \$67 million from 2012. Cambodia is currently the 129th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Cambodia was \$54 million in 2012 (latest data available), up from \$37 million in 2011.

IMPORT POLICIES

Tariffs

Cambodia is one of the few least-developed World Trade Organization (WTO) Members that made binding commitments on all products in its tariff schedule when it joined the WTO in 2004. Cambodia's overall simple average bound tariff rate is 19.1 percent, while the average applied rate is now around 11.5 percent. Cambodia's highest applied tariff rate of 35 percent is imposed across a number of product categories, including a wide variety of prepared food products, bottled and canned beverages, cigars and cigarette substitutes, table salt, paints and varnishes, cosmetic and skin care products, glass and glassware, electrical appliances, cars, furniture, video games, and gambling equipment.

Customs

Both local and foreign businesses have raised concerns that the General Department of Customs and Excise engages in practices that are nontransparent and that appear arbitrary. Importers frequently cite problems with undue processing delays, burdensome paperwork, and unnecessary formalities. The United States continues to raise these and other customs issues with Cambodia under the bilateral Trade and Investment Framework Agreement.

Taxation

Cambodia levies trade-related taxes in the form of customs duties, petroleum taxes on gasoline (\$0.02 per liter) and diesel oil (\$0.04 per liter), an export tax, and two indirect taxes – a value-added tax (VAT) and an excise tax – levied on the value of imports. The VAT is applied at a uniform 10-percent rate. To date, the VAT has been imposed only on large companies, but the Cambodian government is working to expand the base to which the tax is applied. The VAT is not collected on exports and services consumed outside of Cambodia (technically, a zero percent VAT applies). Subject to certain criteria, the zero rate also applies to businesses that support exporters and subcontractors that supply goods and services to exporters, such as garment and footwear manufacturers.

GOVERNMENT PROCUREMENT

Cambodia promulgated a law on public procurement in January 2012, which codified existing procurement regulations for competitive bidding, domestic canvassing, direct purchasing, and direct contracting.

Competitive bidding is mandatory for the purchase of goods or services worth more than 100 million riels (approximately \$25,000). Bidding is restricted to local companies if the value is less than 1 billion riels (\$250,000) for goods, less than 1.2 billion riels (approximately \$300,000) for construction projects, or less than 800 million riels (approximately \$200,000) for services. International competitive bidding is required for expenditures over those amounts.

Despite the general requirement for competitive bidding for procurements valued at more than approximately \$25,000, the conduct of government procurement often is not transparent. The Cambodian government frequently provides short response times to public announcements of tenders, which often are not widely publicized. For construction projects, only bidders registered with the Ministry of Economy and Finance are permitted to participate in tenders. Additionally, prequalification procedures exist at the provincial level, which further limit the opportunity for prospective contractors to participate in tenders.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

There are continuing concerns regarding the protection and enforcement of intellectual property rights in Cambodia in light of widespread copyright piracy and trademark counterfeiting. Although public awareness of the dangers of counterfeit products is gradually increasing, pirated CDs, DVDs, software, garments, and other copyrighted materials, as well as an array of counterfeit goods, including pharmaceuticals, are reportedly widely available in Cambodia's markets. Legislation that would implement commitments with respect to the protection of trade secrets, encrypted satellite signals, and semiconductor layout designs, has been drafted but remains under review. A law clarifying the process for obtaining geographical indications in Cambodia was passed in January 2014.

INVESTMENT BARRIERS

Cambodia's constitution restricts foreign ownership of land. In 2010, a law allowing foreign ownership of property above the ground floor was enacted. The law further stipulates that no more than 70 percent of a building can be foreign-owned, and foreigners cannot own property within 30 kilometers of the national border. Foreign investors may use land through concessions and renewable leases. In May 2012, the Cambodian government imposed a moratorium on Economic Land Concessions (ELCs). Since that time, however, it has granted at least 12 new ELCs. It justified the new ELCs on grounds that they were either subject to private negotiations or had been agreed to "in principle" prior to the directive and therefore were not subject to the moratorium. The moratorium remains in effect.

OTHER BARRIERS

Corruption

Both foreign and local businesses have identified corruption in Cambodia as a major obstacle to business and a deterrent to attracting foreign direct investment. In 2010, Cambodia adopted anticorruption legislation and established a national Anti-Corruption Unit to undertake investigations, implement law enforcement measures, and conduct public outreach. Since the law came into force in 2011, some government officials have been prosecuted and convicted of corruption. Enforcement, however, remains inconsistent. Cambodia began publishing the official fees for public services at the end of 2012 in an effort to combat "facilitation" payments, but this exercise has yet to be completed.

FOREIGN TRADE BARRIERS

Judicial and Legal Framework

Cambodia's legal framework is incomplete and laws are unevenly enforced. While the National Assembly has passed numerous trade and investment laws, including a law on commercial arbitration, many business-related laws are still pending. Cambodia's judicial system is frequently viewed as often arbitrary and subject to corruption, and Transparency International ranked Cambodia 160th out of 177 countries in its 2013 Corruption Perceptions Index, three places lower than the previous year.

In 2009, the Cambodian government established a commercial arbitration body called the National Arbitration Center (NAC), an alternative dispute resolution mechanism intended to resolve commercial disputes more quickly than the traditional judicial system. The NAC was officially launched in March 2013, but has not begun accepting cases because the body lacks operating procedures, facilities, or staff.

Smuggling

The smuggling of products, such as vehicles, fuel, soft drinks, livestock, crops, and cigarettes, remains widespread. The Cambodian government has issued numerous orders to suppress smuggling and has created various anti-smuggling units within governmental agencies, including the General Department of Customs and Excise, and has established a mechanism within this department to accept and act upon complaints from traders and governments. Enforcement efforts, however, remain weak and inconsistent.

CANADA

TRADE SUMMARY

U.S. goods exports in 2013 were \$300.2 billion, up 2.6 percent from the previous year. Corresponding U.S. imports from Canada were \$332.1 billion, up 2.5 percent. The U.S. goods trade deficit with Canada was \$31.8 billion in 2013, up \$437 million from 2012. Canada is currently the largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Canada were \$61.2 billion in 2012 (latest data available), and U.S. imports were \$29.8 billion. Sales of services in Canada by majority U.S.-owned affiliates were \$125.6 billion in 2011 (latest data available), while sales of services in the United States by majority Canada-owned firms were \$74.6 billion

The stock of U.S. foreign direct investment (FDI) in Canada was \$351.5 billion in 2012 (latest data available), up from \$331.7 billion in 2011. U.S. FDI in Canada is led by the nonbank holding companies, manufacturing, and finance/insurance sectors.

The North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA), signed by the United States, Canada, and Mexico (“the Parties”), entered into force on January 1, 1994. At the same time, the United States suspended the United States-Canada Free Trade Agreement, which had entered into force in 1989. Under the NAFTA, the Parties progressively eliminated tariffs and nontariff barriers to trade in goods among them, provided improved access for services, established strong rules on investment, and strengthened protection of intellectual property rights. After signing the NAFTA, the Parties concluded supplemental agreements on labor and the environment, under which the Parties are obligated to effectively enforce their environmental and labor laws, among other things. The agreements also provide frameworks for cooperation on a wide variety of labor and environmental issues.

In 2012, Canada and Mexico became participants in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 11 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns that our businesses and workers face in the 21st century. In addition to the United States, Canada and Mexico, the TPP negotiating partners currently include Australia, Brunei, Chile, Japan, Malaysia, New Zealand, Peru, Singapore, and Vietnam.

IMPORT POLICIES

Tariffs

Canada eliminated tariffs on all industrial and many agricultural products imported from the United States on January 1, 1998, under the terms of the NAFTA. Tariffs and tariff-rate quotas (TRQs) remain in place

FOREIGN TRADE BARRIERS

on dairy and poultry tariff lines. Canada is phasing out its remaining MFN tariffs on imported machinery and equipment and intends to complete this process by 2015. Canada announced the elimination of MFN tariffs on baby clothing and athletic equipment (valued at CAD \$76 million annually) in its 2013 federal budget.

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 TRQs. Canada's supply management regime severely limits the ability of U.S. producers to increase exports to Canada above TRQ levels and inflates the prices Canadians pay for dairy and poultry products. Under the current system, U.S. imports above quota levels are subject to prohibitively high tariffs (*e.g.*, 245 percent for cheese, 298 percent for butter). The United States continues to press for the elimination of all remaining tariffs and TRQs.

The United States remains concerned about additional Canadian actions that limit the access of U.S. exporters to the Canadian dairy market. First, Canada changed the way in which it applies import duties to certain commercial "food preparations" that contain cheese. For these particular food preparations, rather than classifying the product under a single tariff heading as was done previously, Canada now requires the components of the food preparation to be classified separately. As a result, the cheese components of these food preparations are now subject to prohibitively high tariff rates. In particular, U.S. exports of a particular pizza topping product will experience much higher duties as a result of the change. Canada's actions implementing this change were taken without any consultations with affected trading partners or opportunity for public comment. The United States has asked questions and raised concerns about this change at the WTO Committee on Agriculture and the U.S. – Canada Consultative Committee on Agriculture.

Second, Canada's compositional standards for cheese, which entered into force on December 14, 2008, further restrict access of certain U.S. dairy products to the Canadian dairy market. These regulations limit the ingredients that can be used in cheese making, require use of a minimum percentage of fluid milk in the cheese-making process, and make cheese importers more accountable for ensuring that the imported product is in full compliance. The compositional standards also apply to cheese that is listed as an ingredient in processed food.

Geographical Indications

On October 18, 2013, Canada and the European Union (EU) announced an agreement-in-principle on the Canada-EU Comprehensive Economic and Trade Agreement (CETA) after more than four years of negotiation. Although the Canadian government and the European Commission have not released the text of the agreement, the details contained in government summaries and fact sheets have raised serious concerns with respect to access for current and future U.S. agricultural and foodstuff producers. For example, the Canadian government has agreed to the EU's request to automatically protect 179 food and beverage terms without providing for due process safeguards, such as the possibility of refusal of applications or objection by third parties. Also, while the agreement appears to provide limited safeguards for the use of generic terms with respect to a short list of specific terms for existing producers, concerns remain about the right for future producers to use those terms and for producers to use generic terms with respect to other products. In addition, the U.S. Government continues to examine the effect the agreement

will have on the use of individual components of compound terms in trademarks, the use of translations in trademarks, and prior rights of existing trademark owners.

The Canadian Wheat Board

The United States has had longstanding concerns about the monopolistic marketing practices of the Canadian Wheat Board. Canada passed the Marketing Freedom for Grain Farmers Act in 2011 to transition the Canadian Wheat Board from a crown corporation to a commercial entity over a five-year period. The legislation allowed Western Canadian farmers to sell wheat on the open market beginning on August 1, 2012. Several not-for-profit associations from both the United States and Canada created a task force in order to provide information to facilitate the marketing of grain and seed between the United States and Canada. The United States welcomes the progress made to date to transition the Canadian Wheat Board to a commercial entity.

Restrictions on U.S. Grain Exports

U.S. origin wheat and barley are not eligible to receive Canadian statutory grades, other than the lowest official statutory grade in the particular class (for example, feed-grade wheat or #5 Amber Durum). Regulations promulgated under the Canada Grain Act require that for wheat and barley to be eligible to receive statutory grades, the variety must be registered for use in Canada and grown in Canada. As a result, while U.S.-grown varieties of wheat and barley can be brought into Canada and sold at a fair price based on contract-based specifications, they must be segregated from Canadian varieties that are eligible for grading under Canada's grain handling system. Canadian wheat and barley exporters do not face such a two-tiered grain handling system in the United States that distinguishes between domestic and imported wheat. U.S. members of the task force described above would like to have a working group established to review issues concerning varietal declarations as well as the lack of access to Canada's grading system for foreign-grown grains.

Restrictions on U.S. Seeds Exports

Canada's Seeds Act prohibits the sale, advertising, or importation into Canada of seed varieties that are not registered in the prescribed manner. In order to apply for seed varietal registration, the applicant must reside permanently in Canada. In addition, once registered, the seed variety must be grown in Canada in order to avail the resulting crop of any benefits under the Canada Grain Act's grain grading and inspection system (described above). This operates as a trade barrier to the many U.S. seeds (*e.g.*, wheat, barely, etc.) that are not varieties registered in Canada. In 2013, the Canadian government has presented an options paper seeking guidance from industry on how to modernize and streamline the crop variety registration system. Among the options being considered is to remove the oversight role of Canada's federal government in varietal registration.

Personal Duty Exemption

On June 1, 2012, Canada increased the cross-border shopping limit for tax-free imports of goods purchased in the United States. Canadians who spend more than 24 hours outside of Canada can now bring back CAD \$200 worth of goods duty free (the previous limit was CAD \$50). Canada raised the duty-free limit for trips over 48 hours to CAD \$800, an increase from a CAD \$400 limit for stays of up to one week and a CAD \$750 limit for stays longer than 7 days. However, Canada continues to provide no duty-exemption for returning residents who have been out of Canada for fewer than 24 hours. The United States provides

similar treatment for its returning travelers who spend more than 24 hours outside of the country, but unlike Canada, also allows up to \$200 of duty-free goods after visits of less than 24 hours.

Wine, Beer and Spirits

Most Canadian provinces restrict the sale of wine, beer and spirits through province-run liquor control boards. Market access barriers in those provinces greatly hamper exports of U.S. wine, beer and spirits to Canada. These barriers include cost-of-service mark-ups, restrictions on listings (products which the liquor board will sell), reference prices (either maximum prices the liquor board is willing to pay or prices below which imported products may not be sold in order to avoid undercutting domestic prices), labeling requirements, discounting policies (requirements that suppliers offer rebates or reduce their prices to meet sales targets), distribution, and warehousing policies. Moreover, while Canada increased its personal duty exemption limit in June 2012, Canadian tourists still face high provincial taxes on personal imports of U.S. wines and spirits upon their return to Canada from the United States. This inhibits their purchases of U.S. alcoholic beverages.

Softwood Lumber

On September 30, 2013, the United States and Canada agreed to jointly initiate arbitration under the Softwood Lumber Agreement between the Government of the United States and the Government of Canada (SLA) to resolve a disagreement over the implementation of a prior SLA arbitration award (LCIA No. 81010). The award requires Canada to apply additional export charges on shipments of softwood lumber from Quebec and Ontario to remedy breaches of the SLA concerning certain forestry programs in those provinces. The additional export charges were designed to collect \$58.85 million over the term of the SLA, which was set to expire on October 12, 2013 when the award was issued. In January 2012, the United States and Canada extended the SLA until October 12, 2015. Canada has applied the additional export charges since March 2011, but had not collected \$58.85 million as of October 12, 2013. The United States and Canada have reconvened the original tribunal to determine whether the award requires Canada to continue to apply the additional export charges until \$58.85million is collected while the SLA remains in effect.

DOMESTIC SUPPORT MEASURES

Aerospace Sector Support

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

The review also recommended that the Canadian government continue funding the Strategic Aerospace and Defense Initiative (SADI). The SADI provides repayable support for strategic industrial research and pre-competitive development projects in the aerospace, defense, space, and security industries, and has authorized over \$900 million to fund 27 advanced research and development (R&D) projects since its establishment in 2007. To date, SADI has disbursed \$621 million.

The Canadian federal government and the Quebec provincial government announced aid to the Bombardier aircraft company in 2008 not to exceed CAD \$350 million (federal) and CAD \$118 million (provincial) to support research and development related to the launch of the new class of Bombardier CSeries commercial aircraft. According to the Public Accounts of Canada, the federal government has disbursed CAD \$269 million dollars to Bombardier from April 2008 through March 2012. The United States will continue to monitor carefully any government financing of the CSeries aircraft.

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

Canada committed approximately \$3.25 million per year from 2009 to 2013 to support the Green Aviation and Research and Development Network and provides additional funding to the National Research Council's Industrial Research Assistance Program to support R&D in Canada's aerospace sector.

Ontario Feed-In Tariff Program

In December 2012, a WTO panel found that Canada breached its obligations under the General Agreement on Tariffs and Trade 1994 (GATT 1994) and the Agreement on Trade Related Investment Measures (TRIMS), due to particular local-content requirements in Ontario's Green Energy and Green Economy Act of 2009 (Green Economy Act) that treat imported equipment and components less favorably than domestic products (see Canada – Certain Measures Affecting the Renewable Energy Generation Sector (WT/DS412) and Canada – Measures Relating to the Feed-In Tariff (FIT) Program (WT/DS426)). Canada appealed the panel reports in both disputes to the WTO Appellate Body. The Appellate Body issued its report on May 6, 2013, and found that the FIT program is inconsistent with GATT 1994 Article III:4 and Article 2.1 of the TRIMS Agreement. Ontario's Minister of Energy issued a directive to the Ontario Power Authority (OPA) in August 2013, instructing the OPA to reduce domestic content requirements for new FIT programs as an interim step to comply with the WTO's ruling. The Ontario government also announced in June 2013 that large renewable projects (projects over 500 Kilowatts) will be removed from the FIT program and procured under a new competitive process going forward.

A Texas-based renewable energy firm initiated an investor-state claim under NAFTA Chapter 11 against Canada in July 2011, claiming the Green Economy Act violates Canada's obligations under the NAFTA to provide investors with fair and equitable treatment.

GOVERNMENT PROCUREMENT

Canada is a signatory to three international agreements relating to government procurement (the WTO Agreement on Government Procurement (GPA), the NAFTA, and the 2010 United States-Canada Agreement on Government Procurement). Canada ratified the modernized WTO GPA on December 3, 2013, and that agreement is expected to enter into force in April 2014. The current agreements provide U.S. businesses with access to procurement conducted by most Canadian federal departments and a large number of provincial entities. However, U.S. suppliers have access under these trade agreements to procurement of only seven of Canada's Crown Corporations. Crown Corporations are government organizations that operate following a private sector model, but generally have both commercial and public policy objectives. Canada currently has more than 40 Crown Corporations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Protection and enforcement of intellectual property rights is a continuing priority in bilateral trade relations with Canada. After placing Canada on the Special 301 Priority Watch List since 2009, the U.S. Government moved Canada to the Watch List in 2012 in light of steps taken to improve copyright protection through the Copyright Modernization Act. The Act will come into force following additional legislative procedures and regulatory action, and the U.S. Government continues to urge Canada to implement the law as quickly as possible. With respect to pharmaceuticals, the United States continues to have serious concerns about the impact of the heightened patent utility requirements that Canadian courts have adopted. On enforcement issues, Canada re-introduced the Combating Counterfeit Products Act in the House of Commons in October 2013. The United States continues to urge the government of Canada to amend this legislation to address the problem of transshipment of counterfeit trademark goods and pirated copyright goods through Canada to the United States.

SERVICES BARRIERS

Telecommunications

Canada maintains a 46.7 percent limit on foreign ownership of certain suppliers of facilities-based telecommunications services, except for submarine cable operations. This is one of the most restrictive regimes among developed countries. Canada also requires that at least 80 percent of the members of the board of directors of facilities-based telecommunications service suppliers be Canadian citizens. As a consequence of these restrictions on foreign ownership, U.S. firms' presence in the Canadian market as wholly U.S.-owned operators is limited to that of a reseller, dependent on Canadian facilities-based operators for critical services and component parts. These restrictions deny foreign providers certain regulatory advantages only available to facilities-based-carriers (*e.g.*, access to unbundled network elements and certain bottleneck facilities). This limits those U.S. companies' options for providing high quality end-to-end telecommunications services, since they cannot own or operate their own telecommunications transmission facilities.

Canada amended the Telecommunications Act in June 2012 to rescind foreign ownership restrictions to carriers with less than 10 percent share of the total Canadian telecommunications market. Foreign-owned carriers are permitted to continue operating if their market share grows beyond 10 percent, provided the increase does not result from the acquisition of, or merger with, another Canadian carrier. Canada announced in March 2012 that it would cap the amount of spectrum that all large incumbent companies could purchase in the January 2014 700MHz spectrum auction in an effort to facilitate greater competition in the sector. No foreign entities participated in the auction which resulted in Canada's three large incumbent wireless providers winning 85 percent of the available blocks. Canada has blocked deals it believes would lead to excessive spectrum concentration among market leaders.

Canadian Content in Broadcasting

The Canadian Radio-television and Telecommunications Commission (CRTC) imposes quotas that determine both the minimum Canadian programming expenditure (CPE) and the minimum amount of Canadian programming that licensed Canadian broadcasters must carry (Exhibition Quota). Large English language private broadcaster groups have a CPE obligation equal to 30 percent of the group's gross revenues from their conventional signals, specialty and pay services. The Exhibition Quota for all conventional broadcasters is fixed at 55 percent Canadian programming as part of a group, with a 50 percent requirement from 6 p.m. to midnight.

Specialty services and pay television services that are not part of a large English language private broadcasting group are subject to individual Canadian programming quotas (time or expenditure or both), which vary depending upon their respective license conditions.

For cable television and direct-to-home broadcast services, more than 50 percent of the channels received by subscribers must be Canadian programming services. Non-Canadian channels must be pre-approved (“listed”) by the CRTC. Canadian licensees may appeal the listing of a non-Canadian service that is thought to compete with a Canadian pay or specialty service. The CRTC will consider removing existing non-Canadian services from the list, or shifting them into a less competitive location on the channel dial, if they change format to compete with a Canadian pay or specialty service.

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

INVESTMENT BARRIERS

General Establishment Restrictions

The Investment Canada Act (ICA) has regulated foreign investment in Canada since 1985. Foreign investors must notify the government of Canada prior to the direct or indirect acquisition of an existing Canadian business above a particular threshold value. In 2014, the threshold for review of investments/acquisitions by companies from World Trade Organization (WTO) Members was \$354 million. Canada amended the ICA in 2009 to raise the threshold for review to \$1 billion over a four-year period. The new thresholds will come into force once regulations are drafted and published (bids by foreign state owned enterprises (SOEs) will remain subject to the current \$354 million threshold, however). Industry Canada is the government of Canada’s reviewing authority for most investments, except for those related to cultural industries, which come under the jurisdiction of the Department of Heritage. Foreign acquisition proposals under government review must demonstrate a “net benefit” to Canada to be approved. The ICA sets a 45 day time limit for the reviews, extendable by an additional 30 days if the investor is notified prior to expiry of the initial 45 day period. Reviews of investments in cultural industries usually require the extended 30 days to complete. Canada added a national security review to the ICA in 2009 that permits the Industry Minister to review investments that could be “injurious to national security.” National security reviews can take up to 130 days to complete under existing timelines.

The ICA was amended in June 2012 to allow the Industry Minister to disclose publicly that an investment proposal does not satisfy the net benefit test and publicly explain the reasons for denying the investment so long as the explanation will not do harm to the Canadian business or the foreign investor. Canada blocked a \$38.6 billion hostile takeover by an Australian company in 2010 of Potash Corp. of Saskatchewan as not being of “net benefit” to Canada under the ICA.

Under the ICA, the Industry Minister can make investment approval contingent on meeting certain conditions such as minimum levels of employment and research and development. Since the global economic slowdown in 2009, some foreign investors in Canada have had difficulties meeting these conditions. The June 2012 ICA amendments allow the Industry Minister to accept security payment from investors when found by a court to be in breach of their ICA undertakings. Canada also introduced guidelines that provide foreign investors with the option of a formal mediation process to resolve disputes when the Industry Minister believes a non-Canadian investor has failed to comply with a written undertaking.

FOREIGN TRADE BARRIERS

On December 7, 2012, Canada issued new rules to supplement its guidelines for investment by foreign SOEs, including the stipulation that future SOE bids to acquire control of a Canadian oil-sands business will be approved on an “exceptional basis only.”

OTHER BARRIERS

Port Hawkesbury Paper Mill

The United States remains concerned about the nature and extent of assistance provided by the Province of Nova Scotia to the Port Hawkesbury paper mill following a bankruptcy settlement that resulted in the sale of the mill to a Canadian firm.

Cross-Border Data Flows

The strong growth of cross-border data flows resulting from widespread adoption of broadband-based services in Canada and the United States has refocused attention on the restrictive effects of privacy rules in two Canadian provinces, British Columbia, and Nova Scotia. These provinces mandate that personal information in the custody of a public body must be stored and accessed only in Canada unless one of a few limited exceptions applies. These laws prevent public bodies such as primary and secondary schools, universities, hospitals, government-owned utilities, and public agencies from using U.S. services when personal information could be accessed from or stored in the United States.

The Canadian federal government is consolidating information technology services across 63 email systems under a single platform. The request for proposals for this project includes a national security exemption which prohibits the contracted company from allowing data to go outside of Canada. This policy precludes some new technologies such as “cloud” computing providers from participating in the procurement process. The public sector represents approximately one-third of the Canadian economy, and is a major consumer of U.S. services. In today’s information-based economy, particularly where a broad range of services are moving to “cloud” based delivery where U.S. firms are market leaders; this law hinders U.S. exports of a wide array of products and services.

Container Size Regulations

Canada announced in its 2012 budget that it would repeal standardized container size regulations for food products. The Canadian government has stated that these regulations do not provide a food safety benefit and that the elimination of such regulations would remove an unnecessary barrier for the importation of new products from international markets. The timeline for implementing the new regulations continues to be extended, however, and the existing regulations have not been repealed to date. The Canadian Food Inspection Agency conducted consultations with some companies and industry groups in 2013, during which several Canadian food manufacturers expressed opposition to the removal of container size requirements. For the time being, the existing regulations for food container sizes remain in force.

CHILE

TRADE SUMMARY

U.S. goods exports in 2013 were \$17.6 billion, down 6.3 percent from the previous year. Corresponding U.S. imports from Chile were \$10.4 billion, up 10.6 percent. The U.S. goods trade surplus with Chile was \$7.2 billion in 2013, a decrease of \$2.2 billion from 2012. Chile is currently the 21st largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Chile were \$3.2 billion in 2012 (latest data available), and U.S. imports were \$1.4 billion. Sales of services in Chile by majority U.S.-owned affiliates were \$9.7 billion in 2011 (latest data available), while sales of services in the United States by majority Chile-owned firms were \$177 million.

The stock of U.S. foreign direct investment (FDI) in Chile was \$39.9 billion in 2012 (latest data available), up from \$35.0 billion in 2011. U.S. FDI in Chile is reported mostly in the finance/insurance, and manufacturing sectors.

TRADE AGREEMENTS

The United States-Chile Free Trade Agreement (Agreement) entered into force on January 1, 2004. Under the Agreement, Chile immediately eliminated tariffs on 87 percent of bilateral trade in goods. All trade in consumer and industrial goods has been duty free since 2013, while remaining tariffs on most agricultural goods will be eliminated by 2015. At present, the average duty charged for U.S. goods entering Chile is close to zero.

Chile is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 11 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. These negotiations seek to advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment subject matter. It will also include a range of new and emerging issues to address trade concerns that businesses and workers face in the 21st century. In addition to the United States and Chile, the TPP negotiating partners currently include Australia, Brunei, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

IMPORT POLICIES

Tariffs

Chile has one of the most open trade regimes in the world with a uniform applied tariff rate of 6 percent for nearly all goods not covered under an FTA. However, there are several exceptions to the uniform tariff. *Ad valorem* excise tariffs are between 15 percent and 27 percent for alcoholic beverages and between 52 percent and 60 percent for tobacco depending on the type of tobacco product.

Importers also must pay a 19 percent value-added tax (VAT) calculated based on the CIF value (Cost, Insurance, and Freight) plus the import tariff. In the case of duty-free imports, the VAT is calculated based on the CIF value alone.

Import Controls

There are virtually no restrictions on the types or amounts of goods that can be imported into Chile, nor any requirements to use the official foreign exchange market. However, Chilean customs authorities must approve and issue a license for all imports valued at more than \$3,000. After customs authorities issue the license, the goods must generally be imported within 30 days. Commercial banks may authorize imports of less than \$3,000. Importers and exporters must also 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. The licensing requirements appear to be primarily used for statistical purposes; legislation requires that most import licenses be granted as a routine procedure. More rigorous licensing procedures apply for certain products such as pharmaceuticals and weapons.

Chile prohibits the importation of used vehicles (with some exceptions for Chileans returning to Chile after more than one year abroad and for specialized vehicles such as armored cars and ambulances), used motorcycles, and used retreaded tires (with the exception of wheel-mounted tires). Some used items originating from a country that does not have an FTA with Chile are subject to an additional importation charge of 3 percent over the CIF value. Depending on the product, this additional charge can be eliminated or reduced if the used item is imported from a third country that has an FTA with Chile.

Nontariff Barriers

Chile maintains a complex price band system for sugar (mixtures containing more than 65 percent sugar or sugar substitute content are subject to the sugar price band), wheat, and wheat flour that, under the FTA, will be phased out by 2015 for imports from the United States. The price band system was created in 1985 and is intended to guarantee a minimum and maximum import price for the covered commodities. When certain CIF prices (as calculated by Chilean authorities) fall below the set minimum price, a special tax is added to the tariff rate to raise the price to the minimum price. Since 2008, the minimum price has been adjusted downward by 2 percent per year on U.S. imports. In recent years, the price band system has not had a strong impact on U.S. exports because the world prices of the agricultural products governed by the price band system have consistently fallen in between the permitted minimum and maximum import prices. In 2014, Chile's President will evaluate whether to continue the price band system for other trading partners.

Companies are required to contract the services of a customs agent when importing or exporting goods valued at over \$1,000 free on board (FOB). The customs agent is the link between the exporter or importer and the National Customs Service. The agent is responsible for facilitating foreign trade operations and acting as the official representative of the exporter or importer in the country. Customs agents' fees are not standardized. A list of customs agents and information about their responsibilities is available on the National Customs Service's website. Companies established in any of the Chilean duty-free zones are exempt from the obligation to use a customs agent when importing or exporting goods. Individuals who import non-commercial goods valued at less than \$500 are not required to use a customs agent.

EXPORT POLICIES

Chile currently provides a simplified duty drawback program for nontraditional exports. The program reimburses a firm up to 3 percent of the value of the exported good if 50 percent of that good consists of imported raw materials. Exported goods produced with imported capital equipment must have a minimum CIF value of \$3,813 in order to be eligible for duty drawback. The net value of the invoice is used if the capital equipment in question is also manufactured domestically. Another export promotion measure allows all exporters to defer import duties for up to seven years on imported capital equipment or receive an equivalent government subsidy for domestically produced capital goods.

In accordance with its FTA commitments, Chile is eliminating, over a transition period, the use of duty drawback and duty deferral for imports that are incorporated into any goods exported to the United States. Beginning in 2012, the amount of drawback allowed is reduced by 25 percent of the original value each year until it reaches zero in 2015.

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

GOVERNMENT PROCUREMENT

The FTA requires procuring entities subject to the Agreement to use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurement covered by the Agreement. The FTA also contains nondiscrimination provisions that require Chilean entities covered by the FTA to allow U.S. suppliers to participate on the same basis as Chilean suppliers in covered procurements. Most Chilean central government entities, 13 regional governments, 10 ports, state-owned airports, and 341 municipalities are covered by the FTA and must comply with the government procurement obligations.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Chile was listed on the Priority Watch List in the 2013 Special 301 Report. The report notes the United States' serious concerns regarding outstanding intellectual property rights (IPR) issues under the FTA. The United States has urged Chile to create a system to expeditiously address patent issues in connection with applications to market pharmaceutical products and to provide adequate protection against unfair commercial use as well as unauthorized disclosure of undisclosed test or other data generated to obtain marketing approvals for pharmaceutical products. The United States has also urged Chile to implement protections against the circumvention of technological protection measures, to amend its Internet service provider liability regime to permit effective action against any act of infringement of copyright and related rights, to implement protections for encrypted program-carrying satellite and cable signals, and to ensure that effective administrative and judicial procedures and deterrent remedies are made available to rights holders. Additionally, the United States has urged Chile to approve legislation to implement the International Convention for the Protection of New Varieties of Plants (1991) (UPOV '91).

In 2014, the United States will continue to work with Chile to address these concerns.

SERVICES BARRIERS

Telecommunications Services

Chile maintains high mobile termination rates: (the wholesale per-minute rate paid by an originating mobile provider to the terminating mobile provider when a call is placed from subscribers from one network to subscribers of another). The OECD average mobile termination rate is \$0.065 per minute, while Chile has one of the highest rates at \$0.165 per minute (the United States has one of the lowest rates at \$0.0007 per minute).

CHINA

TRADE SUMMARY

U.S. goods exports in 2013 were \$122.0 billion, up 10.4 percent from the previous year. Corresponding U.S. imports from China were \$440.4 billion, up 3.5 percent. The U.S. goods trade deficit with China was \$318.4 billion in 2013, up \$3.3 billion from 2012. China is currently the 3rd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to China were \$30.0 billion in 2012 (latest data available), and U.S. imports were \$13.0 billion. Sales of services in China by majority U.S.-owned affiliates were \$35.2 billion in 2011 (latest data available), while sales of services in the United States by majority China-owned firms were \$1.4 billion.

The stock of U.S. foreign direct investment (FDI) in China was \$51.4 billion in 2012 (latest data available), down from \$55.3 billion in 2010. U.S. FDI in China is led by the manufacturing, wholesale trade, banking, and finance/insurance sector.

KEY TRADE BARRIERS

The United States continues to pursue vigorous and expanded bilateral and multilateral engagement to increase the benefits that U.S. businesses, workers, farmers, ranchers, service providers and consumers derive from trade and economic ties with China. In an effort to remove Chinese barriers blocking or impeding U.S. exports and investment, the United States uses outcome-oriented dialogue at all levels of engagement with China, while also taking concrete steps to enforce U.S. rights at the WTO as appropriate. At present, China's trade policies and practices in several specific areas cause particular concern for the United States and U.S. stakeholders. The key concerns in each of these areas are summarized below. For more detailed information on these concerns, see the 2013 USTR Report to Congress on China's WTO Compliance, issued on December 24, 2013 at <http://www.ustr.gov/sites/default/files/2013-Report-to-Congress-China-WTO-Compliance.pdf>.

Intellectual Property Rights

Overview

In 2013, inadequacies in China's intellectual property rights (IPR) protection and enforcement regime continued to present serious barriers to U.S. exports and investment. China was again placed on the Priority Watch List in the 2013 Special 301 report, and named in USTR's 2013 Out-of-Cycle Review of Notorious Markets Report, which identifies Internet and physical markets that exemplify key challenges in the global struggle against piracy and counterfeiting.

Trade Secrets

The protection and enforcement of trade secrets in China is a serious problem that has attained a higher profile in recent years. Thefts of trade secrets that benefit Chinese companies have occurred both within China and outside of China. Offenders in many cases continue to operate with impunity, while the Chinese government too frequently has failed to recognize serious infringements of IPRs that violate Chinese law. Most troubling are reports that actors affiliated with the Chinese government and the

Chinese military have infiltrated the computer systems of U.S. companies, stealing terabytes of data, including the companies' intellectual property. In order to help address these challenges, the United States has urged China to update and amend its trade secrets laws and regulations, particularly the Anti-Unfair Competition Law; to take actions to address this problem across the range of state-sponsored actors; and to promote public awareness of this issue. At the December 2013 U.S.-China Joint Commission on Commerce and Trade (JCCT) meeting, China committed to adopt and publish an action plan to address trade secrets protection and enforcement for 2014, as well as to work with the United States on proposals to amend China's trade secrets laws and regulations.

Legitimate Goods and Services

Due to the serious obstacles in China to the effective protection and enforcement of IPR in all forms, sales of legitimate IP-intensive goods and services, including software and audiovisual products, remain disproportionately low compared to similar markets with stronger IPR protection and enforcement. The United States continues to work with China on its 2013 U.S.-China Strategic and Economic Dialogue (S&ED) and JCCT commitments to foster a better IP environment that will facilitate increased sales of legitimate IP-intensive goods and services. Sales of legitimate software to the Chinese government by U.S. companies have seen only a modest increase, while losses to U.S. software companies from the use of pirated software by Chinese state-owned enterprises (SOEs) and other enterprises remain very high. The United States continues to call on China to fulfill its existing commitments with regard to software legalization, including those made most recently at the 2013 S&ED meeting, and to urge all levels of the Chinese government, SOEs, and state-owned banks to take necessary steps to ensure the use of legitimate software.

Online Piracy and Counterfeit Goods

Online piracy in China is widespread and continues on a large scale, affecting industries distributing legitimate music, motion pictures, books and journals, software and video games. Similarly, although rights holders report increased enforcement efforts by Chinese government authorities, counterfeiting in China, affecting a wide range of goods, remains widespread. In addition, increased enforcement activities have yet to slow online sales of counterfeit goods. The United State also continues to press China to regulate the manufacture of active pharmaceutical ingredients to prevent their use in counterfeit and substandard medications.

Patents and Technology Transfer

The United States continues to engage China on a range of patent and technology transfer concerns. During Vice President Biden's trip in early December 2013 and at the JCCT meeting held later that month, China committed to permit supplemental data supporting pharmaceutical patent applications. Unresolved concerns include the need to address a surge in low quality patents, to provide effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to provide effective enforcement against infringement of pharmaceutical patents.

The United States also worked with China to eliminate government actions that disadvantage foreign IPR holders. While some longstanding concerns regarding technology transfer remain unaddressed, and new ones have emerged, China committed at the December 2013 JCCT meeting not to finalize or implement a selection catalogue and rules governing official use vehicles. The catalogue and rules would have interfered with independent decision making on technology transfer and would have effectively excluded

vehicles produced by foreign and foreign-invested enterprises from important government procurement opportunities.

Industrial Policies

Overview

China continued to pursue industrial policies in 2013 that seek to limit market access for imported goods, foreign manufacturers and foreign service suppliers, while offering substantial government guidance, resources and regulatory support to Chinese industries. The principal beneficiaries of these policies are SOEs, as well as other favored domestic companies attempting to move up the economic value chain. In 2014, the United States will continue to pursue vigorous and expanded bilateral engagement to resolve the serious concerns that remain over many of China's industrial policy measures. The United States also will continue to seek the elimination of China's export restraints on rare earths and other key raw material inputs through the dispute settlement case that it has brought at the WTO.

Indigenous Innovation

In 2013, policies aimed at promoting "indigenous innovation" continued to represent an important component of China's industrialization efforts. Through intensive, high-level bilateral engagement, the United States previously secured a series of critical commitments from China that generated major progress in de-linking indigenous innovation policies at all levels of the Chinese government from government procurement preferences, culminating in the issuance of a State Council measure mandating that provincial and local governments eliminate any remaining linkages by December 2011. Since then, the principal challenge has been to begin addressing a range of discriminatory indigenous innovation preferences proliferating outside of the government procurement context. Using the U.S.-China Innovation Dialogue, the United States was able to persuade China to take an important step in this direction at the May 2012 S&ED meeting, where China committed to treat IPR owned or developed in other countries the same as IPR owned or developed in China. The United States also used the 2012 JCCT process to press China to revise or eliminate specific measures that appeared to be inconsistent with this commitment. Throughout 2013, China reviewed specific U.S. concerns, and the United States and China have intensified their discussions.

In a positive development, at the December 2013 JCCT meeting, China committed not to finalize or implement two measures that would have excluded vehicles manufactured by foreign enterprises or foreign-invested enterprises from procurement by the Chinese government and the Chinese communist party. Moreover, dialogue during the past year reversed a troubling proposed measure, which China's Food and Drug Administration (CFDA) had released for public comment, relating to the approval of new medical devices. This measure, among other things, sought to limit eligibility for priority treatment to medical device manufacturers holding domestically developed intellectual property. Using the JCCT process, the United States persuaded China to revise the measure to bring it into compliance with China's JCCT and S&ED commitments.

Import Substitution

In October 2010, China's State Council issued a decision on "accelerating the cultivation and development of Strategic Emerging Industries (SEI)" that called upon China to develop and implement policies designed to promote rapid growth in government-selected industry sectors viewed as economically and strategically important for transforming China's industrial base into one that is more internationally

competitive in cutting-edge technologies. China subsequently identified the following seven sectors for focus under the SEI initiative: (1) energy-saving and environmental protection; (2) new generation information technology; (3) biotechnology; (4) high-end equipment manufacturing; (5) new energy; (6) new materials; and (7) new-energy vehicles. To date, import substitution policies have been included in some SEI development plans at the sub-central government level. For example, a development plan for the LED industry issued by the Shenzhen municipal government included a call to support research and development in products and technologies that have the ability to substitute for imports. Shenzhen rescinded the plan following U.S. Government intervention with China's central government authorities. As China continues to develop and issue SEI policies and industrial policies in other sectors, the United States will closely monitor measures that could potentially be implemented in a manner that is inconsistent with China's WTO or bilateral commitments and will continue to engage with China on ways to develop its industries in ways that promote mutual benefit.

Import Ban on Remanufactured Products

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

Aircraft Tariffs

In August 2013, China increased the import tariff on narrow body aircraft with an empty weight of between 25 tons and 45 tons from 1 percent to the bound rate of 5 percent. Because the tariff for narrow body aircraft weighing more than 45 tons remains at 1 percent, and many comparable narrow body aircraft have an empty weight of between 40 tons and 50 tons, this change is having the unintended consequence of encouraging Chinese airlines to purchase heavier, less fuel-efficient aircraft in order to fall within the 1 percent tariff category and thereby save millions of dollars on the purchase price. This change also could adversely affect U.S.-manufactured narrow body aircraft in particular, as they tend to be lighter and more fuel-efficient than competing aircraft. The United States continues to urge China to revise its tariff policy.

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 incentives for foreign downstream producers to move their operations, technologies and jobs to China. Effective January 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 late March 2014, the United States expects a decision in a second WTO case, where the claims focus 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.

Export Subsidies

China has continued to provide a range of injurious subsidies to its domestic industries, some of which appear to be prohibited under WTO rules. The United States has addressed these subsidies both through countervailing duty proceedings conducted by the Commerce Department and through dispute settlement proceedings at the WTO. For example, in September 2012, the United States brought a case challenging numerous types of subsidies provided by the central government and various sub-central governments in China to automobile and automobile parts enterprises located in regions in China known as “export bases.” The United States and other WTO members also have continued to press China to notify its subsidies to the WTO in accordance with its WTO obligations. Since joining the WTO 12 years ago, China has yet to submit to the WTO a complete notification of subsidies maintained by central, provincial and local governments.

Excess Capacity

Chinese government actions and financial support in manufacturing industries like steel and aluminum have contributed to massive excess capacity in China, with the resulting over-production distorting global markets and hurting U.S. producers and workers. For example, from 2000 to 2012, China accounted for nearly 77 percent of global steelmaking capacity growth. Currently, China’s capacity alone exceeds the combined steelmaking capacity of the EU, Japan, the United States, and Russia. China has no comparative advantage with regard to the energy and raw material inputs for steelmaking, yet China’s capacity is expected to continue to grow from an estimated 915 million metric tons (MT) in 2012 to an unprecedented one billion MT in 2015, despite weakening demand domestically and abroad. China’s excess steelmaking capacity is currently estimated to exceed 200 million MT, nearly double the United States’ total steelmaking capacity of 117 million MT. China’s steel exports have grown to be the largest in the world, at 62 million MT in 2013, an 11 percent increase over 2012 levels, despite sluggish growth in steel demand abroad. Excess capacity in China – whether in the steel industry or other industries like aluminum – hurts U.S. industries and workers not only because of direct exports from China to the United States, but because lower global prices and a glut of supply make it difficult for even the most competitive producers to remain viable.

Value-Added Tax Rebates and Related Policies

As in prior years, in 2013, the Chinese government attempted to manage the export of many primary, intermediate and downstream products by raising or lowering the value-added tax rebate available upon export. China sometimes reinforces its objectives by imposing or retracting export duties. These practices have caused tremendous disruption, uncertainty and unfairness in the global markets for some products, particularly downstream products where China is a leading world producer or exporter, such as products made by the steel, aluminum and soda ash industries. These practices, together with other policies, such as excessive government subsidization, also have contributed to severe excess production capacity in these same industries. Domestic industries in many of China’s trading partners have continued to respond to the effects of these trade-distortive practices by petitioning their governments to impose trade remedies such as antidumping and countervailing duties.

Standards and Technology

In the standards area, Chinese government officials in some instances have reportedly pressured foreign companies seeking to participate in the standards-setting process to license their technology or intellectual property on unfavorable terms. In addition, China has continued to pursue unique national standards in a

number of high technology areas where international standards already exist. To date, bilateral engagement has yielded minimal progress in resolving these matters. For more information on these and other concerns in the area of standards and technical barriers to trade, see USTR's 2014 Report on Technical Barriers to Trade.

Government Procurement

The United States continues to press China to take concrete steps toward fulfilling its commitment to accede to the WTO's Government Procurement Agreement (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 of coverage as highly disappointing in scope and coverage. In 2013, the United States secured two commitments from China in an effort to expedite China's accession to the GPA while continuing to push for robust terms that are comparable to the coverage of the United States and other GPA parties. At the July 2013 S&ED meeting, China agreed to submit by the end of 2013 a new revised offer to join the GPA that would take the requests of the GPA parties into consideration and that would lower coverage thresholds and increase coverage of sub-central entities, among other improvements. At the December 2013 JCCT meeting, China further agreed to accelerate its GPA accession negotiations and submit in 2014 an additional revised offer that is on the whole commensurate with the coverage of GPA parties. China submitted its most recent offer in December 2013, shortly after the JCCT meeting. This fourth revised offer showed some progress in areas consistent with China's July 2013 S&ED commitment, including by lowering thresholds and increasing sub-central entities coverage and other coverage, but it fell short of U.S. expectations and remains far from acceptable to the United States and other GPA Parties.

China's domestic government procurement regime is governed by two important laws. The Government Procurement Law, which is administered by the Ministry of Finance, governs purchasing activities conducted with fiscal funds by state organs and other organizations at all levels of government in China. The Tendering and Bidding Law falls under the jurisdiction of the National Development and Reform Commission and imposes uniform tendering and bidding procedures for certain classes of procurement projects in China, notably construction and works projects, without regard for the type of entity that conducts the procurement. Both laws cover important procurements that GPA parties would consider to be government procurement eligible for coverage under the GPA. The United States will continue to work with the Chinese government to ensure that China's future GPA offers include coverage of government procurement regardless of which law it falls under, including procurement conducted by both government entities and other entities, such as SOEs.

Investment Restrictions

China also seeks to protect many domestic industries through a restrictive investment regime, which adversely affects foreign investors in numerous manufacturing sectors, as well as services sectors, such as financial services, telecommunications services and express delivery. In addition to prohibitions and restrictions imposed through China's foreign investment catalogue or other means, China can readily impose additional constraints on investment through its foreign investment approval processes, where Chinese government officials can use vaguely defined powers on an *ad hoc* basis to delay or restrict market entry. For example, foreign enterprises report that Chinese government officials may condition investment approval on a requirement that a foreign enterprise conduct research and development in China, transfer technology, satisfy performance requirements relating to exportation or the use of local content, or make valuable, deal-specific commercial concessions.

The United States has repeatedly raised concerns with China about its restrictive investment regime. To date, however, this sustained bilateral engagement has not led to a significant relaxation of China's investment restrictions, nor has it appeared to curtail *ad hoc* actions by Chinese government officials. At the same time, the United States is closely monitoring developments related to the Shanghai Free Trade Zone, a pilot project established in September 2013 in which China plans to pursue significant trade and investment liberalization, including, among other things, the lifting of investment restrictions.

Since the issuance of the "Decision on Major Issues Concerning Comprehensive and Far-Reaching Reforms" at the Third Plenum of the 18th Central Committee of the Chinese Communist Party in November 2013, China has been giving increased attention to possible ways to reform and streamline its administrative system for the review and approval of foreign investment. The National Development and Reform Commission (NDRC) recently issued a revised Catalogue of Investment Projects Subject to Government Ratification, with related draft implementing rules for foreign investment project approvals, but these rules do not appear to represent significant reform. The scope of the Catalogue is limited to "fixed asset" investments, but only certain foreign investment fixed asset projects would, in theory, be allowed to enter under a record filing system. Further, the proposed implementing rules would seem to provide the NDRC with significant discretion not to approve a particular foreign investment record-filing application. Even more importantly, since the Ministry of Commerce (MOFCOM) and other sectoral regulators continue to impose their own approval or review requirements for a much broader scope of foreign investments, the effect of the NDRC reform, by itself, does not seem to be that significant.

The United States also continues to pursue negotiations with China for a bilateral investment treaty (BIT). These negotiations intensified after China committed at the July 2013 S&ED meeting to negotiate a high-standard BIT that will embrace the principles of openness, non-discrimination and transparency, provide national treatment at all phases of investment, including market access (*i.e.*, the "pre-establishment" phase of investment), and employ a "negative list" approach in identifying exceptions (meaning that all investments are permitted except for those explicitly excluded).

Anti-Monopoly Law

The Chinese government's interventionist policies and practices and the large role of SOEs in China's economy have created some uncertainty regarding how the Anti-Monopoly Law will be applied. One provision in the Anti-Monopoly Law protects the lawful operations of SOEs and government monopolies in industries deemed nationally important. To date, China has enforced the Anti-Monopoly Law against SOEs, but concerns remain that enforcement against SOEs will be more limited.

In 2013, NDRC increased its enforcement activity noticeably, particularly against foreign enterprises. In addition, U.S. industry has expressed concern about insufficient predictability, fairness and transparency in NDRC's investigative processes, including NDRC pressure to "cooperate" in the face of unspecified allegations or face steep fines. U.S. industry also has reported pressure from NDRC against seeking outside counsel, in particular international counsel, or having counsel present at meetings.

Electric Vehicles

An array of Chinese policies designed to assist Chinese automobile enterprises in developing electric vehicle technologies and in building domestic brands that can succeed in global markets continued to pose challenges in 2013. As previously reported, these policies have generated serious concerns about discrimination based on the country of origin of intellectual property, forced technology transfer, research and development requirements, investment restrictions and discriminatory treatment of foreign brands and

imported vehicles. Although significant progress has been made in addressing some of these policies, more work remains to be done.

Trade Remedies

China's regulatory authorities seem to be pursuing antidumping and countervailing duty investigations and imposing duties for the purpose of striking back at trading partners that have exercised their WTO rights against China, even when necessary legal and factual support for the duties is absent. The U.S. response has been the filing and prosecution of three WTO disputes. The two disputes decided to date – the grain oriented flat-rolled electrical steel (GOES) dispute and the chicken broiler products dispute – confirm that China failed to abide by WTO disciplines when imposing duties. The panel report in the third WTO dispute, which challenges duties that China imposed on imports of certain U.S.-made automobiles, is expected in mid-2014.

Services

Overview

The prospects for U.S. service suppliers in China are promising, given the size of China's market and the Chinese leadership's stated intention to promote the growth of China's services sectors. The United States continues to enjoy a substantial surplus in trade in services with China, as the United States' cross-border supply of private commercial services into China totaled \$30 billion in 2012. In addition, services supplied through majority U.S.-invested companies in China totaled \$35 billion in 2011, the latest year for which data are available. This success has been largely attributable to the market openings phased in by China pursuant to its WTO commitments, as well as the U.S. Government's comprehensive engagement with China's various regulatory authorities, including in the pursuit of sector openings that go beyond China's WTO commitments.

Nevertheless, in 2013, numerous challenges persisted in a range of services sectors. As in past years, Chinese regulators continued to use discriminatory regulatory processes, informal bans on entry and expansion, various restrictions on the cross-border supply of services, overly burdensome licensing and operating requirements, and other means to frustrate efforts of U.S. suppliers of banking, insurance, telecommunications, Internet-related, audiovisual, express delivery, legal and other services to achieve their full market potential in China. Some sectors, including electronic payment services and theatrical film distribution, have been the subject of WTO dispute settlement.

In 2014, the United States will continue to engage China on outstanding service market access issues and will continue to press China to address problematic restrictions. The United States also will closely monitor developments in an effort to ensure that China fully adheres to its WTO commitments.

Electronic Payment Services

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

Theatrical Film Distribution

The United States and China reached an alternative solution with regard to the WTO case that the United States had won involving the distribution of theatrical films. In February 2012, the two sides reached an agreement providing for substantial increases in the number of foreign films imported and distributed in China each year, along with substantial additional revenue for foreign film producers. Significantly more U.S. films have been imported and distributed in China since the signing of the memorandum of understanding (MOU) and the revenue received by U.S. film producers has increased significantly. However, China has not yet fully implemented its MOU commitments, including with regard to opening up film distribution opportunities and fulfilling certain contract-related obligations. As a result, the United States has been pressing China for full implementation.

Banking

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

Insurance

China's regulation of the insurance sector has resulted in market access barriers for foreign insurers, whose share of China's market remains very low. In the life insurance sector, China only permits foreign companies to participate in Chinese-foreign joint ventures, with foreign equity capped at 50 percent. The market share of these joint ventures is less than 4 percent. For the health insurance sector, China also caps foreign equity at 50 percent. While China allows wholly foreign-owned subsidiaries in the non-life insurance (*i.e.*, property and casualty) sector, the market share of foreign-invested companies in this sector is only 1 percent. China also limits foreign insurance brokers from providing a full scope of services, and its market for political risk insurance is completely closed to foreign participation. In addition, some U.S. insurance companies established in China continue to encounter difficulties in getting the Chinese regulatory authorities to issue timely approvals of their requests to open up new internal branches to expand their operations.

Telecommunications Services

Restrictions maintained by China on value-added telecommunications services have created serious barriers to market entry for foreign suppliers seeking to provide value-added services. In addition, China's restrictions on basic telecommunications services, such as informal bans on new entry, a requirement that

foreign suppliers can only enter into joint ventures with SOEs, and exceedingly high capital requirements, have blocked foreign suppliers from accessing China's basic services market. In May 2013, China introduced rules establishing a pilot program for the resale of mobile services, which can increase competitive opportunities in China's heavily concentrated market. The United States is very concerned that foreign firms are currently excluded from the pilot program, even as China moves forward to license numerous Chinese suppliers.

Internet-Related Services

China's Internet regulatory regime is restrictive and non-transparent, affecting a broad range of commercial services activities conducted via the Internet. In addition, China's treatment of foreign companies seeking to participate in the development of cloud computing, including computer data and storage services provided over the Internet, raises concerns. For example, China has sought to impose value-added telecommunications licensing requirements on this sector, including a 50 percent equity cap on investments by foreign companies, even though the services at issue are not telecommunications services.

Audio-Visual and Related Services

China's restrictions in the area of theater services have wholly discouraged investment by foreign suppliers, and China's restrictions on services associated with television and radio greatly limit participation by foreign suppliers.

Express Delivery Services

The United States continues to raise concerns with China regarding implementation of the 2009 Postal Law and related regulations. China has blocked foreign companies' access to the document segment of China's domestic express delivery market, and it has placed troubling restrictions on foreign companies' access to the package segment of China's domestic express delivery market, including discriminatory treatment in approving their business permits.

Legal Services

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

Agriculture

Overview

China is the largest agricultural export market for the United States, with \$26 billion in U.S. agricultural exports in 2013. Much of this success resulted from intensive engagement by the United States with China's regulatory authorities. Notwithstanding this success, China remains among the least transparent and predictable of the world's major markets for agricultural products, largely because of selective intervention in the market by China's regulatory authorities. As in past years, seemingly capricious practices by Chinese customs and quarantine agencies delay or halt shipments of agricultural products into China. In addition, SPS measures with questionable scientific bases and a generally opaque regulatory

regime frequently create difficulties and uncertainty for traders in agricultural commodities, who require as much certainty and transparency as possible.

Biotechnology Approvals

In 2013, China continued to delay approvals of agricultural products derived from biotechnology. These delays created increased uncertainty among traders and also resulted in trade disruptions for U.S. corn and dried distillers grain exports. In 2014, the United States will continue to urge China to review biotechnology products in a transparent and predictable manner and improve its regulatory process for such products.

Agricultural Support

In recent years, China has been significantly increasing domestic subsidies and other support measures for its agricultural sector. Since 2004, China has established a direct payment program, instituted minimum support prices for basic commodities and sharply increased input subsidies. More recently, China began several new support schemes for hogs and pork, and in 2011 it implemented a new cotton reserve system, based on minimum purchase prices. In October 2011, China submitted its overdue notification concerning domestic support measures for the period 2005-2008. This notification documents an increase in China's support levels, but the United States is concerned that the methodologies used by China to calculate support levels, particularly with regard to its price support policies and direct payments, result in underestimates. The United States is also concerned about the effects of domestic support measures that China has adopted since 2008, such as the cotton reserves purchasing system.

Beef, Poultry, and Pork

In 2013, beef, poultry and pork products were affected by questionable SPS measures implemented by China's regulatory authorities. Consequently, anticipated growth in U.S. exports of these products was again not realized. In 2014, the United States will continue its discussions with China on U.S. beef products, with the shared goal of achieving a resumption in market access in 2014. In addition, the United States will continue to urge China to lift the state-level restrictions on imports of U.S. poultry products. For more information on these and other SPS concerns, see USTR's 2014 Report on Sanitary and Phytosanitary Measures.

Transparency

Overview

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

Publication of Trade-Related Laws, Regulations, and Other Measures

China committed to adopt a single official journal for the publication of all trade-related laws, regulations and other measures, and China adopted a single official journal, to be administered by MOFCOM, in 2006. To date, it appears that some central-government entities publish some trade-related measures in this journal. Nevertheless, these government entities tend to take a narrow view of the types of trade-related

measures that need to be published in the official journal. As a result, while trade-related regulations and departmental rules are often published in the journal, it is less common for other measures such as opinions, circulars, orders, directives and notices to be published, even though they are in fact all binding legal measures. In addition, China still does not regularly publish in the journal certain types of trade-related measures, such as subsidy measures.

Notice and Comment Procedures

China also committed to provide a reasonable period for public comment before implementing new trade-related laws, regulations and other measures. China has taken several steps related to this commitment. In 2008, the National People's Congress (NPC) instituted notice-and-comment procedures for draft laws, and shortly thereafter China indicated that it would also publish proposed trade and economic related administrative regulations and departmental rules for public comment. Subsequently, the NPC began regularly publishing draft laws for public comment, and China's State Council regularly published draft regulations for public comment. However, many of China's ministries were not consistent in publishing draft departmental rules for public comment. At the May 2011 S&ED meeting, China committed to issue a measure implementing the requirement to publish all proposed trade and economic related administrative regulations and departmental rules on the website of the State Council's Legislative Affairs Office (SCLAO) for a public comment period of not less than 30 days. In April 2012, the SCLAO issued two measures that appear to address this requirement. Since then, despite continuing U.S. engagement, no noticeable improvement in the publication of departmental rules for public comment appears to have taken place.

Translations

In its Protocol of Accession to the WTO, China committed to make available translations of all of its trade-related laws, regulations and other measures in one or more of the WTO languages (English, French, and Spanish). However, China has not yet established an infrastructure to undertake the agreed-upon translations.

Legal Framework

Several other areas of China's legal framework can adversely affect the ability of the United States and U.S. exporters and investors to access or invest in China's market. Key areas include administrative licensing, commercial dispute resolution, labor laws and laws governing land use. Corruption among Chinese government officials, enabled in part by China's incomplete adoption of the rule of law, is also a key concern. For more detailed information on these concerns, see the 2013 USTR Report to Congress on China's WTO Compliance, issued on December 24, 2013.

COLOMBIA

TRADE SUMMARY

U.S. goods exports in 2013 were \$18.6 billion, up 13.8 percent from the previous year. Corresponding U.S. imports from Colombia were \$21.6 billion, down 12.2 percent. The U.S. goods trade deficit with Colombia was \$3.0 billion in 2013, down \$5.3 billion from 2012. Colombia is currently the 20th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Colombia was \$8.4 billion in 2012 (latest data available), up from \$6.5 billion in 2011. U.S. FDI in Colombia is primarily concentrated in manufacturing and finance/insurance sectors.

The United States-Colombia Trade Promotion Agreement

The United States-Colombia Trade Promotion Agreement (CTPA) entered into force on May 15, 2012. The CTPA is a comprehensive free trade agreement, under which Colombia immediately eliminated the majority of tariffs on U.S. exports, with all remaining tariffs to be phased out over defined time periods. Under the CTPA, Colombia also allows substantially improved market access for U.S. service suppliers. In addition, the CTPA calls for improving customs administration and trade facilitation, technical barriers to trade, government procurement, investment, electronic commerce, telecommunications, intellectual property rights, transparency, and labor and environmental protection.

IMPORT POLICIES

Tariffs

About 80 percent of U.S. exports of consumer and industrial products to Colombia became duty free immediately upon the CTPA's entry into force, with remaining tariffs to be phased out within ten years of entry into force. The first round of tariff reductions took place on May 15, 2012. Subsequent tariff reductions occur on January 1 of each year and the third round of tariff reductions took place on January 1, 2014. In March 2012, Colombia joined the WTO Information Technology Agreement, under which participants eliminate tariffs on a most favored nation basis for a wide range of information technology products.

Colombia applies variable tariffs to imports of certain agricultural products pursuant to the Andean Community's price band system. However, when the CTPA entered into force, Colombia stopped imposing variable tariffs on imports of agricultural exports from the United States. Under the CTPA, almost 70 percent of U.S. agricultural exports (by value) became duty free upon entry into force of the Agreement, including high quality beef, an assortment of poultry products, soybeans and soybean meal, cotton, wheat, whey, and most horticultural and processed food products. The remaining tariffs on U.S. agricultural exports will be phased out over defined time periods. U.S. agricultural exporters also benefit from zero-duty tariff rate quotas (TRQs) on corn, rice, poultry parts, dairy products, sorghum, dried beans, standard grade beef, animal feeds, and soybean oil. The TRQs permit immediate duty-free access for specified quantities of each of these products, with the duty-free amount increasing during its tariff phase-out period.

Nontariff Measures

In March 2013, Colombia imposed a one-for-one scrapping requirement based on the cargo capacity of old trucks as a condition for the sale and registration of new freight trucks, without public consultation or a transition period. Previously, importers could register new trucks by paying a “scrapage fee” to the government. Although the fee increased the cost of doing business, the option provided a more flexible method to register new trucks without having to comply with the scrapping requirement. Three thousand U.S. freight trucks, valued at approximately \$113 million, imported to Colombia since March 2013 cannot be sold because there is insufficient supply of old trucks to be scrapped or because owners of old trucks are requesting excessive prices for their old trucks. The United States has raised concerns with the scrapping requirements, as well as the lack of a transparent public consultation process and transition period for the new measures, in multiple fora and at multiple levels, including in the OECD Trade Committee in the context of negotiations on Colombia’s membership in the OECD. A number of other truck exporting trading partners have also raised concerns with Colombia. Late in 2013, Colombia passed another decree, also without consultation or a transition period, in an attempt to address these concerns. While this effort is welcome, it did not address U.S. concerns. The United States will continue to press Colombia for a resolution of this issue to effectively reopen the Colombian market for U.S. trucks.

Colombia currently assesses a consumption tax on distilled spirits with a system of specific rates per degree (half percentage point) of alcohol strength (Law 788 of 2002, Chapter V, amended by Law 1393 of 2010). Arbitrary breakpoints result in a lower tax rate on spirits produced locally and therefore creates an unfair disadvantage for imported distilled spirits. Under the CTPA, Colombia committed to eliminating the breakpoints for imports of U.S. distilled spirits four years after entry into force of the CTPA, that is, by May 15, 2016. The Ministry of Trade plans to introduce a bill in early 2014 that will regulate government-owned entities with distilled spirits distribution monopolies by addressing tax inequalities and market access barriers. The bill calls for non-discriminatory and transparent contracts between departments (provincial districts), which own such monopolies, and alcohol importers.

Under the CTPA, Colombia affirmed it would not adopt or maintain prohibitions or restrictions on trade of remanufactured goods (provided they have warranties similar to new goods) and that some existing prohibitions on trade in used goods would not apply to remanufactured goods. The import of remanufactured goods has been a challenge, however, particularly in the mining sector. Although the government does not require import licenses due to the CTPA, procedures to pay taxes or issue certain required certificates for remanufactured products make the process cumbersome. The private sector has asked the government of Colombia to research other countries’ remanufactured markets and has pointed out how difficult it is to trace the origin of remanufactured parts or to guarantee the complete disassembly of new parts. Colombia is working to develop a policy on this issue with assistance from U.S. technical experts. In addition, Colombia does not permit the importation of used clothing, in accordance with Andean Community Decision 337.

Colombia is considering new rules affecting the approval methodologies for biologic and biotechnologic medicines. The proposed draft decree would establish three pathways for the approval of biological medicines. The first two pathways appear to be aligned with World Health Organization guidelines as well as U.S. Food and Drug Administration (FDA) approval processes, and would permit biological medicines to be approved either: (1) on a stand-alone basis with a full dossier of supporting preclinical and clinical evidence (the Complete Dossier path), or (2) on the basis of a robust analytical preclinical and clinical comparison with a previously approved innovative biologic (the Comparability path). By contrast, the third pathway is an abbreviated pathway that does not appear to require the same detailed information and clinical evidence to prove the quality, safety, and efficacy of a product but would instead permit an

applicant to rely on “any information deemed relevant” when the information originates from designated countries or specified health authorities abroad for a product with an “active pharmaceutical ingredient.” In July 2013, Colombia notified the fourth version of this draft decree to the WTO through the TBT Committee. The United States, the European Commission, U.S. stakeholders, and a Colombian patient safety group each submitted comments to the WTO expressing concern with the third pathway. Despite initial indications that the regulation might be reviewed and revised, the Ministry of Health and Social Protection continues to indicate that it intends to retain the third party abbreviated pathway. The United States will continue to engage with Colombia on this issue in 2014.

GOVERNMENT PROCUREMENT

Under the CTPA, Colombia grants national treatment to U.S. goods, services, and suppliers in procurements covered by the Agreement. The CTPA expands U.S. firms’ access to procurement by Colombia’s ministries, departments, legislature, courts, and first tier sub-central entities, as well as a number of Colombia’s government enterprises, including its majority state-owned oil company. In addition, Colombia does not apply Law 816 of 2003 to CTPA-covered procurements, as that law mandates preferential treatment for tenders that provide Colombian goods or services. U.S. companies are still required to have some local representation in order to qualify for government procurement.

Colombia is not a signatory to the WTO Agreement on Government Procurement, but it has been an observer to the WTO Committee on Government Procurement since February 1996.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Colombia was listed on the Watch List in the 2013 Special 301 Report. In 2013, Colombia continued to improve its efforts against intellectual property rights (IPR) violators through enforcement action and improved coordination among IPR enforcement agencies and with rights holders. Colombia continued to take steps in 2013 to address its patent backlog and to accelerate processing time and quality by increasing the staff numbers and the budget of the Patent and Trademark (SIC) office, as well as granting the SIC and the Copyright office (DNDA) new authority to handle IP-related civil cases as an expedited alternative to the judicial system. The SIC began adjudicating cases early in 2013 and average wait times for a decision have been reduced from 63 months in 2010 to 34 months in 2013. Despite these positive developments, there remains a need for further IPR improvements in Colombia, particularly through additional training and resources for agencies involved in enforcing IPR and more public awareness and outreach by the Colombian government is also needed. The United States will continue to monitor progress during 2014.

In January 2013, the Constitutional Court declared the law implementing several FTA related commitments – including copyrights, TV programming quotas, and IPR enforcement measures – unconstitutional on procedural grounds. In response, the Santos administration decided to present several separate bills to Congress. As of the end of the legislative session in December 2013, television programming quotas and IPR enforcement bills had been reintroduced to Congress; the first has been approved in three of the four required debates as Law 226 of 2013 in the Senate and as Law 300 of 2013 in the House, and the latter was fully approved again as Law 1648 of 2013 in July 2013. The copyright law is being circulating for comment prior to resubmission to Congress during the next legislative session that begins on March 15, 2014. The fourth law needed is for Internet Service Providers (ISPs) liability, which was to be in place one year after entry into force of the TPA, and a new law has yet to be sent to the Colombian Congress.

In 2013, Colombia began implementing a system identifying geographical indications in response to the process of reviewing and making determinations regarding European Union applications to register a range of GIs in Colombia. During engagement with Colombia on the matter, the United States stressed the need for consistency in protections and process, including public notice and opportunity for opposition and cancellation, and transparency in decision making, in particular the need for transparency and clarity with regard to the determinations, particularly with regard to the scope of coverage of protection. The United States will continue to press this issue.

SERVICES BARRIERS

The CTPA grants U.S. service suppliers substantially improved market access across Colombia's entire services regime, subject to a limited number of exceptions. Some restrictions, such as economic needs tests and residency requirements, still remain in sectors such as accounting, tourism, legal services, insurance, distribution services, advertising, and data processing.

Telecommunications

Foreign participants in Colombia's telecommunications market, including U.S. providers, have raised concerns about regulatory treatment in the mobile market, specifically with respect to the ability to obtain roaming agreements with existing operators. In 2013, Colombia issued regulations for the auction of new spectrum which required existing operators to provide automatic national roaming, prior to launching new 4G mobile services. Two companies with significant U.S. investment acquired licenses in this auction. Despite the requirement to provide roaming agreements when requested, none of the three existing providers in Colombia have done so with new entrants and, moreover, all three have launched 4G mobile services contrary to Colombian regulations. Although the government of Colombia has now ordered the incumbent carriers to comply, it has not yet taken enforcement action against the three incumbent providers that prematurely launched service. The United States will continue to monitor and engage with Colombia to ensure that it enforces these rules.

Financial Services

Insurance companies must maintain a commercial presence to sell policies other than those for international travel or reinsurance. Colombia prohibits the sale of maritime insurance by foreign companies. Foreign banks must establish a subsidiary to operate in Colombia. Under the CTPA, Colombia will phase in further liberalization of financial services, such as allowing branching by banks and allowing the cross-border supply of international maritime shipping and commercial aviation insurance by 2016. Additionally, mutual funds and pension funds will be allowed to seek advice from portfolio managers in the United States.

COSTA RICA

TRADE SUMMARY

U.S. goods exports in 2013 were \$7.2 billion, roughly the same as the previous year. Corresponding U.S. imports from Costa Rica were \$11.9 billion, down 1.1 percent. The U.S. goods trade deficit with Costa Rica was \$4.7 billion in 2013, down \$135 million from 2012. Costa Rica is currently the 37th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Costa Rica was \$1.7 billion in 2012 (latest data available), down from \$1.9 billion in 2011. U.S. FDI in Costa Rica is primarily in the manufacturing sector.

Free Trade Agreement

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

IMPORT POLICIES

Tariffs

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

Under the CAFTA-DR, however, 100 percent of U.S. consumer and industrial goods will enter Costa Rica duty free by 2015. Nearly all textile and apparel goods that meet the Agreement’s rules of origin now enter Costa Rica duty free and quota free, creating economic opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Costa Rica duty free. Costa Rica will eliminate its remaining tariffs on virtually all U.S. agricultural products by 2020 (2022 for chicken leg quarters; 2025 for rice; and 2028 for dairy products). For certain agricultural products, tariff-rate quotas (TRQs) will permit some duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Costa Rica will liberalize trade in fresh potatoes and onions through continual expansion of a TRQ, rather than by the reduction of the out-of-quota tariff.

Nontariff Measures

Under the CAFTA-DR, all CAFTA-DR countries, including Costa Rica, committed to improve transparency and efficiency in administering customs procedures. The CAFTA-DR countries also

committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and agreed to share information to combat illegal trans-shipment of goods.

Costa Rica has ratified the “Hague Convention Abolishing the Requirement for Legalization of Foreign Public Documents” or “Apostille Convention,” to which the United States is also a party. Official documents originating in the United States are now subject to a simplified authentication process, which has facilitated paperwork for commerce between the United States and Costa Rica.

Costa Rica’s Information Technology Customs Control (TICA) system, implemented in 2007 for imports and in early 2009 for exports, has suffered system-wide breakdowns as the volume of entries increased. TICA has been acknowledged by the government of Costa Rica to be badly flawed and in need of replacement. Although some have argued that TICA is still one of the best customs systems in Central America, Costa Rica’s ability to facilitate import and export of goods without unjustifiable delay clearly depends upon rapid development and installation of a new “TICA2” customs system.

When asked to approve cosmetics and toiletries items for registration in Costa Rica, the Costa Rican Ministry of Health requires a Good Manufacturing Practices (GMP) certificate. Manufacturers from the United States cannot comply with the Ministry of Health requirement because a U.S. Government certificate of this kind does not exist. Companies from other countries outside the Central American region have had similar problems. U.S. companies have, in some cases, been able to comply with the requirement by submitting documents from state or local authorities or trade organizations; however, this results in inconsistent and discriminatory treatment towards U.S. manufacturers unable to obtain such documents. In one recent case, the issue persists despite repeated attempts at dialogue and a formal letter from Global Markets (formerly United States Commercial Service) clarifying that the U.S. Government does not issue the GMP certificate. In this particular case, the U.S. company reported \$1,000,000 in lost sales during the first half of 2013 because of its inability to register and stock a particular cosmetic product.

Costa Rica has set a presumed profit level of 40 percent for imports of carbonated beverages and levies a value-added tax (VAT) on that profit, while presuming a lower profit level of 25 percent for domestic carbonated beverages. Hence, imported carbonated beverages suffer a significantly higher tax burden than competing local carbonated beverages. In one ongoing case, an affected U.S. stakeholder formally appealed to the Costa Rican tax authority in late 2012, arguing that this treatment violated Costa Rica’s international obligations to ensure national treatment.

In January 2004, Costa Rica introduced a specific excise tax system for spirits that is calculated on a per percent of alcohol per liter basis, with a lower rate per percentage of alcohol on alcoholic beverages that are typically produced locally (Ley 7972). The local spirit, guaro, (which is produced in largest volume by the state-owned alcohol company) is assessed an excise tax of 30 percent alcohol-by-volume (a.b.v.), while the vast majority of internationally traded spirits, such as whiskey and gin, are assessed at a rate of 40 percent a.b.v.

GOVERNMENT PROCUREMENT

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

to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

A September 2013 decree provided that the automated government procurement system, called Mer-link, will be the only procurement system within the Costa Rican central government. Mer-link will eventually be adopted widely throughout the government. The administration reinforced this message with its November 2013 adoption of the World Bank's open contracting principles. Mer-link has been running successfully for three years in a small group of agencies, providing a single purchasing platform for all participating ministries with an entirely paperless procurement process based on a secure database, allowing enhanced levels of transparency and competition in the procurement process. Mer-Link and open contracting should significantly reduce the risk of corruption or fraud in Costa Rican government procurement.

Some U.S. company representatives have commented that they find it difficult to compete with domestic suppliers in Costa Rican government procurement because bids are often due within three to six weeks of the procurement announcement. U.S. companies interpret this as reflecting Costa Rica's reluctance to attract foreign bidders to its government procurement processes.

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

EXPORT SUBSIDIES

Under the CAFTA-DR, Costa Rica may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). Costa Rica has modified its free trade zone regime in order to conform to this requirement. While tax holidays are available for investors in free trade zones, sources have expressed concern that the Ministry of Foreign Trade (COMEX) exercises significant discretionary power using undefined criteria in determining what investors qualify for Free Trade Zone status.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Costa Rica was again on the Watch List in the 2013 Special 301 report. Key concerns include Costa Rica's need to place a higher priority on intellectual property rights (IPR) protection, to devote more resources to IPR enforcement efforts and impose deterrent penalties. The United States engaged extensively with Costa Rica as it prepared legislative amendments governing protections for geographical indications (GIs), in anticipation of action on applications from the European Union, which were received in 2013, to register a range of GIs in Costa Rica. During that ongoing engagement, the United States has stressed the need for use of CAFTA-DR consistent protections and processes, including providing public notice and opportunity for opposition and cancellation, and transparency and impartiality in decision making. The United States will continue to monitor Costa Rica's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Insurance

Costa Rica's state-owned former monopoly insurance provider, the National Insurance Institute (INS), competes in an increasingly dynamic and crowded market. Ten private companies, including U.S. companies, are operating in most segments of the market. The exceptions are the so-called obligatory

insurance categories – worker’s compensation and basic automobile liability – which are open to new entrants, but are still serviced only by INS. New market entrants continue to face challenges in light of the market power INS derives from its former monopoly position. Specific concerns relate to deceptive advertising by the former monopoly, a cumbersome and nontransparent product approval process, and the extension of exclusivity contracts between INS and insurance retailers designated as agents.

Telecommunications

Since the 2009 entry into force of the CAFTA-DR, Costa Rica has progressively opened important segments of its telecommunications market, including private network services, Internet services, and mobile wireless services, which are now formally open for competition as a matter of law or regulation. As of December 1, 2013, the Costa Rican telecommunication consumer is guaranteed the opportunity to switch mobile service providers while retaining the same cell phone number; this number portability heightens competition among mobile service providers by facilitating the transfer process for consumers. The telecommunication market has grown, with revenue jumping from 1.1 percent of GDP in 2010 to 2.4 percent of GDP in 2013. While this market opening is a notable achievement, Costa Rica’s new wireless service providers continue to face obstacles, including reluctance by some municipal governments to approve cell tower construction necessary to support new providers and expand coverage areas. Furthermore, a company that had been seeking to provide Internet services via satellite was subjected to a lengthy and onerous regulatory review and is still pursuing permission to operate in Costa Rica.

INVESTMENT BARRIERS

The regulatory environment can pose significant barriers to successful investment in Costa Rica. One common problem is inconsistent action between institutions within the central government or between the central government and municipal governments. This results in an unnecessarily lengthy process that is especially noticeable in infrastructure projects which can languish for years between the award of a tender and the start of project construction. A project critical to facilitating trade, a private-public partnership to build a new container terminal at Costa Rica’s main Atlantic port, remains stalled. The delays have postponed the start of construction on the terminal by more than one year and cost the investing private company more than \$100 million to date.

Another concern for U.S. investors is the frequent recourse to legal challenges before Costa Rica’s constitutional court to review whether government authorities have acted illegally or to ascertain the constitutionality of legislation or regulations. Some U.S. investors believe that such challenges have been used at times to undermine their investments or draw out the dispute. Consequently, some investors use the phrase “judicial insecurity” to describe their predicament in Costa Rica, despite Costa Rica’s relatively robust legal protections.

OTHER BARRIERS

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

In July 2009, Costa Rica notified levels of agricultural domestic support to the WTO for 2007 that were above its \$15.9 million Total Aggregate Measurement of Support (TAMS) ceiling on trade-distorting domestic support. Costa Rica’s subsequent notifications to the WTO for the years 2008 through 2011 listed domestic support expenditures at ever increasing levels, reaching \$104.5 million in 2011. In 2012,

domestic support expenditures dropped to \$81.5 million, still well above Costa Rica's WTO ceiling. Between 2008 and 2012, Costa Rica's price support for rice accounted for all of its notified TAMS, and rice accounted for a majority of its notified TAMS prior to 2008. Between 2007 and 2013, Costa Rica's domestic production of rice has increased while U.S. rice exports to Costa Rica have dropped by 54 percent. In May 2013, the government of Costa Rica issued Decree #37699-MEIC, which reduced the price support by a modest amount and stated that the current price support mechanism for rice would be eliminated starting in March 2014. However, in January 2014, Costa Rica delayed that deadline by a year until March 2015.

As the Costa Rican government has increased tax collection efforts in recent years, several U.S. companies have found themselves facing what they consider to be novel or inconsistent interpretations of tax regulations and principles. While a number of the current cases have been resolved or appear to be on the path to resolution, they illustrate the level of bureaucratic challenges facing foreign business in dealing with Costa Rican tax authorities. Recent adoption of a new set of transfer-pricing regulations in September 2013 represents a very significant advance by the Costa Rican government in the area of transparency and predictability. The United States will continue to monitor implementation of the new regulation.

DOMINICAN REPUBLIC

TRADE SUMMARY

U.S. goods exports in 2013 were \$7.2 billion, up 3.2 percent from the previous year. Corresponding U.S. imports from the Dominican Republic were \$4.3 billion, down 2.5 percent. The U.S. goods trade surplus with the Dominican Republic was \$2.9 billion in 2013, up \$332 million from 2012. The Dominican Republic is currently the 38th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in the Dominican Republic was \$1.7 billion in 2012 (latest data available), up from \$1.5 billion in 2011. U.S. FDI in the Dominican Republic is primarily in the manufacturing sector.

Free Trade Agreement

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

IMPORT POLICIES

Tariffs

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

Under the CAFTA-DR, however, 100 percent of U.S. consumer and industrial goods will enter the Dominican Republic duty free by 2015. Nearly all textile and apparel goods that meet the Agreement’s rules of origin now enter the Dominican Republic duty free and quota free, creating economic opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Currently, under the CAFTA-DR, 63 percent of U.S. agricultural products qualify for duty free treatment in the Dominican Republic, by 2015 that number will rise to 83 percent. The Dominican Republic will eliminate remaining tariffs on nearly all agricultural goods by 2020 (2025 for chicken leg quarters, 2028 for some dairy products and rice).

Nontariff Measures

The Dominican Republic’s customs policies and procedures, and often lengthy clearance times for merchandise, frequently provoke complaints by businesses. However, the Dominican Republic’s customs procedures, transparency and responsiveness to complaints from businesses have, with a few exceptions, improved steadily, as have processing times. The United States continues to raise concerns with respect to the barriers outlined below, as well as other nontariff measures as they arise, and the Dominican Republic has made further progress in some areas.

The Dominican Ministry of Agriculture continues to use discretionary import permits. The United States continues to raise concerns with this practice with Dominican authorities and is working to eliminate it.

For certain agricultural products, tariff-rate quotas (TRQs) permit some duty-free access for specified quantities, with the duty-free amount expanding during the tariff phase-out period. Under the CAFTA-DR, the TRQs are to be made available for the entire calendar year, beginning on January 1 of each year. The Dominican Republic has a record of failing to allow products subject to TRQs to enter on January 1, as required by the Agreement. Quota allocations were often issued several months into the year. In addition, both the issuance of quotas for sensitive products and the distribution of the import licenses, which allow importers to exercise their quota rights, were frequently delayed. However, the current Dominican administration made substantial improvement to its administration of TRQs for 2013, with the annual tariff allocations issued by January 10, 2013. For 2014 TRQs, the Dominican Republic opened and allocated quota volumes for all products by January 24, 2014. The Dominican Republic also eliminated the use of physical import certificates and has established an electronic document system eliminating the opportunity for quota holders to sell the import certificates. The U.S. Government will continue to engage on this issue with the Dominican Republic and will monitor its performance with regard to the timely opening of the TRQs, the timely distribution of import licenses, and the distribution of appropriate quota volumes to allow TRQ products to enter the Dominican Republic as of January 1 of each year.

Since early 2012, exporters of steel construction reinforcing bars (rebar) from the United States to the Dominican Republic have encountered various barriers to trade, with the specific form of the barrier changing over time. The United States continues to work with Dominican authorities to remove each of these barriers as they occur.

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

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Dominican government entities, including key ministries and state-owned enterprises, on the same basis as Dominican suppliers. The anticorruption provisions in the Agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties. Nevertheless, U.S. suppliers have complained that Dominican government procurement is frequently not conducted in a transparent manner and that corruption is widespread.

The Dominican Republic is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

The Dominican Republic does not have export promotion schemes other than tariff waivers for inputs imported by firms in the free trade zones. Under the CAFTA-DR, the Dominican Republic may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, the CAFTA-DR permitted the Dominican Republic to maintain such measures through 2009, provided that it maintained the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures. Under Law 139 of 2011, the Dominican Republic now levies a 2.5 percent tax on goods sold from free trade zones into the local market. The U.S. Government is working with the Dominican Republic government in an effort to ensure it implements its CAFTA-DR obligations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2013, the Dominican Republic remained on the Watch List in the Special 301 report. Key concerns cited in the report included the widespread availability of pirated and counterfeit goods and excessive delays in the issuance of patents.

Despite these concerns, progress has recently been made in a few areas. For example, the Dominican Republic continued its efforts to implement its obligations under the CAFTA-DR with respect to government use of licensed software and addressing television broadcast piracy. The Dominican Republic also ratified the WIPO Trademark Law Treaty. In addition, in April 2013 the Dominican government approved the "National Strategy on Intellectual Property in the Dominican Republic", which seeks to integrate intellectual property into the country's public policies and development plans. The Dominican Republic also expanded in 2011 the use of a system to facilitate and expedite the Ministry of Public Health's marketing approval process for foods, medicinal products, cosmetics, and home and personal hygiene products. However, U.S. producers continue to report lengthy administrative delays in the marketing approval process for pharmaceutical products.

During 2014, the United States will continue to monitor the Dominican Republic's implementation of its intellectual property rights (IPR) obligations under the CAFTA-DR, with a special focus on lowering the levels of trademark counterfeiting and copyright piracy, reducing delays in the patent application and examination process, and enhancing judges' capacity to manage IPR issues. The United States will continue to monitor the Dominican Republic's implementation of its bilateral and multilateral obligations to provide an effective system for protecting against the unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approvals for pharmaceutical and agrochemical products.

OTHER BARRIERS

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

ECUADOR

TRADE SUMMARY

U.S. goods exports in 2013 were \$7.3 billion, up 9.5 percent from the previous year. Corresponding U.S. imports from Ecuador were \$11.5 billion, up 21.1 percent. The U.S. goods trade deficit with Ecuador was \$4.2 billion in 2013, up \$1.4 billion from 2012. Ecuador is currently the 35th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ecuador was \$851 million in 2012 (latest data available), up from \$793 million in 2011. U.S. FDI in Ecuador is led by the mining and manufacturing sectors.

IMPORT POLICIES

On June 12, 2013, Executive Decree 25 created the Ministry of Foreign Trade. Previously, foreign trade policy was administered by the Ministry of Foreign Affairs as a vice-ministry. The Foreign Trade Minister, appointed on June 14, 2013, holds a broad mandate that includes the formulation and implementation of trade and investment policies.

The Organic Code for Production, Trade, and Investment (Production Code), which came into effect on December 29, 2010, covers an array of issues, including import and export policies, customs procedures, taxes, and investment and labor rules. Among other things, the Production Code provides incentives intended to spur local and foreign investment and to promote export expansion and diversification. The Production Code created a Committee on Foreign Trade (COMEX) to replace the former Trade and Investment Council (COMEXI) as Ecuador's interagency body in charge of trade policy formulation and regulation. COMEX now falls under the authority of the Ministry of Foreign Trade. The Production Code also lowered the corporate tax rate by 1 percentage point per year, until it reached 22 percent in 2013, as well as provided 3 types of tax incentives to promote investment in domestic production activities.

Ecuador pursues a strategic policy of selective import substitution. A key concept in the 2013-2017 national plan developed by the Planning Agency is to change Ecuador's production model ("Matriz Productiva") from reliance on commodity exports to production of higher value added products. According to the plan, the products subject to selective import substitution measures include fertilizers, agrochemicals, agricultural commodities and food products, pesticides and fungicides, soaps, detergents, cosmetics, ceramic tiles, floors, textiles, clothing, footwear, leather, radios, telephones, televisions, electronics, pharmaceuticals, and electrical appliances. Also, the plan states the aim of fostering metalworking industries as well as software and hardware industries. The stated goal is to reduce the share of imported food products from 7.4 percent in 2010 to 5 percent in 2017.

Ecuador applies a combination of tariff and nontariff measures, such as non-automatic import licensing, to most of the sectors listed above to implement its selective import substitution strategy.

Tariffs

Ecuador's import policies are increasingly restrictive and create an uncertain environment for traders in many sectors. Ecuador is a member of the Andean Community (AC) customs union, which also includes Bolivia, Colombia, and Peru. When Ecuador joined the WTO in January 1996, it bound most of its tariff

FOREIGN TRADE BARRIERS

rates at 30 percent *ad valorem* or less, except for agricultural products covered by the Andean Price Band System (APBS). Ecuador's second Trade Policy Review (TPR) by the WTO was concluded in November 2011. According to the WTO Secretariat's TPR report, Ecuador's tariff structure has become more complex. Previously, Ecuador had generally applied a simple four-tiered tariff structure with levels of 5 percent for most raw materials and capital goods, 10 percent or 15 percent for intermediate goods, and 20 percent for most consumer goods. Ecuador also imposes a number of fees and charges on imports.

According to the information available to the WTO, Ecuador's applied simple average most favored nation (MFN) tariff rate was 10.1 percent in 2012. While its average applied MFN tariff rate for industrial products declined from 10.6 percent in 2005 to 8.8 percent in 2012, for agricultural products it increased from 16.7 percent to 18.5 percent. However, as Ecuador did not supply to the WTO the *ad valorem* equivalents for its mixed tariffs and has implemented new trade restrictions since the WTO conducted its analysis, the actual average applied MFN tariff rates might be higher. As part of Ecuador's TPR, the WTO Secretariat identified 19 tariffs at the 10-digit level that exceeded Ecuador's bound tariff rates by 5 to 15 percentage points in 2011.

In June and July of 2012, Ecuador adopted a number of trade-restrictive measures, which included an increase in tariffs on a number of products, as well as import quotas scheduled to expire at the end of 2014. On December 4, 2013, Ecuador issued Resolution 116, which requires the conformity to dozens of new technical regulations that prohibit the importation and sale of products that do not conform to these new requirements. Nearly 300 product categories are affected by these new measures, including food, cosmetics, spices, food container materials, building materials, dietary supplements, and automobiles. For more details on Resolution 116, please refer to the Ecuador section of USTR's annual TBT Report.

Specific trade-restrictive resolutions by industry include:

Consumer goods

Resolution 63, enacted on June 15, 2012, increased tariffs on products covered by 102 tariff lines, including alcoholic beverages, washing machines, televisions, video and photographic equipment, art utensils, paper and cardboard, hair styling equipment, and work safety equipment. In Resolution 63, Ecuador also increased tariffs on tobacco and tobacco seeds, malt, and other cereals. Mixed tariffs (1 percent *ad valorem* plus a specific tariff of \$0.25 per grade of alcohol/liter) were established for 20 alcoholic products, including malt beer, sparkling wine, "pisco" (grape brandy), vodka, and tequila. According to U.S. distilled spirit industry sources, due to the new formulation and the prevailing price of the majority of imported spirits, Ecuador's assessed tariff rates on spirits in many instances now exceed Ecuador's WTO bound rates. Televisions, which fall within a single tariff line, were also assigned mixed tariffs, increasing in proportion to the size of the television. Resolution 70 introduced a specific tariff of \$39.97 for all televisions up to 20 inches, while retaining the existing 5 percent *ad valorem* duty; it also increased to \$73.11 the specific tariff for televisions between 20 inches and 32 inches. Ecuador raised tariffs on an additional 81 tariff lines, with all but 4 lines increased to the bound tariff rate under its WTO commitments.

Automotive

Resolution 65, also enacted on June 15, 2012, established value ceilings and unit quotas for imports of automobile complete knock-downs. In addition, Resolution 65 established a sliding tariff scale ranging between 4 percent and 40 percent, which decreases as more locally produced content is incorporated in the vehicle. Resolution 65 also created a monitoring mechanism to verify increases in the incorporation of

local content. However, Ecuador has not yet published a methodology for measuring local content levels. This resolution is scheduled to expire at the end of December 2014, but could be renewed.

Resolution 66, issued on June 11, 2012, established a \$538 million limit for the importation of motor vehicles classified under 16 tariff lines, including passenger cars and cargo trucks. The \$538 million quota served to limit imports of vehicles under the 16 tariff lines affected to 68 percent by value of the total imported in 2010. The 38 importers among which the quota was divided had to comply with established unit and dollar value limitations. Tariffs on vehicles, which are as high as 40 percent, also remained in effect.

Resolution 66 has been modified on multiple occasions. Resolution 77, approved on July 30, 2012, slightly eased the unit and value restrictions on vehicle imports imposed by Resolution 66 by allowing importers to use existing import licenses to continue to import vehicles through December 28, 2012, even if it resulted in imports exceeding the importers' quotas. In addition, Resolution 77 increased the number of beneficiaries of the quota system from 38 to 50.

Resolution 92, enacted on October 24, 2012, reiterated the need to charge all January through December 2012 vehicle imports to the quota established under Resolution 66 and also established a prohibition on carrying forward unused import entitlements to 2013. Resolution 94, approved on November 19, 2012, modified Resolution 66 by giving Ecuador's customs authority flexibility in shifting vehicles' quotas among different sub-tariff items (or car models for each importer).

Resolution 96 approved by COMEX on December 7, 2012, eliminated all sub-tariff items that restricted vehicle imports by automobile dealer. As a result, an import quota in total units and value per dealer (as opposed to by vehicle type) was established.

Resolution 101, enacted January 7, 2013, established the 2013 parameters for automobile and truck imports. It confirmed the original quota and values established under Resolution 66 for 38 importers and ratified the quotas and values for the 12 importers included under Resolution 77. The aggregate value of entitlement for the 50 importers is \$552.5 million.

On October 24, 2012, COMEX issued Resolution 91, which established an annual import quota in units and in dollars for vehicles with cylinder capacity under or equal to 1,000 cubic centimeters (tariff line item 8703.21.00.90), excluding purchases made by the government. Resolution 91 established a quota of 189 units and a total value of \$434,501 (FOB) for such products, with 75 percent allocated to a single importer.

COMEX Resolution 95, passed on December 7, 2012, highlighted the widespread use of three-wheeled vehicles for commercial purposes and established *ad valorem* tariffs between 30 percent and 40 percent. Resolution 95 also combined four sub-tariff items into a new line item for three-wheeled vehicles.

Government-procured goods

On August 30, 2012, COMEX issued Resolution 82 to reduce tariffs on imported capital goods used for government contracts. Resolution 82 aims to promote investments and support investors that have signed contracts with the government. To qualify for the benefits, goods must be validated individually by COMEX for end-use purposes and meet origin and technical requirements. If there are any similar locally produced goods, the benefits do not apply.

Restrictions on satellite decoders/dishes

Resolution 93, issued on November 19, 2012, banned the import of decoders and satellite dishes when transported by mail, couriers, personal air luggage, ports or land borders.

Agricultural products

Ecuador applies variable import duties set pursuant to the Andean Price Band System (APBS) with respect to more than 150 agricultural products when they are imported from outside the Andean Community (AC). These products include wheat, rice, sugar, barley, white and yellow corn, soybeans, African palm oil, soy oil, chicken meat, pork meat, and powdered milk, as well as certain products derived from them. The APBS protects domestic producers of covered products by providing for tariff increases when world prices fall and tariff decreases when world prices rise.

When Ecuador became a WTO member, it agreed to phase out its participation in the APBS. To date, no steps have been taken to phase out use of the APBS. Since July 2007, the application of APBS is voluntary to member countries. The extent to which the APBS restricts trade varies by product. For some U.S. exports, such as wheat, barley, malt barley, and their byproducts, the price band total duty (*ad valorem* tariff plus variable levy) is often zero. However, price band total duties as high as 86 percent and 45 percent have been applied to chicken parts and pork, respectively, restricting those imports.

Tariff-Rate Quotas

When Ecuador became a WTO Member it established tariff-rate quotas (TRQs) for a number of agricultural imports. Products subject to TRQs include wheat, corn, sorghum, barley, barley malt, soybean meal, powdered milk, and frozen turkeys. The Ecuadorian government has not implemented a process for TRQ administration, but this has not stopped the flow of trade in these goods.

Nontariff Measures

Importers must register with Ecuador's National Customs Service (formerly the Ecuadorian Customs Corporation) to obtain a registration number for all products. In August 2011, Ecuador instituted a non-automatic import licensing program covering 42 tariff subheadings. The products affected are tires, vehicles, mobile telephones, televisions and monitors, refrigerators and freezers, and semi-finished iron and steel products. According to the Ecuadorian government, the licensing regime was put into place to monitor compliance with so-called voluntary import agreements within these sectors.

Ecuador's Ministry of Agriculture (MAGAP) has been actively pursuing import substitution policies for sensitive agricultural products such as cheese, butter, milk fats, potatoes (including french fries), beef, pork, chicken, turkey, offals, beans, sorghum, and corn. On March 1, 2013, Ecuador established a non-automatic import licensing regime administered by the Ministry of Agriculture for 55 such products. Andean Community products are exempt from the import licensing regime. In June 2013, Ecuador instituted a mandatory and cumbersome process to allocate import licenses for certain agricultural products subject to import licensing.

Another administrative hurdle for importers of agricultural products is the Ministry of Agriculture, Livestock and Fisheries (MAGAP) use of "Consultative Committees" for some import authorizations for agricultural products. These Committees, composed primarily of local producers, often advise MAGAP against granting import authorizations. Additionally, import authorizations usually are subject to crop

absorption programs, pursuant to which MAGAP requires that all local production be purchased at high prices before authorizing imports.

In January 2008, Ecuador increased its special consumption tax (ICE) on a number of products, largely luxury items. The ICE was increased mostly for imported products rather than those produced domestically, such as perfumes, vehicles (tiered increases by vehicle price starting at \$20,000), video games, firearms, airplanes, helicopters, boats, and cable television service. In December 2011, a new tax package increased the ICE *ad valorem* rate on spirits from 40 percent to 75 percent, and added a specific tax, phased in over 3 years, of \$6.20 for every liter equivalent of alcohol. On December 18, 2012, Resolution 832, issued by Ecuador's tax authority, increased the specific per liter tax to \$6.93 based on consumer price index for alcohol and beer. Resolution 832 entered into effect on January 1, 2013. The resolution is supposed to make assessment of the ICE for domestically produced and imported spirits more equitable by establishing factory and pre-import duty prices as the new taxable bases, respectively. A special consumption tax on cigarettes set on November 24, 2011 at \$0.08 per cigarette was increased to \$0.0862 through Resolution 864, issued on December 19, 2013. The tax is adjusted biannually, depending on the consumer price index.

Mobile phones

Resolution 67, adopted on June 15, 2012, limited annual imports under a single tariff line for cell phones to \$142.6 million, which represented 68 percent of the total value of Ecuador's cell phone imports in 2011. Unit and dollar value limits were established for each of Ecuador's 33 cell phone importers. Imports of cell phones entering Ecuador before June 11, 2012, were counted toward the annual limits, as were shipments already in transit. Cell phones are also subject to a 15 percent *ad valorem* tariff.

On July 17, 2012, COMEX issued Resolutions 69 and 70, which tightened the import restrictions established in Resolution 67 with respect to mobile phones. Resolution 69 reduced by 28 percent the total value of permissible imports by CONECEL, Ecuador's largest private mobile phone operator. Meanwhile, the state-owned telecommunications company, CNT, received a 145 percent increase in its import value entitlement, which grew from \$4.9 million to \$12 million. Unit quotas for CONECEL and CNT remained unchanged, suggesting that Ecuador has structured the restrictions to permit CNT to import more expensive phone models and improve its market share, which is only 1.6 percent. Resolution 104, approved on August 9, 2013, establishes quotas that apply specifically to smart phones worth \$220 or less for the 3 operators CONECEL, OTECEL, and publicly-owned CNT. Although the 3 operators currently have unequal shares in the wireless market, the government of Ecuador allocated equal shares of 15,152 units and/or a total value of \$3,333,333 equally among the three. The resolution also does not specify whether the quantity or value criteria will prevail.

GOVERNMENT PROCUREMENT

On October 14, 2013, the National Assembly passed reforms to the Public Procurement Law. The National Procurement Service (SERCOP) was created and the National Institute of Procurement (INCOP) was legally closed. Article 2 of the law gives SERCOP regulatory powers which INCOP lacked.

As a general rule, all public institutions are subject to Ecuador's public contracting law. However, that law establishes several exceptions, including for procurements made according to special regimes established pursuant to norms set by the Ecuadorian President (Article 2), international agreements for the purchase of goods and services (Article 43), exploration and exploitation of hydrocarbons, emergency situations (Article 57), and national security contracts.

Since 2008, Ecuador's public contracting law has required that priority be given to locally produced and supplied products and services, although foreign suppliers can compete for the procurements. The 2013 reform law reiterates preferential treatment for locally produced goods, especially those produced by the constitutionally created "social and solidarity economy," as well as micro and small enterprises. Article 25 of the public contracting law promotes procurement of local goods and services. The possibility of winning a procurement contract is higher depending on the local content of the product offered (assessed by the value of local inputs in a given product) to compete for public procurements.

On August 29, 2013, Decree 92 created the "Public Enterprise for Imports." The new entity, chaired by the Minister of Foreign Trade, is responsible for importing all government procured goods and for acquiring products subject to trade restrictions. This new entity is not yet operational. Private sector representatives have voiced concerns regarding possible unfair competition since the public sector is exempt from the 5 percent capital exit tax on foreign transfers.

Bidders are required to register and submit bids for government procurement through an online system (<http://www.compraspublicas.gob.ec>). Foreign bidders must register and have a local legal representative in order to participate in government procurement in Ecuador. Bidding on government procurement can be cumbersome and non-transparent. The lack of transparency creates opportunities for manipulation by procuring entities.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Ecuador remained on the Special 301 Watch List in 2013. The United States is very concerned about increases in the fees charged to apply for and maintaining patent rights and plant variety protection in Ecuador; these exorbitantly high fees create a disincentive for innovative companies to enter the market and will adversely affect the operation of the patent system. Widespread piracy and counterfeiting continue to adversely affect market access for U.S. rights holders. The United States urges Ecuador to continue to improve its IPR enforcement efforts and to establish the specialized IPR courts required under Ecuador's 1998 IPR law. Ecuador should also further clarify its system for protecting against unauthorized disclosure or unfair commercial use of undisclosed test or other data submitted to the government to obtain marketing approval for pharmaceutical and agricultural chemical products. The United States also encourages Ecuador to provide an effective system to expeditiously address patent issues presented by applications to market pharmaceutical products. The United States looks forward to continuing to work with Ecuador to address these and other issues.

SERVICES BARRIERS

Credit Reference Services

In November 2012, Ecuador enacted a credit bureau law that severely restricts the operations of private credit bureaus, giving a state-owned entity exclusive right to credit-related data. The law was to become effective on December 4, 2013, but Ecuador postponed implementation for 90 days. Private credit bureaus, while not prohibited outright from operating, will be obliged to transfer their databases to the government and can no longer receive data directly from the financial sector. As of December 2013, only one private credit bureau remained in operation.

Mobile Spectrum

Ecuador's 4G spectrum is currently licensed exclusively to CNT, the public enterprise with 3.4 percent market coverage of the mobile market.

INVESTMENT BARRIERS

Ecuador's investment climate remains marked by uncertainty, as the government's economic policies continue to evolve. While Ecuador is still relatively open to foreign investment in most sectors, new laws and regulations limit private sector participation in sectors deemed "strategic," most notably in the extractive industries. In addition, inconsistent application and interpretation of its investment laws negatively impacts the transparency and stability of Ecuador's investment regime. This legal complexity increases the risks and costs of doing business in Ecuador.

In 2013, the Permanent Court of Arbitration (PCA), an intergovernmental organization based in The Hague, The Netherlands, which provides a variety of dispute resolution services, issued two awards favorable to U.S. oil companies in highly visible cases against the Republic of Ecuador. Furthermore, the Ecuadorian judiciary sanctioned lower courts for issuing a favorable tax ruling to a foreign-owned oil pipeline operator.

Ecuador's framework for investment protection is still unsettled. Ecuador's denunciation of the Convention on the Settlement of Investment Disputes (ICSID Convention) became effective January 7, 2010. In September 2009, the Ecuadorian government requested approval from the country's National Assembly to terminate 13 bilateral investment treaties (BITs), including its BIT with the United States, arguing that they contained provisions that were unconstitutional. On November 24, 2010, Ecuador's Constitutional Court ruled that provisions within Ecuador's BIT with the United States were unconstitutional. In its ruling, Ecuador's Constitutional Court held that Article 422 of Ecuador's Constitution prohibited the state from concluding treaties or international instruments in which Ecuador would cede sovereign jurisdiction to international arbitration tribunals in commercial disputes between the state and private investors and concluded that the BIT with the United States constituted such an instrument.

The Constitutional Court has delivered similar rulings on the other BITs under review. Based on the Constitutional Court's rulings, Ecuador's National Assembly has so far approved the termination of five BITs, but has not approved the termination of four others, including the U.S. BIT. The Sovereignty, Integration and Foreign Relations Committee approved the termination of the U.S. BIT but the decision has not come to a full floor vote in the plenary. On November 19, 2013, the Minister of Foreign Trade issued an announcement that Ecuador would not terminate the remaining four BITs in 2013, but rather that Ecuador will seek to renegotiate those BITs that conflict with its constitution.

To date, the Ecuadorian government has only officially terminated its BIT with Finland. Furthermore, the Ecuadorian government has indicated it may be open to negotiating international arbitration clauses within individual contracts, as provided for under the Production Code and the Planning and Public Finance Code.

In May 2013, Presidential Decree 1506 created the "Integral Citizen's Audit Commission of Bilateral Investment Treaties and International Arbitration on Investment Issues" to study Ecuador's bilateral investment treaties and the international arbitration system to determine their legality and legitimacy, and to identify inconsistencies or irregularities that could have an impact on Ecuador in economic, social, and environmental terms. The Commission's work is currently in progress. The structure of the Commission,

FOREIGN TRADE BARRIERS

which is chaired by the National Planning Office, closely resembles the “Integral Debt Audit” implemented in 2008 and 2009 that provided the arguments for Ecuador’s sovereign debt default of \$3.2 billion in May 2009.

Certain sectors of Ecuador’s economy are reserved for the state, while equity caps apply in other sectors, such as a 49 percent cap on foreign investment in domestic fishing operations and a 25 percent limit with respect to broadcast stations. Petroleum exploration and development is reserved for the state, but foreign investment can be conducted through “exceptional” contracts with the state. In the past, a number of disputes relating to these contracts have arisen, as well to the laws regulating petroleum exploration and development generally. In 2010, the Ecuadorian government enacted a hydrocarbons law that requires all contracts in the extractive industries to be in the form of service, or “for fee” contracts, rather than production sharing agreements. On November 23, 2010, the Ecuadorian government completed negotiations with most resident foreign oil companies to transition from production sharing to service contracts. Several companies declined to renegotiate their contracts but instead opted to negotiate compensation agreements for operations that they subsequently turned over to the Ecuadorian government. The last U.S. oil and gas production company operating in Ecuador departed in 2011 after negotiating a sale of its operations to the government. As noted above, some U.S. companies that have operated in Ecuador, notably in the petroleum sector, have initiated international investment arbitration claims relating to these disputes.

EGYPT

TRADE SUMMARY

U.S. goods exports in 2013 were \$5.2 billion, down 5.1 percent from the previous year. Corresponding U.S. imports from Egypt were \$1.6 billion, down 46.2 percent. The U.S. goods trade surplus with Egypt was \$3.6 billion in 2013, an increase of \$1.1 billion from 2012. Egypt is currently the 43rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Egypt was \$17.1 billion in 2012 (latest data available), up from \$15.0 billion in 2011.

IMPORT POLICIES

Tariffs

Egypt increased tariffs on several types of goods in 2013. In March 2013, the government of Egypt issued presidential decree number 184/2013 announcing an increase in tariffs for dozens of “non-essential” goods, including, sunglasses, nuts, cut flowers, fireworks, grapes, strawberries, apples, pineapples, video games, chewing gum, watches, and seafood, including shrimp and caviar. Tariffs on seafood increased as follows: on fish from 5 percent to 30 percent, on caviar from 30 percent to 40 percent and on lobster from 20 percent to 40 percent. Tariffs on cut flowers increased from 30 percent to 40 percent, and on fresh and dried nuts from 5 percent to 10 percent. Tariffs on some fresh fruits, including strawberries, increased from 5 percent to 10 percent while levies on some other fresh fruits, including apples, increased from 20 percent to 30 percent.

The tariff on passenger cars with engines of less than 1,600 cubic centimeters (cc) is 40 percent, and the tariff on cars with engines of more than 1,600 cc is 135 percent. In addition, cars with engines over 2,000 cc are subject to an escalating sales tax of up to 45 percent.

Tariffs on a number of processed and high-value food products, including poultry meat, range from 20 percent to 30 percent.

There is a 300 percent duty on alcoholic beverages for use in the tourism sector, including for hotels, plus a 40 percent sales tax. The tariff for alcoholic beverages ranges from 1,200 percent on beer to 1,800 percent on wine to 3,000 percent on sparkling wine and spirits.

Foreign movies are subject to duties and import taxes amounting to 46 percent and are subject to sales taxes and box offices taxes higher than those for domestic films.

Customs Procedures

In 2004, the Ministry of Finance committed to a comprehensive reform of Egypt’s customs administration and is reorganizing the Customs Authority to meet international standards. Egypt began establishing modern customs centers at major ports to test new procedures, such as risk management, and Egypt began implementing new information technology systems to facilitate communications among ports and airports. These systems were to become fully operational in 2009, but implementation has been delayed. Meanwhile, the information technology infrastructure has been deteriorating, representing an additional

obstacle to modernization. Egyptian does not currently have systems in place to accept advance information on international cargo arriving at ports of entry.

The Ministry of Finance in 2008 finalized a draft of a new customs law to streamline procedures and facilitate trade. The proposed legislation has yet to be submitted to parliament for consideration. Its status at this point remains unclear. The practice of consularization, which requires exporters to secure a stamp from Egyptian consulates on all documents for goods to be exported to Egypt – at a cost of \$100 to \$150 per document – remains in place and adds significant costs in money and time.

Import Bans and Barriers

The National Nutrition Institute or the Drug Planning and Policy Center of the Ministry of Health and Population (MOHP) registers and approves all nutritional supplements, specialty foods, and dietary foods. The definition of specialty foods is broad and includes processed foods with labels claiming that the food is “high in” or “enriched with” vitamins or minerals. The government attempts to complete the approval process in 6 weeks to 8 weeks, but some products face waiting periods of 4 months to 12 months for approval. Importers must apply for a license to import a dietary product and renew the license every 1 year to 5 years depending on the product, at a cost of approximately \$1,000 per renewal.

The MOHP must approve the importation of new, used, and refurbished medical equipment and supplies to Egypt. This requirement does not differentiate between the most complex computer-based imaging equipment and basic supplies. The MOHP approval process consists of a number of steps which can be burdensome. Importers must submit a form requesting the MOHP’s approval to import, provide a safety certificate issued by health authorities in the country of origin, and submit a certificate of approval from the U.S. Food and Drug Administration or the European Bureau of Standards. The importer must also present an original certificate from the manufacturer indicating the production year of the equipment and, if applicable, certifying that the equipment is new. All medical equipment must be tested in the country of origin and proven safe. The importer must prove it has a service center to provide after-sales support for the imported medical equipment, including spare parts and technical maintenance.

GOVERNMENT PROCUREMENT

A 1998 law regulating government procurement requires that technical factors, along with price, be considered in awarding contracts. A preference is granted to Egyptian companies whose bids are within 15 percent of the price of other bids. In the 2004 Small and Medium Sized Enterprises (SMEs) Development Law, Egyptian SMEs were given the right to supply 10 percent of the goods and services in every government procurement contract.

Egyptian law grants potential suppliers certain rights, such as speedy return of their bid bonds and an explanation of why a competing supplier was awarded a contract. However, concerns about a lack of transparency remain. For example, the Prime Minister retains the authority to determine the terms, conditions, and rules for procurement by specific entities.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Egypt remained on the Watch List in the 2013 Special 301 Report. Piracy and counterfeiting continue to be serious problems, as does the lack of speed and effectiveness of processing trademark applications.

Piracy of broadcast content via satellite television operations, lack of enforcement in major cases involving counterfeit apparel and other trademark violations, online piracy, entertainment software piracy, and book piracy remain concerns. The United States remains concerned about the lack of clarity in protections against unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approvals for pharmaceutical products.

SERVICES BARRIERS

Egypt restricts foreign equity in construction and transport services to 49 percent. Egypt also limits the employment of non-nationals to 10 percent of an enterprise's general workforce, although the Ministry of Manpower and Migration can waive this limitation. In computer-related industries, Egypt requires that 60 percent of top level management be Egyptian within 3 years of the start-up date of the venture.

Banking

No foreign bank seeking to establish a new bank in Egypt has been able to obtain a license in the past 20 years, and in November 2009, the Central Bank reaffirmed that no new foreign banks would be given licenses. However, foreign banks have been allowed to buy shares in existing banks.

Since banking reform began in 2004, the government has divested itself from many joint venture banks and privatized the government-owned Bank of Alexandria in 2006. However, efforts to restructure the remaining three state-owned banks have been mixed, and the Central Bank rejected privatization of the three banks in 2009 on the grounds that market conditions were not appropriate. The three remaining state-owned banks control at least 40 percent of the banking sector's total assets.

Telecommunications

The state-owned telephone company, Telecom Egypt, lost its legal monopoly on the local, long-distance and international telecommunication sectors in 2005. Nevertheless, Telecom Egypt continues to hold a *de facto* monopoly, primarily because the National Telecommunications Regulatory Authority (NTRA) failed to offer additional licenses to compete in these sectors.

NTRA has been working on a unified license regime that would allow a company to offer both fixed line and mobile networks. It was reported in December 2013 that the NTRA recommendation was before the Egyptian cabinet for final approval. Adoption of a unified license regime would allow Telecom Egypt, currently operating in the fixed line market, to enter the mobile market and the three mobile companies, MobiNil, Vodafone and Etislat, to enter the fixed market.

Courier and Express Delivery Services

The Egyptian National Postal Organization (ENPO) must grant special authorization to private courier and express delivery service suppliers seeking to operate in Egypt. In addition, although express delivery services constitute a separate, for-profit, premium delivery market, ENPO requires private express operators to pay a postal agency fee of 10 percent of annual revenue on shipments less than 20 kilograms. In 2010, ENPO imposed an additional fee on private couriers and express delivery services of £E5 (\$0.75) on all shipments under five kilograms.

INVESTMENT BARRIERS

Significant impediments to investment exist in Egypt. Foreign direct investment accounted for less than 25 percent of all investment in Egypt prior to the revolution in 2011 and has fallen drastically since. Following the revolution, Egypt put into place capital transfer restrictions that prevent foreign companies from transferring more than \$100,000 per year out of Egypt without a valid commercial purpose, original documentation, and approval by the Central Bank. Daily withdrawals for corporations are limited to \$30,000. In 2012, Egypt announced further capital controls that limit the amount of money that can be transferred out of the country to \$10,000 per day and instituted a new currency auction system that has led to a gradual depreciation of the Egyptian Pound. Investors report that it can take several weeks for legitimate transfers to be executed.

Labor rules prevent companies from employing more than 10 percent non-Egyptians (25 percent in Free Zones), and foreigners are not allowed to operate sole proprietorships or simple partnerships. Egypt's trade regulations allow foreigners to act as commercial agents with respect to the import of goods for trading purposes, but prohibit foreigners from acting as importers themselves. A foreign company wishing to import for trading purposes must do so through an Egyptian importer.

Although Egypt is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, U.S. investors have complained that Egyptian courts are not consistent in their approach to the recognition of foreign arbitral awards and court judgments. In their view, the judicial system is subject, in some cases, to political influence.

Other obstacles to investment include excessive bureaucracy, a shortage of skilled labor, limited access to credit, slow and cumbersome customs procedures, and non-tariff trade barriers.

OTHER BARRIERS

Pharmaceutical Price Controls

On July 3, 2012, the MOHP issued Ministerial Decree No. 499/2012 to provide a new legal basis for the pricing of branded and generic products in Egypt. The new pricing structure is mainly based on global public price comparisons. In addition, the decree set profit margin caps at the distributor and retail levels. This decree revoked Decree No. 373 of 2009, a cost-plus system. However, implementation plans have been suspended as a result of resistance from both pharmaceutical producers and consumer interest groups and Decree No. 373 continues to govern the system.

EL SALVADOR

TRADE SUMMARY

U.S. goods exports in 2013 were \$3.2 billion, up 2.3 percent from the previous year. Corresponding U.S. imports from El Salvador were \$2.4 billion, down 5.8 percent. The U.S. goods trade surplus with El Salvador was \$731 million in 2013, an increase of \$222 million from 2012. El Salvador is currently the 53rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in El Salvador was \$2.7 billion in 2012 (latest data available), up from \$2.6 billion in 2011.

Free Trade Agreement

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

IMPORT POLICIES

Tariffs

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

Under the CAFTA-DR, however, 100 percent of U.S. consumer and industrial goods will enter El Salvador duty free by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter El Salvador duty free and quota free, creating economic opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Currently, under the CAFTA-DR, 68 percent of U.S. agricultural products qualify for duty-free treatment in El Salvador and by 2015 that number will reach 84 percent of qualifying U.S. agricultural exports. El Salvador will eliminate its remaining tariffs on nearly all agricultural products by 2020 (2023 for rice and chicken leg quarters and 2025 for dairy products). For certain agricultural products, tariff-rate quotas (TRQs) permit some duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. El Salvador will liberalize trade in white corn through continual expansion of a TRQ, rather than by the reduction of the out-of-quota tariff.

Nontariff Measures

Under the CAFTA-DR, all CAFTA-DR countries, including El Salvador, committed to improve transparency and efficiency in administering customs procedures. The CAFTA-DR countries also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and agreed to share information to combat illegal trans-shipment of goods. However, U.S. exporters and

Salvadoran importers of U.S. products, particularly agricultural goods, have expressed increasing concern about customs-related problems they are encountering in El Salvador, specifically issues related to origin verification procedures. The United States is continuing to engage with El Salvador on these concerns. The treatment of trans-shipped goods is increasingly becoming an issue. Companies are stating that the Salvadoran customs authorities are delaying the release of goods that originate in the United States and transit through a non-CAFTA-DR country. The Salvadoran customs authorities have alleged that these goods lose origin when not coming directly from the United States, without meeting new and burdensome documentation requirements covering the goods' transit through the intermediary country.

In 2009, and again in 2010, El Salvador amended its law regulating the production and sale of alcoholic beverages. The amendments applied an 8 percent *ad valorem* tax on domestic and imported alcoholic beverages, as well as a specific tax based on percentage of alcohol by volume. This tax structure applies a lower rate per percentage of alcohol on alcoholic beverages that are typically produced locally or imported from other Central American countries (*e.g.*, aguardiente) than on alcoholic beverages that are imported from non-Central American countries (*e.g.*, whiskey and gin). The U.S. Government has raised concerns about the amended law with the government of El Salvador and continues to work with the government in an effort to address those concerns.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurements covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Salvadoran government entities, including key ministries and state-owned enterprises, on the same basis as Salvadoran suppliers. The anticorruption provisions in the Agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

In May 2011, the Legislative Assembly approved a series of reforms to the LACAP (Ley de Adquisiciones y Contrataciones de la Administración Pública), which regulates government procurement. These reforms included easing procurement procedures to expedite contracts valued at less than \$35,856. The U.S. Government, however, is discussing with the government of El Salvador additional measures that have passed subsequently, including a June 2011 law which would allow the Ministry of Health to purchase pharmaceuticals without going through an open tender, and a December 2012 decree covering procurements for 2013 and a subsequently revised decree covering procurements for 2014, that favor national seed producers in the Ministry of Agriculture's seed distribution program.

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

EXPORT SUBSIDIES

El Salvador has notified the WTO Committee on Subsidies and Countervailing Measures of the Export Processing Zones and Marketing Act, an export subsidy program which must be phased out by the end of 2015.

Beginning on February 1, 2011, El Salvador eliminated the 6 percent tax rebate it had applied to exports shipped outside Central America for goods that had undergone a transformation process adding at least 30 percent to the original value. To compensate for the elimination of the 6 percent rebate, in January 2011, the Salvadoran government approved a new form of drawback, consisting of a refund of custom duties

paid on imported inputs and intermediate goods exclusively used in the production of products exported outside of the Central American region, which remains in place.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

While El Salvador remained unlisted in the 2013 Special 301 Report, the United States initiated an out-of-cycle review with El Salvador to highlight the need to make progress in IPR protection and enforcement, in particular with respect to implementation of recent legislation on geographic indications and pharmaceuticals, and enforcement efforts.

To implement its CAFTA-DR intellectual property rights (IPR) obligations, El Salvador undertook legislative reforms providing for stronger IPR protection and enforcement. Despite these efforts, the piracy of optical media, both music and video, in El Salvador remains a concern. In addition, the business software industry continues to report very high piracy rates for El Salvador. Optical media imported from the United States into El Salvador are being used as duplication masters for unauthorized copies of copyrighted works. The United States has expressed concern to the Salvadoran government about inadequate enforcement of cable broadcast rights and the competitive disadvantage it places on legitimate providers of this service. The United States remains concerned about the adequacy of implementation of regulations to protect against the unfair commercial use, as well as unauthorized disclosure, of test and other data generated to obtain marketing approval for pharmaceutical products. The lack of an effective system to address patent issues expeditiously in connection with applications to market pharmaceutical products is also concerning. The United States engaged extensively with El Salvador as it prepared legislative amendments governing protections for geographical indications (GIs), in anticipation of European Union applications to register a range of GIs in El Salvador, which were received in 2013. During that ongoing engagement, the United States has stressed the need for CAFTA-DR consistency in protections and process, including public notice and opportunity for opposition and cancellation, and transparency and impartiality in decision making. The United States will continue to monitor El Salvador's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Telecommunications

Since June 2008, every international telephone call, regardless of origin, is charged a \$0.04 per minute tax, while domestic calls within El Salvador are not assessed this tax. A previous exemption for calls from other Central American countries is no longer in effect.

INVESTMENT BARRIERS

There are few formal investment barriers in El Salvador. However, there are nontransparent and duplicative regulations, and licensing and regulatory decision-making processes that appear to be inconsistent and contradictory. Such barriers have affected sectors including energy, mining, and retail sales.

OTHER BARRIERS

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in El Salvador. Administrative and judicial decision-making appear at times to be inconsistent, nontransparent, and very time consuming. Bureaucratic requirements have at times reportedly been excessive and unnecessarily complex. U.S. firms have expressed concern about the “Medicines Act” passed by the Salvadoran Legislative Assembly in February 2012, and the implementing regulations issued in December 2012, particularly regarding the methodology to determine maximum sales prices of pharmaceuticals to be sold in El Salvador and the lack of transparency in the process.

ETHIOPIA

TRADE SUMMARY

U.S. goods exports in 2013 were \$678 million, down 46.8 percent from the previous year. Corresponding U.S. imports from Ethiopia were \$194 million, up 5.7 percent. The U.S. goods trade surplus with Ethiopia was \$485 million in 2013, a decrease of \$607 million from 2012. Ethiopia is currently the 92nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ethiopia was \$11 million in 2012 (latest data available), up from \$9 million in 2011.

IMPORT POLICIES

Ethiopia is not a Member of the World Trade Organization (WTO), but is pursuing accession. Ethiopia participated in the third meeting of its working party on WTO accession in March 2012 and submitted its goods market offer to Members in February 2012. In December 2013, Ethiopia finalized its services market access offer. This, a revised goods market access offer, and responses to questions submitted by the United States and other WTO members at the third meeting of Ethiopia's WTO accession Working Party have been prepared for submission to Members for discussion at the fourth meeting of the Working Party, which has not yet been scheduled.

Ethiopia is a member of the Common Market for Eastern and Southern Africa (COMESA), but does not participate in COMESA's free trade area.

Tariffs

According to the WTO, Ethiopia's average applied tariff rate was 17.3 percent in 2012. Revenue generation, not protection of local industry, appears to be the primary reason for Ethiopia's tariff levels; however, high tariffs are applied to protect certain local industries, including textiles and leather.

Nontariff Measures

A cereals export ban, imposed in 2009, remains in effect due to supply shortages. An export ban imposed on cotton in November 2010 was lifted in April 2012. Another export ban, on raw and semi-processed hides and skins, which was intended to artificially increase domestic supply and strengthen the export of value-added products, took effect at the end of 2011.

An importer must obtain a letter of credit for the total value of the imports and apply for an import permit before an order can be placed. Even with a letter of credit, import permits are not always granted.

Foreign Exchange Controls

Ethiopia's central bank administers a strict foreign currency control regime and the local currency (Birr) is not freely convertible. While larger firms, state-owned enterprises, and enterprises owned by the ruling party do not typically face major problems obtaining foreign exchange, less well-connected importers, particularly smaller, new-to-market firms, face delays in arranging trade-related payments. The

unreliability of foreign exchange supply in Ethiopia's banks has negatively affected U.S. companies' ability to import essential inputs and industrial capital goods on a timely basis.

GOVERNMENT PROCUREMENT

A high proportion of Ethiopian import transactions are for government consumption, reflecting the heavy involvement of the government in the overall economy. Tender announcements are usually made public, but a number of major procurements have not gone through a tender process. Bureaucratic procedures and delays in the decision-making process sometimes impede foreign participation in procurements. U.S. firms have complained about the abrupt cancellation of some procurements, a perception of favoritism toward Chinese suppliers, a frequent requirement that would-be suppliers appear in person to collect solicitation packages, and a general lack of transparency in the procurement system. Business associations complain that state-owned and ruling party-owned enterprises have enjoyed *de facto* advantages over private firms in government procurement. Several U.S. firms have complained of pressure to offer supplier financing or other low-cost financing in conjunction with tenders. Several significant contracts have been signed in recent years between government enterprises and Asian companies outside of the government procurement process.

As a non-member of WTO, Ethiopia is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The Ethiopian Intellectual Property Office (EIPO) is responsible for the administration of patents, trademarks, and copyrights, and has jurisdiction over intellectual property policy. EIPO focuses mainly on protecting domestic content, and has taken virtually no action to confiscate or impede the sale of pirated foreign works in Ethiopia. Ethiopia is a member of the World Intellectual Property Organization; however, it has not ratified most of the major IPR treaties, including the Berne Convention or Madrid Protocol.

Trademark infringement of major international brands appears to be widespread in Ethiopia. The lack of enforcement capacity leaves the government in a position of only responding to IPR challenges brought to Ethiopia's Competition Commission. Furthermore, enforcement of intellectual property rights is often unpredictable due to an overall lack of coordination between government agencies.

SERVICES BARRIERS

The state-owned Ethio-Telecom maintains a monopoly on wire and wireless telecommunications and internet service and is closed to private investment. Management of Ethio-Telecom was outsourced to France Telecom (Orange) in December 2010 through 2012, with a contract extension through 2013. The Value Added Service Directive No. 2/2005 allows private companies to provide internet service through the government's infrastructure, but implementing regulations have yet to be promulgated. The Ministry of Information and Communication Technology allows companies and organizations whose operations are Internet-dependent or are located in remote areas of the country to use Very Small Aperture Terminals (VSATs), but it does not allow the general public to use VSATs.

INVESTMENT BARRIERS

Official and unofficial barriers to foreign investment persist. Investment in telecommunications services and in defense industries is permitted only in partnership with the Ethiopian government. The banking, insurance, and micro-credit industries are restricted to domestic investors. Other areas of investment reserved exclusively for Ethiopian nationals include broadcasting, domestic air transport services using aircraft with a seating capacity of over 20 passengers, and forwarding/shipping agency services. Foreign investors are also barred from investing in a wide range of small retail and wholesale enterprises (e.g., printing, restaurants, and beauty shops).

The government continues to privatize a number of state-owned enterprises. Most, but not all, of the tenders issued by the Privatization and Public Enterprises Supervising Agency are open to foreign participation. Some investors bidding on these properties have alleged a lack of transparency in the process. Investors in formerly state-owned businesses subject to privatizations reportedly have encountered problems that include impediments to transferring title, delays in evaluating tenders, and issues with tax arrearages.

All land in Ethiopia belongs to the state; there is no private land ownership. Land may be leased from local and regional authorities for up to 99 years. A land-lease regulation passed in late 2011 places limits on the duration of construction projects, allows for revaluation of leases at a government-set benchmark rate, places previously owned land (“old possessions”) under leasehold, and restricts transfer of leasehold rights. Compensation is paid for real property seized upon the termination of a lease, but is not paid for the land on which the property is built.

OTHER BARRIERS

Parastatal and Party-affiliated Companies

Ethiopian and foreign investors alike complain about patronage networks and *de facto* preferences shown to businesses owned by the government or associates of the ruling party, including preferential access to bank credit, foreign exchange, land, procurement contracts, and favorable import duties.

Judiciary

Companies that operate businesses in Ethiopia assert that its judicial system remains inadequately staffed and inexperienced, particularly with respect to commercial disputes. While property and contractual rights are recognized, and there are commercial and bankruptcy laws, judges often lack understanding of commercial matters and scheduling of cases often suffers from extended delays. Contract enforcement remains weak. There is little evidence to suggest that the award of an international arbitral tribunal will be fully accepted and implemented by Ethiopian authorities.

EUROPEAN UNION

TRADE SUMMARY

U.S. goods exports in 2013 were \$262.3 billion, down 1.3 percent from the previous year. Corresponding U.S. imports from the European Union (EU) were \$387.3 billion, up 1.5 percent. The U.S. goods trade deficit with the EU was \$125.1 billion in 2013, up \$9.1 billion from 2012. European Union countries, together, would rank as the second largest export market for the United States in 2013.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to the EU were \$199.2 billion in 2012 (latest data available), and U.S. imports were \$143.2 billion. Sales of services in the EU by majority U.S.-owned affiliates were \$554.7 billion in 2011 (latest data available), while sales of services in the United States by majority EU-owned firms were \$409.9 billion.

The stock of U.S. foreign direct investment (FDI) in the EU was \$2.2 trillion in 2012 (latest data available), up from \$2.0 trillion in 2010. U.S. FDI in the EU is primarily concentrated in the nonbank holding companies, finance/insurance, and manufacturing sectors.

Overview

The United States and the 28 Member States of the EU share the largest and most complex economic relationship in the world. The enormous volume of trade and investment is a key pillar of prosperity both in the United States and Europe.

Transatlantic trade flows (goods and services trade plus earnings and payments on investment) averaged \$4.3 billion each day of 2013. The total stock of transatlantic investment was nearly \$3.9 trillion in 2012. Countries around the world benefit significantly from the prosperity resulting from this transatlantic economy.

Despite the broadly successful character of the U.S.-EU trade and investment relationship, U.S. exporters and investors face chronic barriers to entering, maintaining, or expanding their presence in certain sectors of the EU market. Some of the most significant barriers, which have persisted despite repeated efforts at resolution through bilateral consultations or WTO dispute settlement procedures, have been highlighted in this report for many years. Many are highlighted again in this year's report.

To further strengthen the transatlantic trade and investment relationship, President Obama announced on February 13, 2013 his intention to pursue comprehensive trade and investment negotiations with the EU. On June 17, 2013, the President joined with EU Leaders to launch negotiations on the Transatlantic Trade and Investment Partnership (T-TIP) agreement. These negotiations build upon the work and recommendations of the U.S.-EU High Level Working Group for Jobs and Growth, which was co-chaired by the U.S. Trade Representative and the European Commission Trade Directorate, and which recommended a comprehensive trade and investment agreement. Three negotiating rounds took place in 2013, and both sides have agreed to pursue an ambitious schedule of negotiations in 2014.

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

WTO Information Technology Agreement

In September 2010, the WTO Dispute Settlement Body (DSB) adopted the final report of the panel considering the U.S. claim that the EU violated its tariff commitments under the WTO Information Technology Agreement (ITA) by imposing duties as high as 14 percent on flat panel computer monitors, multifunction printers, and certain cable, satellite, and other set-top boxes. For all three product categories at issue, the panel concluded that the EU tariffs were inconsistent with its obligations. The United States and the EU agreed to a period of nine months and nine days for the EU to comply with the recommendations and rulings of the DSB, ending on June 30, 2011. The EU has taken the legislative steps necessary to come into compliance with the DSB's recommendations and rulings, but the United States is continuing to closely monitor implementation by Member State customs authorities to ensure that products covered by the ITA are accorded duty-free treatment. With EU compliance, the United States expects that U.S. producers of high technology products will continue to be able to export those products to Europe duty free, as required under the ITA.

Pharmaceutical Products

The U.S. pharmaceutical industry has expressed concerns regarding some EU and Member State policies affecting market access for pharmaceutical products, including nontransparent procedures and a lack of meaningful stakeholder input into policies related to pricing and reimbursement, including therapeutic reference pricing and other price controls. The United States is following with interest EU deliberations on steps to increase the availability of pharmaceutical product information to consumers as a means of promoting consumer awareness and access to medicines and is also following the current discussions on the review of the EU Transparency Directive. Pharmaceutical firms have also expressed concern regarding recent and possible future changes to European Medicines Agency (EMA) policy, and possible related changes to EU law, regarding disclosures of clinical trial data, including confidential commercial information submitted to EMA by pharmaceutical firms seeking marketing authorization. The United States continues to engage with the EU and individual Member States on these matters. In recent years, the U.S. pharmaceutical industry has raised concerns about pharmaceutical market access and government pricing and reimbursement systems in Austria, Belgium, the Czech Republic, Finland, France, Hungary, Lithuania, the Netherlands, Poland, Portugal, Romania, Spain, and the United Kingdom. Additional detail on some of these countries' measures follows.

Member State Measures

Austria: In 2011, the government of Austria, public health insurers, and the pharmaceutical industry agreed to a "Frame Contract for Reimbursement of Pharmaceuticals," valid until the end of 2015. U.S. companies have voiced concern that, despite the new contract, they are forced to accept significant price reductions to compete with generic pharmaceuticals. In addition, U.S. companies have expressed concern regarding reimbursement rules for follow-on products that are biosimilar to a biological pharmaceutical product.

Belgium: U.S. pharmaceutical companies have expressed concern about the lack of adequate transparency in the development and implementation of government cost-containment measures in Belgium. In 2012, the government proposed to implement an International Price Referencing System for on-patent medicines. The Ministry of Social Affairs, Public Health and Social Integration modified the proposal to ensure that pharmaceutical companies would not be treated differently with respect to budgetary cuts than any other group within the medical sector. The Belgian government agreed not to increase the sales tax on

pharmaceuticals and to speed up the approval process for new medicines. The prices set for pharmaceutical prices for 2013 and 2014 are expected to remain stable. However, representatives from U.S. pharmaceutical companies have expressed concern that following the elections in May 2014, the price referencing system is likely to be reviewed and that challenges driven by federal budget negotiations, similar to those faced in 2012, may resurface for the 2015 and 2016 fiscal years.

Czech Republic: U.S. pharmaceutical companies have expressed concern about the Czech Republic's system for determining pricing and reimbursement levels for pharmaceutical products, as well as new legislation that went into effect in December 2011 requiring electronic auctions on pharmaceuticals and medical devices and equipment. The government has not fully implemented this legislation, using auctions only on a limited basis beginning in 2013. The United States has encouraged the Czech government to ensure that its current pricing and reimbursement system does not unfairly limit the access of innovative pharmaceutical products to the Czech market.

Finland: U.S. innovative pharmaceutical companies have reported that the Finnish Pharmaceutical Pricing Board has delayed reimbursement for their products, which has in turn reduced market access for those products. The U.S. pharmaceutical industry has also reported that the Pricing Board has also pressured U.S. companies to lower the prices of their innovative medicines in line with generic drugs of the same therapeutic class. The pharmaceutical companies have indicated that the Board's practices are hindering their ability to recoup their research and development costs. As a consequence of the Pricing Board's practices, U.S. pharmaceutical companies report that they have stopped most clinical trials and research in Finland.

France: France's "Sunshine Act" reform bill, called the Loi Bertrand on Improving Drug and Health Product Safety was introduced in December 2011 to provide stricter disclosure and drug monitoring rules and to create the National Agency for Health Products Safety. This regulatory authority can conduct post-authorization studies in cases of reported adverse reactions to a drug. This authority is also responsible for reviewing all pharmaceutical advertising. With respect to conflicts-of-interest issues, the law further requires manufacturers to make public agreements with healthcare authorities. The pharmaceutical industry largely supported the reform, with the exception of the industry tax and the two-year ban on visits by industry sales representatives to individual doctors. Implementation of the law has been slow, but the implementation decree was finally published in May 22, 2013. The provision of the law banning visits by industry sales representatives to doctors in hospitals was declared illegal by the Constitutional Council and has not been implemented.

Hungary: Pharmaceutical manufacturers have expressed several concerns about Hungary's pharmaceutical policies, including its volume and pricing restrictions, high sector-specific taxes, and delays in reimbursement approvals. The pharmaceutical industry has also identified negative impacts of Hungary's "blind-bidding" system, which provides preferential treatment to those medicines with the lowest price, without sufficient differentiation of innovative products. Several pharmaceutical companies have also reported concerns regarding new tax obligations introduced in August 2012 for pharmaceutical companies marketing innovative products. Hungary has taken some positive steps to address these concerns, including adoption of amendments to the Hungarian Act 95 of 2005 Medical Products for Human Use (also known as the Medicines Act) in June 2013, which empowers the National Institute of Pharmacy with investigative tools and powers to impose fines, conduct dawn raids, and conduct searches of premises and seize goods. The Hungarian government has also signed a series of strategic agreements with pharmaceutical companies. While these agreements have few concrete commitments, the pharmaceutical industry has generally been supportive of the government's efforts in this regard.

Italy: U.S. innovative companies have expressed concern about Italy's cost containment and other measures that negatively impact the Italian pharmaceutical market. Pharmaceutical companies are required to pay money back to the Italian government when government spending on pharmaceuticals exceeds the budgeted amount. Furthermore, availability of innovative drugs approved by the European Medicine Agency is significantly delayed by the fragmented healthcare administration system. Concerns also exist regarding the ability of pharmaceutical companies to fully exercise their patent rights for the complete patent term. The United States has encouraged the Italian government to open a dialogue with U.S. industry to address these issues. In October 2012, the Italian government approved a law providing for more expeditious marketing approval for innovative drugs. The new law also states that generic medicines can be included in the approved reimbursable drug list only after the patent expiration of the original innovative medicine. However, concerns remain regarding the price reimbursement renegotiation system.

Lithuania: The United States continues to engage with the government of Lithuania regarding pharmaceutical market access issues. Discussions between the Health Ministry and pharmaceutical industry representatives have made little progress to add innovative drugs to the government's reimbursement list. Pharmaceutical industry representatives remain concerned about the lack of transparency in the reimbursement process and about pricing for innovative drugs.

Poland: U.S. pharmaceutical companies report that transparency and meaningful engagement between industry and the Ministry of Health in general and in the development and implementation of cost-containment measures affecting pharmaceutical reimbursement and pricing policies has improved. The Ministry of Health meets monthly with industry representatives and consults with industry about proposed legislative changes and changes in policy (the government of Poland has not consulted industry in the past on such issues). The Ministry of Health now publishes every two months lists of pharmaceuticals the national health system will reimburse. Prior to 2012, the Ministry did not update and release these lists on a regular basis. The law governing reimbursement by the national health system, which entered into force in January 2012, applies therapeutic reference pricing, a methodology which pools both patented and off-patent pharmaceutical/generic products into just 300 so-called "limit" groups based on therapeutic categories. By assuming that all products used to treat the same condition are interchangeable, this practice erodes the incentives to invest in the development of innovative medicines and may undermine the availability of such medicines. The pharmaceutical industry has also expressed concerns regarding possible reimbursement rules for biosimilars.

Portugal: The U.S. pharmaceutical industry reports that there continues to be a lack of transparency in the development and implementation of government cost-containment measures. Portuguese Law No. 52/2011, in effect since January 2012, requires that pharmaceutical patent holders submit cases, including evidence, to arbitration within 30 days of notice of intent by a generic drug manufacturer to distribute the generic product. The law does not provide for injunctive relief, but instead requires the party found to have infringed the patent in question to reimburse the patent holders for any resulting losses. While the arbitration system has proven to be faster than the normal court system, it remains costly and industry questions the quality of the legal decisions rendered.

Romania: Innovative pharmaceutical products face several significant challenges in Romania due to the fact that the government has not updated the lists of pharmaceuticals that are eligible for reimbursement under the national health system (the reimbursement lists) since 2008, despite repeated requests. This severely undermines the ability of U.S. pharmaceutical companies to introduce newer drugs in Romania because the National Health Insurance House will not pay reimbursement for drugs that are not included on the reimbursement list. As of December 2013, there are approximately 170 innovative drugs waiting

for the Romanian government's approval for inclusion in an updated reimbursement list. In contrast, generic drugs have benefited from accelerated, quasi-automatic inclusion on the reimbursement lists. In March 2013, a protocol was signed between the Ministry of Health and the Romanian Association of Innovative Drugs Producers (ARPIM), which established a July 1, 2013 target for updating the reimbursement list. However, Romania has postponed this target date several times and the update to the reimbursement list and pricing legislation remains delayed.

Spain: U.S. pharmaceutical companies remain concerned that Spain's pricing and reimbursement system is unpredictable and lacks transparency. U.S. companies reported that Spanish government reforms enacted during 2010 and 2011 diluted the value of their patents and created a disincentive to innovation and new investment. The reforms, aimed at reducing the national health system budget, require, in general, that the prescription of medicine must be by active ingredient, rather than by brand, and that pharmacies must dispense the lowest cost drugs available. The Spanish government approved a comprehensive health care reform package on April 20, 2012, which further reduced industry revenues by requiring prescription of generic drugs, even if innovative drugs are the same price, and lowering the reference prices on certain drugs. The reforms also subjected patented drugs with no generic competitors to reference pricing after 10 years of obtaining the first marketing authorization in the EU. The United States is working with the Spanish government on these issues.

Uranium

The United States is concerned that nontransparent EU policies may restrict the import into the EU of enriched uranium, the material from which nuclear power reactor fuel is fabricated. Since 1994, the EU has maintained quantitative restrictions on imports of enriched uranium in accordance with the terms of the Corfu Declaration, a joint European Council and European Commission policy statement that has never been made public or notified to the WTO. The Corfu Declaration appears to limit the acquisition of non-EU sources of supply of enriched uranium. The United States has raised concerns about the nontransparent nature of the Corfu Declaration and its application.

MARKET ACCESS FOR AGRICULTURAL AND FOOD PRODUCTS

Bananas

In December 2009, the United States and the EU initialed an agreement designed to lead to a settlement of the longstanding dispute over the EU's discriminatory bananas trading regime. In the agreement, the EU agreed not to reintroduce measures that discriminate among foreign banana distributors and to maintain a nondiscriminatory, tariff-only regime for the importation of bananas. The U.S.-EU agreement complements a parallel agreement, the Geneva Agreement on Trade in Bananas (GATB), between the EU and several Latin American banana-supplying countries, which provides for staged EU tariff cuts to bring the EU into compliance with its WTO obligations. The United States and the Latin American countries signed their respective agreements with the EU in June 2010.

The agreements marked the beginning of a process that, when completed, will culminate with the settling of all of the various banana disputes and claims against the EU in the WTO. The GATB entered into force on May 1, 2012, and certification by the WTO of the EU's new tariffs on bananas was completed on October 27, 2012. On November 8, 2012, the EU and the Latin American signatories to the GATB announced that they had settled their disputes and claims related to bananas. On January 24, 2013, the U.S.-EU bananas agreement entered into force. The final step called for in the U.S.-EU agreement is settlement of the United States' bananas dispute with the EU, provided certain conditions are met.

Husked Rice Agreement

The United States has ongoing concerns regarding the operation of the U.S.-EU husked rice agreement, which has been in effect since 2005. Under the terms of this bilateral agreement, negotiated as a result of the EU's decision to modify the tariff concessions agreed to in the Uruguay Round, the applied tariff for husked rice imports from the United States is determined by the total quantity of husked rice (excluding basmati) imported by the EU, and is adjusted every six months. Discussions on this subject with the European Commission have focused on the annual increase in the import reference volume and the longer-term operation of the tariff adjustment mechanism set out in the agreement. The United States has sought a significant increase in the import reference quantity in the husked rice agreement. The longer-term U.S. objective is the elimination of EU tariffs on brown rice and other U.S. agricultural products under the T-TIP agreement.

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

The EU Common Market Organization (CMO) for fruit and vegetables came into effect on January 1, 2008. 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 2013, after the end of a five-year transitional period, EU support for this sector was fully decoupled from production decisions. However, hidden subsidies remain an ongoing concern for U.S. producers. In their view, the decoupled Single Farm Payments are funded by the European Commission and paid to the Member States, then channeled through POs to producers. The United States continues to monitor and review EU assistance in this sector, evaluating potential trade-distorting effects.

EU Enlargement

In December 2006, the United States entered into negotiations with the EU, within the framework of the GATT 1994 provisions relating to the expansion of customs unions, regarding compensation for certain tariff increases related to Romania's and Bulgaria's EU accession on January 1, 2007. Upon accession to the EU, Romania and Bulgaria were required to change their tariff schedules to conform to the EU's common external tariff schedule, which resulted in increased tariffs on the importation of certain, mainly agricultural, products. Under GATT Articles XXIV:6 and XXVIII, the United States is entitled to compensation from the EU to offset these tariff increases. In late 2011, the United States concluded negotiation of a bilateral compensation agreement with the EU covering several agricultural products, and the two sides signed the agreement in 2012. The agreement establishes or increases EU tariff-rate quotas allocated to the United States for several agricultural products. The United States and the EU brought the agreement into force on July 1, 2013.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2013, the European Commission continued implementation of its 2011 intellectual property rights (IPR) strategy that includes initiatives on enforcement and copyright, as well as a renewed effort to adopt an EU-wide patent regime. Although patent filing costs have decreased in the EU, patent filing and maintenance fees in the EU and its Member States remain significantly higher than in other countries, including the United States. The IPR strategy also included launching a study into extending geographical indication (GI) protection for products other than agricultural products and food stuffs, which are currently eligible for GI protection in the EU.

The United States continues to have serious concerns with the EU's system for the protection of GIs, including with respect to its negative impact on the protection of trademark and market access for U.S. products that use generic names. The EU adopted its current GI regulation for food products, Council Regulation (EC) 510/06, in response to WTO DSB findings in a case brought by the United States (and a related case brought by Australia) that the EU GI system impermissibly discriminated against non-EU products and persons. The DSB also agreed with the United States that the EU could not create broad exceptions to trademark rights guaranteed by the TRIPS Agreement. The United States continues to have concerns about this regulation and intends to monitor carefully both its implementation and current initiatives to modify it. These concerns also extend to Council Regulation (EC) 479/08, which relates to wines, and to Commission Regulation (EC) 607/09, which relates, *inter alia*, to GIs and traditional terms of wine sector products. The United States is carefully monitoring the implementation of each of these regulations.

With respect to copyright protection, the European Commission decided in December 2012 to initiate a two-part copyright program, set out in the Commission Communication entitled "Content in the Digital Single Market." Under the first part of that program, the Commission launched a stakeholder dialogue, known as "Licenses for Europe," to address key copyright issues in the EU. The stakeholder dialogue was divided into four working groups: cross-border access and portability of services, user generated content and micro-licensing, audiovisual heritage, and text and data mining. In November 2013, stakeholders agreed to a series of pledges, contained in "Ten Pledges to Bring More Content Online." The second part of the program involves completing the Commission's review of the EU copyright legislation framework with a view to a decision by the spring of 2014 on whether to table legislative reform proposals. As part of this review, the Commission launched a public consultation to gather input from all stakeholders on the review of the EU copyright rules between December 5, 2013 and February 5, 2014. The United States welcomes the inclusion of U.S. stakeholders in these Commission-led processes and urges that any outcomes of this program fully reflect the value of copyright industries to the EU, transatlantic, and global economies and continue to promote strong copyright protection and enforcement internally and internationally.

Member State Measures

While there have been improvements in some Member States, the United States continues to have concerns about IPR protection and enforcement in several Member States. The United States actively engages with the relevant authorities in these countries and will continue to monitor the adequacy and effectiveness of IPR protection and enforcement, including through the annual Special 301 review process.

Austria: Austria was not listed in the 2013 Special 301 Report. U.S. copyright holders report, however, that while legal protections are strong in principle, procedural obstacles continue to limit efforts to effectively combat online piracy.

Bulgaria: Bulgaria was added to the Watch List in the 2013 Special 301 Report. U.S. industry reports continued concerns about IPR enforcement, including with respect to piracy over the Internet. Stakeholders have also highlighted the need for Bulgaria to enhance the effectiveness of its patent and trademark enforcement system, including with respect to prosecutions and to address bad-faith trademark registration at the Bulgarian Patent Office. For example, U.S. exporters of distilled spirits have expressed concerns regarding trademark infringement and limited enforcement against locally-produced counterfeit products. Bulgaria has an established process for administrative rulings and appeals in cases of patent and trademark infringement, although significant concerns remain regarding the decisions issued in those adjudicatory proceedings.

Czech Republic: The Czech Republic was not listed in the 2013 Special 301 Report. The Czech Republic has made considerable progress in IPR enforcement in the approximately 50 open air markets that line the country's borders with Germany and Austria. This success in physical markets has pushed more activity into the online realm, where digital lockers containing pirated content remain a problem. Nevertheless, when IPR holders have gone to the courts, there have been positive results. There have been instances where rights holders have won sizable (for the Czech justice system) monetary settlements against online sites for allowing illegal downloads of copyrighted material.

Finland: Finland remained on the Watch List in the 2013 Special 301 Report. The key concern cited in the report was the lack of product patent protection for certain pharmaceutical products and a regulatory framework that denied adequate protection for some process patents filed before 1995 and those that were pending in 1996. Affected products include top-selling U.S. pharmaceutical products currently on the Finnish market.

Greece: Greece remained on the Watch List in the 2013 Special 301 Report. The United States acknowledges some improvements in IPR protection and enforcement in Greece, including actions taken against piracy over the Internet. However, inadequate IPR protection continues to pose barriers to U.S. exports and investment. Key issues cited in the 2013 Special 301 Report include widespread copyright piracy and weak and inconsistent IPR enforcement.

Hungary: Hungary was not listed in the 2013 Special 301 Report. Hungary and the United States have had an established bilateral Intellectual Property Agreement for over a decade. In 2010, Hungary was removed from the Special 301 Watch List. In 2012, Hungary joined the Patent Prosecution Highway (PPH) program, signing a Memorandum of Understanding with the United States. The PPH program is a process that allows a patent ruling in one country to begin a fast track process in another country for the same patent.

Italy: Italy remained on the Watch List in the 2013 Special 301 Report. Italy's listing in the Report was primarily due to ongoing concerns regarding piracy over the Internet. Notably, on December 12, 2013, the Italian Communications Regulatory Authority adopted regulations regarding piracy over the Internet, which are scheduled to enter into effect on March 31, 2014. The United States is reviewing those regulations.

Latvia: Latvia was not listed in the 2013 Special 301 Report. In recent years, Latvia has taken steps to improve IPR protection and enforcement in its market, including amendments to its intellectual property

criminal statutes that have simplified certain aspects of infringement cases and may result in more successful prosecutions of IPR violations. Yet, concerns remain with respect to Latvian law, including regarding the ability to secure deterrent penalties under the Copyright Law, and the lack of provisions in the Public Procurement Law requiring use by government authorities of legitimate software. On enforcement, police and prosecutors actively pursue IPR cases, but a lack of resources and severe backlogs in police forensics labs hamper their efforts. While the Latvian judicial climate is improving with the publication of judgments online and a reduction in the backlog of pending cases, there are still significant challenges, including lengthy proceedings and high evidentiary burdens.

Malta: Malta was not listed in the 2013 Special 301 Report. Although industry reports indicate that Malta's civil regime for copyright is generally adequate, industry believes that Malta's criminal law is insufficient, including with respect to inadequate deterrence of IPR infringement. While the relevant provisions of the Maltese Criminal Code are generally viewed as satisfactory in the context of trademarks and designs, the Criminal Code provisions governing other intellectual property rights remain largely un-enforced and should be updated to reflect technological advances.

Poland: Poland was not listed in the 2013 Special 301 Report. Over the past three years, the government has implemented a national IPR strategy, entitled "Program for the Protection of Copyright and Related Rights 2011-2013," which adopted EU IPR protection strategies. The government plans to announce a new program for 2014-2016 in early 2014. The Polish government organizes monthly stakeholder workshops on copyright law and related issues. On October 24, 2013, the government published a report on the implementation of Poland's 1994 copyright law and related rights, which recommended several reforms including with respect to improvements of the Ministry of Culture and National Heritage's copyright committee. The report also recommends that the government establish a separate court division to handle IPR cases, and that copyright management organizations include in their reports detailed information on who is charged and how residuals are distributed for a particular work.

Portugal: Portugal was not listed in the 2013 Special 301 Report. Portugal regularly conducts inspections for illegal goods at street fairs, markets, and festivals. However, it does not have adequate mechanisms to effectively deter piracy over the Internet. Court cases involving IPR often take years to resolve and rarely result in convictions. Furthermore, courts rarely order an injunction against the activity in question while a case is pending. Portugal has two judges dedicated to IPR matters who have reportedly not received specialized training.

Romania: Romania remained on the Watch List in the 2013 Special 301 Report. While counterfeit physical goods, infringing optical discs, and street piracy continued to decline in 2013, piracy over the Internet, especially peer-to-peer downloading, remains a serious concern. IPR enforcement also remains inadequate, with serious questions arising regarding Romania's commitments to such enforcement, reflected in reduced cooperation among enforcement authorities, a decline in the number of enforcement actions and a lack of meaningful sanctions. Other enforcement concerns include the 2010 changes to the Penal Code, which provide for trial court adjudication of IPR cases, where the judges and prosecutors have substantially less IPR expertise, higher rates of turnover, judicial inefficiency, and only limited use of deterrent sentences. In particular, enforcement efforts have not adequately addressed piracy over the Internet in Romania.

Spain: Spain was not listed in the 2013 Special 301 Report. Spain was removed from the Watch List in the 2012 Special 301 Report in recognition of efforts with respect to IPR protection and enforcement, including the December 2011 adoption of regulations implementing provisions of the Sustainable Economy Law (commonly known as the Ley Sinde), a law to combat copyright piracy over the Internet.

However, concerns remain regarding the Spanish government's efforts to combat online piracy, including its implementation of the Ley Sinde and the impact the 2006 Prosecutor General's Circular that appears to decriminalize illegal peer-to-peer file sharing of infringing materials, further perpetuating the ongoing perception by the public and judges that unauthorized Internet downloads are not an illicit activity. In 2013, the government of Spain initiated a series of legislative reform initiatives with respect to IPR, but progress has been slow. The Ministry of Culture's 2012-2015 Strategic Plan sets objectives and strategies to guide Spain's cultural policy over the next four years including strengthening the legal framework for the protection of rights derived from intellectual property. In 2014, the United States will continue to carefully monitor the implementation of the Ley Sinde provisions, as well as the reform of Spain's IP, criminal, and civil procedure laws.

Sweden: Sweden was not listed in the 2013 Special 301 Report. Sweden continues to grapple with widespread piracy on the Internet, but government enforcement efforts have begun to show positive results. Following the entry into force in April 2009 of legislation implementing the EU Enforcement Directive, several major pirate websites left Sweden. Nonetheless, Sweden still hosts some large online pirate sites, several of which are listed in USTR's Notorious Markets List. Legal sales over the Internet have increased in recent years, in part because of Swedish enforcement efforts.

SERVICES BARRIERS

Telecommunications

EU Member States' WTO commitments covering telecommunications services and EU legislation have encouraged liberalization and competition in the telecommunications sectors in EU Member States since the late 1990s. All EU Member States made WTO commitments to provide market access and national treatment for voice telephony and data services. The EU's 2002 Common Regulatory Framework for Electronic Communications Networks and Services (Framework Directive) imposed additional liberalization and harmonization requirements on Member States. Implementation of these requirements has been uneven across Member States, however, and significant problems remain in many markets, including with the provisioning and pricing of unbundled local loops, line sharing, co-location, and the provisioning of leased lines.

In 2009, the Commission amended EU telecommunications legislation, including the Framework Directive, with a third telecommunications package with the aim of harmonizing Europe's telecommunications markets. Perhaps the most significant change was the creation of the Body of European Regulators for Electronic Communications (BEREC). Increased Member State coordination, a larger role for the Commission, and the creation of BEREC were intended to help ensure fair competition and more consistency in the regulation of telecommunications markets within the EU. The deadline to transpose the revised directives into national law was May 25, 2011. All EU member states have now completed the transposition.

The European Commission is undertaking infringement procedures for incorrect transposition of the revised directives against two Member States, Belgium and the Netherlands, a process that could see the Commission referring both Member States to the EU Court of Justice.

Building upon the 2009 regulatory framework, in September 2013, the Commission presented its draft for a regulation "Laying down measures to complete the European single market for electronic communications and to achieve a Connected Continent." The proposal includes new rules on net neutrality, network investments, and roaming. In light of the tardiness and complexity of the proposal, as

well as the spring 2014 European Parliament elections and the transition to a new Commission in the fall, it is likely that the Commission will withdraw the proposal and reformulate it for later consideration.

EU institutions are also discussing proposals on data protection, which could restrict international data flows, and are reviewing the Data Retention Directive. In addition, the Commission has launched a European Radio Spectrum Policy Program to improve radio spectrum management in Europe.

Member State Measures

France: France has implemented all relevant EU Telecommunications Directives. The government holds a 27 percent share in global telecommunications company Orange (formerly France Telecom), and the company has 37 percent of the French mobile market.

In July 2013, France's Constitutional Council revoked legal provisions governing the powers of the regulator, Autorite de Regulation des Communications Electroniques et des Postes (Arcep), stripping it of its authority to enforce sanctions. ARCEP asked Skype to register as a provider of electronic communications service. After Skype did not do so, ARCEP referred the matter to the French government.

Germany: Despite increased competition in some sectors of Germany's telecommunications market, Deutsche Telekom (DT) retains a dominant position in a number of key market segments, including local loop and broadband connections. DT's competitors continue to call for more effective regulation of the competitive environment. At the end of 2013, Germany's Monopolies Commission published a report recommending that the government sell its direct and indirect stake in Deutsche Telekom.

Hungary: The cellular service market in Hungary is nearly 100 percent controlled by Germany's T-Mobile, Britain's Vodafone, and Norway's Telenor. While some sector-specific taxes on mobile providers expired in 2012, taxes on phone calls and text messages continue – part of a Hungarian government trend of applying sector-specific taxes in sectors that are largely controlled by foreign firms. The European Commission initiated infringement proceedings on the taxes, but the EU Court of Justice ultimately ruled against the European Commission and the infringement proceedings were dropped.

Italy: Telecom Italia (TI), the former state-owned monopoly operator, is the largest telecommunications provider in Italy. Spain's Telefonica, holds a 46 percent stake in Telco, the holding company that owns 22.4 percent of TI. Telefonica has an option to take a controlling stake in Telco, but possible antitrust obstacles have prevented this from happening thus far. TI sources tell us that newly appointed top management has put the plan on hold but not cancelled it. In the meantime, they are strengthening the functional separation between pure services and infrastructure operations.

TI's overall domestic market share is decreasing with respect to its competitors. Its share of the fixed-line market declined to approximately 63.4 percent in the third quarter of 2013 (down from 65.3 percent in the third quarter of 2012). Similarly, TI's share of the Italian retail broadband market was 49.7 percent in the third quarter of 2013 (compared to 51.7 percent in the third quarter of 2012). TI's market share for mobile subscribers was 34.2 percent in the third quarter of 2013 (it was 34.7 percent in the third quarter of 2012). Telecom Italia's chief executive has outlined a three-year plan that includes asset sales and increased investment in the Italian market.

Television Broadcasting and Audiovisual Services

The 2007 EU Directive on Audiovisual Media Services (AVMS) amended and extended the scope of the Television without Frontiers Directive (which covered traditional broadcasting, whether delivered by terrestrial, cable, or satellite means) to also cover audiovisual media services provided on-demand, including via the Internet. EU Member State content quotas for broadcasting remain in place. On-demand services are subject to somewhat less restrictive provisions than traditional broadcasting under the AVMS Directive, which does not set any strict content quota, but still requires Member States to ensure that on-demand services encourage production of, and access to, EU works. This could be interpreted to refer to the financial contribution made by such services to the production and rights acquisition of EU works or to the prominence of EU works in the catalogues of video on-demand services.

Member State Measures

Several EU 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 EU Broadcast Directive in a restrictive manner. France's implementing legislation, which was approved by the European Commission in 1992, requires that 60 percent of programming be EU and 40 percent French language. These requirements exceed those of the Broadcast Directive. Moreover, these quotas apply to both the regular and prime time programming slots, and the definition of prime time differs from network to network. The prime time restrictions pose a significant barrier to U.S. programs in the French market. Internet, cable, and satellite networks are permitted to broadcast as little as 50 percent EU content (the AVMS Directive minimum) and 30 percent to 35 percent French-language product, but, in exchange, channels and services are required to increase their investment in the production of French-language product. In addition, radio broadcast quotas that have been in effect since 1996 specify that 40 percent of songs on almost all French private and public radio stations must be in French.

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 with more than two prints, or through staggered and interlocking projection techniques, in such a way as to account for more than 30 percent of the multiplex's weekly shows. Theatrically released feature films are not allowed to be advertised on television. France also maintains a four-month waiting period between the date a movie exits the cinema and the date when it can be shown on video-on-demand.

Italy: Broadcasting Law DL 44, which implements EU regulations, reserves 50 percent of the programming time (excluding sports, news, game shows, and advertisements) for EU works. Ten percent of transmissions (and 20 percent for state broadcaster RAI) must be reserved for EU works produced during the preceding 5 years. Within this quota, an undefined percentage of time must be reserved for Italian movies.

Poland: Broadcasters in Poland must devote at least 33 percent of their broadcasting time each quarter to programming that was originally produced in the Polish language.

Spain: For every three days that a film from a non-EU country is screened, in its original language or dubbed into one of Spain's languages, one EU film must be shown. This ratio is reduced to four to one if the cinema screens a film in an official language of Spain and keeps showing the film in that language

throughout the day. In addition, broadcasters and providers of other audiovisual media services must annually invest 5 percent of their revenues in the production of EU and Spanish films and audiovisual programs. In 2010, the government revised the audiovisual law and imposed restrictions on non-EU ownership (limited to no more than 25 percent share) and leasing of AV licenses, which have negatively impacted U.S. investors. Following the 2010 amendment, several U.S. investors signed agreements with Spanish AV license holders to provide content for free-to-air television channels, but a Supreme Court decision in November 2012 annulled the digital terrestrial television broadcasting licenses of these Spanish firms, asserting that the government had not followed the proper public tender process in allocating the licenses in 2010, putting U.S. investments at risk. In March 2013, the cabinet authorized the channels to continue broadcasting until the end of the year, but the Spanish government intends to subsequently reallocate the spectrum to 4G mobile technology. The U.S. Embassy has raised the concerns of U.S. investors with the Spanish government.

Legal Services

Austria, Cyprus, Greece, Hungary, Lithuania, Malta, and Slovakia require EU nationality for full admission to the bar, which is necessary for the practice of EU and Member State law. Belgium and Finland require EU nationality for legal representation services. In many cases, non-EU lawyers holding authorization to practice law in one Member State face more burdensome procedures to obtain authorization in another Member State than would a similarly situated lawyer holding EU citizenship.

Member State Measures

Bulgaria: The Bulgarian Bar Act allows law firms registered in the EU to practice in Bulgaria under their original name after they register with the local bar association. However, at least one of the partners has to be registered both in Bulgaria and in another EU Member State if the local partnership is to use an internationally recognized name.

Czech Republic: In contrast to EU-based law firms, U.S. law firms cannot establish Czech branches to practice law (*i.e.*, operate directly through their home legal entities). Attorneys from U.S. law firms admitted as foreign lawyers, together with Czech lawyers, may establish local partnerships.

Hungary: U.S. lawyers may provide legal services only under a “cooperation agreement” in partnership with a Hungarian law firm and can only provide information to their clients on U.S. or international law.

Portugal: Portuguese law requires that practicing lawyers be members of the Portuguese Bar Association. The Portuguese Bar Association requires that members graduate from a Portuguese or Brazilian law school. U.S. citizens with a law degree may apply as legal trainees if the law degree is recognized by a Portuguese law school and if the U.S. citizen has a valid Portuguese residence authorization. The successful completion of legal internship and the mandatory Bar Association exams are required for a U.S. citizen to practice law in Portugal.

Accounting and Auditing Services

Member State Measures

Portugal: Portuguese law requires that practicing accountants and auditors be accredited by one of two Portuguese accounting associations, which require legal residency. Portuguese language ability and

citizenship of a country with a reciprocal agreement or EU citizenship are prerequisites for membership in the associations.

EU Enlargement

Upon each of the three most recent rounds of EU enlargement, the EU has submitted notifications to WTO Members concerning the modification of existing commitments under the GATS by the newly acceded members of the EU. In accordance with GATS Article XXI, the EU was required to enter into negotiations with any other WTO member that indicated that it was affected by the modification of existing commitments. In connection with the largest of these rounds of enlargement, the expansion to 25 members in 2004, the United States and EU successfully negotiated a compensation package, which was agreed on August 7, 2006. To date, however, the European Commission has failed to secure the approval of all EU Member States, which is necessary to implement the agreement. USTR will continue to monitor this process to ensure the agreement is implemented as soon as possible.

INVESTMENT BARRIERS

Foreign investors in the EU are accorded national treatment in most sectors and, with few exceptions, EU law requires that any company established under the laws of one Member State must receive national treatment in all other Member States, regardless of the company's ultimate ownership. As discussed below, however, EU law does impose some restrictions on U.S. and other foreign investments and, in many instances, individual Member State policies and practices have had a more significant impact on U.S. investment than EU-level policies.

Prior to the adoption of the Lisbon Treaty in December 2009, the European Commission shared competence with Member States on foreign investment issues. Member States negotiated their own bilateral investment treaties (BITs) and generally retained responsibility for their foreign investment regimes, while the EU negotiated investment-related market access provisions in EU economic agreements. Article 207 of the Lisbon Treaty brings foreign direct investment (FDI) under the umbrella of Europe's common commercial policy, making it the exclusive competence of the EU. FDI is not defined in the Treaty, however, leaving many practical implications of the Treaty for EU external investment policy unclear.

Member State Measures

Bulgaria: Weak corporate governance remains a problem in Bulgaria. Although legislative protection for minority shareholders has been improved through insolvency rules in Bulgaria's Commercial Code and changes to its Law on Public Offering of Securities, enforcement of these statutory provisions remains inadequate.

Cyprus: Cypriot law imposes significant restrictions on the foreign ownership of real property. 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 can be made for projects requiring larger plots of land, but are difficult to obtain and rarely granted. Only citizens of EU Member States have the right to register as construction contractors in Cyprus, and non-EU entities are not allowed to own a majority stake in a local construction company. Non-EU natural persons or legal entities may bid on specific construction projects, but only after obtaining a special license from the Cypriot Council of Ministers.

France: Pursuant to a November 2004 law that streamlined the French Monetary and Financial Code, the State Council defined a number of sensitive sectors in which prior approval would be required before foreign acquisition of a controlling equity stake is permitted. A December 2005 government decree (Decree 2005-1739) lists the 11 business sectors in which the French government will monitor, and can potentially restrict, foreign ownership through a system of “prior authorization.” In 2013, France’s Minister of Industrial Recovery announced the desire of the government to take new measures to protect French companies against hostile takeover bids, including measures to protect against creeping takeovers, to develop long-term shareholder equity, and to soften conditions governing the issuance of so-called “poison pills.” The measures are part of a bill called “Proposal Aimed at Reconquering the Real Economy.” The National Assembly passed the bill, but a Senate Commission is still examining the draft legislation.

The government of France has expressed concern over the acquisition of “strategic” companies, whose stock prices fell steeply in the wake of the financial crisis. Near the end of 2008, then-President Sarkozy announced the establishment of a strategic investment fund (Fonds Stratégique d'Investissement – FSI) to assume a stake in companies with “key technologies.” The fund would be run as a “strategic priority” by the Caisse des Dépôts et Consignations (CDC), a state-sponsored financial institution and France’s largest institutional investor, under parliamentary supervision. In July 2013, the creation of the Public Investment Bank (Banque Publique d'Investissement – BPI) merged Bpifrance Financement (previously Oséo) and Bpifrance Investissement (regrouping CDC Entreprises, FSI and FSI Régions) to officially become one entity with the role of supporting the French economy by gathering resources in a single institution. The government has also asked the CDC to work as a domestic buffer against foreign takeovers by increasing its stake in French companies. The government is also able to become directly involved in mergers and acquisitions by using its “golden share” in state-owned firms to protect perceived national interests.

Greece: All purchases of land in border areas and on certain islands require approval from the Ministry of Defense. The definition of “border area” is broader for non-EU purchasers of land and obtaining approval for purchase is more burdensome. Greek authorities consider local content and export performance criteria when evaluating applications for tax and investment incentives, although such criteria are not prerequisites for approving investments.

Parliament has passed numerous laws recently aimed at fostering growth, reducing bureaucratic hurdles for investors, and attracting foreign investment. The laws primarily provide for investment incentives, the establishment of a “one-stop shop” for those interested in making major investments, and simplification of the process for setting up new businesses. Greece has also lowered the corporate tax rate from 40 percent to 26 percent in 2013, and Prime Minister Samaras stated his intention to reduce the tax further to 15 percent.

Hungary: Since 2010, the Fidesz government has used its two-thirds majority in parliament to replace the constitution and pass several hundred laws – including many “cardinal” laws that require a two-thirds majority to repeal. U.S. investors have expressed concern about the impact of the volume and pace of these legislative changes on Hungary’s investment climate, as well as concern that future governments may be unable to change laws that require a two-thirds majority to repeal or amend. Additionally, some companies claim that recent “crisis taxes” target certain industries and sectors over others, adding to the uncertainty about whether the government views these sectors favorably or whether other sectors may be targeted next.

Lithuania: U.S. citizens and foreign investors have reported difficulties obtaining and renewing residency permits, with decisions by the Migration Office on the issuance of permits taking up to six months. Non-Lithuanians are generally not able to buy agricultural or forestry land. As part of its EU accession agreement, Lithuania is required to eliminate this restriction in 2014. Notwithstanding this EU agreement, a social movement called Zemes Vardu (“in the name of land”) has reportedly collected enough signatures to hold a national referendum on banning sale of land to non-Lithuanians.

Romania: Uncertainty and a lack of predictability in legal and regulatory systems pose a continuing impediment to foreign investment in Romania. Tax laws change frequently and many companies experience long delays in receiving VAT refunds to which they are legally entitled. Deadlines stipulated by law for the processing and payment of refunds are often not respected. Companies have reported frequent instances in which the government has issued legal decrees or regulations affecting the business climate without following required transparency and public consultation procedures. Tort cases often require lengthy and expensive procedures, and judicial rulings are reportedly often inconsistent.

GOVERNMENT PROCUREMENT

The EU is a signatory to the WTO Government Procurement Agreement (GPA). U.S. suppliers participate in EU Member States’ government procurement tenders, but the lack of quality EU statistics that takes into account the country of origin of winning bids makes it difficult to assess the level of U.S. and non-EU participation.

The current EU Utilities Directive (2004/17) covers purchases in the water, transportation, energy, and postal services sectors. This Directive requires open, competitive bidding procedures, but discriminates against 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 the following sectors: water (production, transport, and distribution of drinking water); energy (gas and heat); urban transport (urban railway, automated systems, tramway, bus, trolley bus, and cable); and postal services.

In 2014, the European Parliament is set to approve three legislative proposals on public procurement including: (1) a revised Public Procurement Directive for general sectors; (2) a revised Public Procurement Directive for the utilities sectors; and (3) a new EU Public Procurement Directive on concessions contracts. A fourth proposal, aimed at regulating access of third-country goods and services to the EU public procurement market (relative to the access provided to EU goods and services in third-country public procurement markets), is still being debated in the European Parliament and in the EU Member States. U.S. access to the EU’s non-GPA covered procurement could be affected under this new Regulation.

Member State Measures

Bulgaria: The public procurement process in Bulgaria is not always transparent, and industry reports that it is frequently discriminatory and unfair. There are persistent complaints that tenders are narrowly defined and that they appear tailored to a specific company. One company has recently reported that a procurement for equipment included over 550 mandatory specifications, which in practice excluded all companies except for one to bid on the tender. U.S. companies also complain that they face difficulties having their certification documents accepted to qualify as bidders on public procurement projects. The latter include extremely tight deadlines and requests for documentation that are not necessary in any other country, and they are very difficult to obtain on short notice.

Czech Republic: In 2012, the Czech government adopted a major public procurement reform bill which addressed some transparency and corruption concerns. The legislation also lowered the threshold for the application of procurement rules to CZK 1 million (\$50,000). But in 2013, President Zeman signed an amendment to the law that in 2014 will restore the original, CZK 3 million (\$150,000) threshold for construction contracts. The law will continue to require more than one bidder for all procurements and publication of tender specifications. The law also requires bidders to disclose more of their ownership structure in the bidding process. However, it maintains loopholes that could permit bidders to subcontract to anonymously held companies. Prior to the collapse of the previous center-right government in June, the Ministry of Justice and the Ministry of Finance were working on related legislation requiring full identification of ownership for all recipients of public tenders. The Ministry of Regional Development was separately developing guidelines to make the process clearer for bidders and for state institutions that issue tenders.

France: The French government continues to maintain ownership shares in several major defense contractors (EADS, now Airbus – 12 percent of voting rights after the sale of 2.1 percent stake; Safran – 27.02 percent; and Thalès – 27 percent of indirect share ownership). 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: Greece imposes onerous qualification requirements on companies seeking to bid on public procurement tenders. Companies must submit documentation from competent authorities indicating that they have paid taxes, have not been in bankruptcy, and have paid in full their social security obligations for their employees. All managing directors and board members of companies that want to participate in procurements must submit certifications from competent authorities that they have not engaged in fraud, money laundering, criminal activity, or similar activities. It is difficult for U.S. firms to comply with these requirements, because there are no competent authorities in the United States that issue these types of certifications.

The U.S. Embassy in Athens and the Greek Ministry of Development reached an agreement in late 2008 that would allow U.S. companies to submit sworn, notarized, and translated statements from corporate officers, along with an official statement from the U.S. Embassy in Athens stating that no U.S. federal authority issues the documents otherwise required under Greek procurement law. Despite this agreement, the potential remains for considerable confusion among Greek authorities as to how U.S. firms may comply with these requirements. However, to date, there are no cases known to the U.S. Government where this process has had a negative impact on procurement tender.

Additionally, U.S. industry has complained that procurements in Greece are not always transparent and that some tenders, such as for medical equipment to be installed in hospitals, contain technical specifications that favor specific Greek suppliers. The U.S. Government is continuing to engage with the Greek government on this issue. Greece also continues to require offsets as a condition for the awarding of defense contracts.

On May 2013, the Greek government passed Public Law 4155 establishing the National System of Electronic Public Contracts (ESIDIS). The system envisages that public sector entities will electronically administer the entire public procurement process (*i.e.*, the publication of tenders, submission of offers, conduct of the contract, monitoring the execution of the contract, online orders, invoicing, and payments). Central government procurements have been processed electronically since July 1, 2013. The government's goal is to expand the electronic procedure to the entire public sector by October 1, 2015.

The system aims to simplify and accelerate the public sector's procurement system through increased transparency and cost effectiveness.

Hungary: Inadequate transparency in public procurement continues to be a significant problem in Hungary. In January 2012 a new Public Procurement Act came into force with the government claiming that it would speed procurement and improve transparency. The new procurement law is criticized by transparency watchdogs because state enterprises and ministries can conduct procurement without a public announcement for the purchase of goods or services up to HUF 25 million (\$112,000) or for construction valued at less than HUF 150 million (\$675,000). Transparency watchdogs have also noted that larger contracts that would have required a public bid are now broken up into smaller contracts that fall under the thresholds. Hungarian companies, state-owned enterprises, or companies close to the government still appear to have an advantage over other players in public tenders.

Italy: Italy's public procurement practice is often criticized for a lack of transparency, which has created obstacles for some U.S. bidders. Laws implemented in the mid-1990s reduced corruption, but industry asserts that it still exists, especially at the local level. In 2012, the Italian parliament approved an anticorruption bill which, among other things, introduces greater transparency and more stringent procedures in the public procurement process. Over 2013, some implementing regulations were introduced to increase transparency, including measures regulating the conduct of civil servants. However, it is still too early to gauge the effectiveness of these regulations, and Italian press has reported on alleged corruption involving the abuse of emergency procurement laws. To increase transparency, the Italian government has also started publishing information online about the use of public funds, including data on procurement.

Lithuania: The public procurement process in Lithuania is not always transparent. There are persistent complaints that some tenders are so narrowly defined that they appear tailored to a specific company. The government has made procurement reform a top priority and is starting to improve transparency by implementing online public procurement of its central purchasing body, the central project management agency. In 2013, the government adopted legislation requiring all public procurement to occur through a centralized online portal by 2014 and all contracts to be published by 2015. Since 2003, the Lithuanian government has often required offset agreements as a condition for the award of contracts for procurement of military equipment.

Portugal: U.S. firms report that the Portuguese government tends to favor EU firms, even when bids from U.S. firms are technically superior or lower in price. U.S. firms also report that they are more successful when bidding as part of consortia or as part of joint ventures with Portuguese or other EU firms.

Romania: Romania requires offsets as a condition for the awarding of defense contracts. Romania revised its public procurement law in 2013, exempting certain state owned enterprises from the public procurement law and allowing them to use nontransparent procedures for their procurements. In an effort to enhance absorption of EU funds, the government has simplified the procurement procedures for private sector beneficiaries of EU funds.

Slovenia: U.S. firms continue to express concern that the public procurement process in Slovenia is nontransparent. Other complaints include short timeframes for bid preparation, lack of clarity in tendering documentation, and opacity in the bid evaluation process. One complaint involves the quasi-judicial National Revision Commission (NRC), which reviews all disputed public procurement cases. The NRC has extraordinary powers to review, amend, and cancel tenders, and its decisions are not subject to judicial appeal. There also are concerns that the NRC favors EU, and especially Slovenian, firms under its

ambiguous “national interest” standard, regardless of cost or doubts about a firm’s ability to deliver and service its products.

SUBSIDIES

Government Support for Airbus

Over many years, the governments of Belgium, France, Germany, Spain, and the United Kingdom have provided subsidies to their Airbus-affiliated companies to aid in the development, production, and marketing of Airbus’s large civil aircraft. These governments have financed between 33 percent and 100 percent of the development costs of all Airbus aircraft models (launch aid) and have provided other forms of support, including equity infusions, debt forgiveness, debt rollovers, research and development funding, and marketing assistance, in addition to political and economic pressure on purchasing governments. The EU’s aeronautics research programs are driven significantly by a policy intended to enhance the international competitiveness of the EU civil aeronautics industry. EU governments have spent hundreds of millions of euros to create infrastructure for Airbus programs, including €751 million spent by the city of Hamburg to drain the wetlands that Airbus is currently using as an assembly site for the A380 “superjumbo” aircraft. French authorities also spent €182 million to create the AeroConstellation site, which contains additional facilities for the A380. The Airbus A380, the beneficiary of more than \$5 billion in subsidies, is the most heavily subsidized aircraft in history. Some EU governments have also made legally binding commitments of launch aid for the new Airbus A350 aircraft, even though Airbus has barely begun to repay the financing it has received for the A380.

Airbus SAS, the successor to the original Airbus consortium, is owned by the Airbus Group, which is now the second largest aerospace company in the world. This entity was previously known as the European Aeronautic, Defense, and Space Company (EADS). The name change accompanies a reorganization of the company’s ownership structure, resulting in the governments of Germany and France each owning up to 12 percent of the shares, Spain approximately 4 percent, and the remaining approximately 72 percent of shares trading on open markets. The reorganization also ended these governments’ rights to veto strategic decisions and to appoint directors to the Airbus board. Instead, the governments only have the right to veto board members appointed by the company. The Airbus Group accounted for more than half of worldwide deliveries of new large civil aircraft over the last few years, and is a mature company that should face the same commercial risks as its global competitors.

In October 2004, following unsuccessful U.S.-initiated efforts to negotiate a new U.S.-EU agreement that would end subsidies for the development and production of large civil aircraft, the United States exercised its right to terminate the 1992 U.S.-EU Bilateral Agreement on Large Civil Aircraft. The United States also commenced WTO consultations, which failed to resolve the U.S. concerns. A renewed effort to negotiate a solution ended without success in April 2005.

On May 31, 2005, the United States requested establishment of a WTO panel to address its concern that EU subsidies were inconsistent with the WTO Agreement on Subsidies and Countervailing Measures. The WTO established the panel on July 20, 2005. In 2010, the dispute settlement panel found in favor of the United States on the central claims, and the Appellate Body upheld the finding of WTO inconsistency in 2011. On December 1, 2011, the EU submitted a notification to the WTO asserting that it had taken appropriate steps to bring its measures into conformity with its WTO obligations. On December 9, 2011, the United States requested consultations with the EU to address its concern that the EU had failed to bring its Airbus subsidies into conformity with WTO rules. That dispute is currently before a WTO panel, which has indicated that it expects to complete its work by the end of 2014.

During this period, the ongoing WTO dispute did not cut the flow of money to Airbus. In 2009, EADS's total European government (UK, France, Germany, Spain) refundable advances outstanding amounted to €5.3 billion, of which €3.6 billion was for the A380, €1.2 billion for long-range wide body aircraft, and €0.2 billion for Eurocopter.

In September 2009, the UK government announced it would lend plane maker Airbus £340 million (\$540 million) in launch aid to develop its new wide-body aircraft, the A350XWB. The loan for the A350XWB model comes partly from the UK government's £750 million (\$1.2 billion) Strategic Investment Fund. The launch aid is intended to safeguard 1,200 jobs at Airbus's plants in Filton, near Bristol, and Broughton in north Wales. It also secures Britain's share of the work on the Airbus aircraft and a further 5,000 jobs at Airbus suppliers. Airbus's sites in the UK specialize in wing manufacturing, but also make landing gear and fuel integration systems. France, Germany, and Spain have announced similar funding for Airbus.

Government Support for Airbus Suppliers

Member State Measures

Belgium: The federal government of Belgium, in coordination with Belgium's three regional governments, subsidizes Belgian manufacturers that supply parts to Airbus. In the fall of 2006, the EU Commissioner for Competition concluded that Belgium's €195 million support program exceeded the allowable level of support under EU regulations. The Belgian federal government in June 2007 subsequently reduced its support fund to €150 million, but simultaneously, the Flemish regional government set up a €50 million start-up fund for the aviation sector in Flanders. It is unclear how much assistance already paid to the companies for the A350 program, if any, has been reimbursed. The Belgian commitment to the A380 superjumbo was €195 million, not all of which was disbursed. Belgium claims that its A380 support was structured in accordance with the 1992 bilateral agreement and covers nonrecurring costs.

In the spring of 2009, the Commission once again notified the Belgian government that its 2008-2013 program of federal aid to the aeronautical sector was illegal. However, in May 2010, after being provided with supplemental information from the government, the Commission ruled that the program, for €178 million, was compatible with article 87(3)c of the EC Treaty. Industrial research or experimental development projects linked to the A350 and A380 were cited as examples of projects that could benefit from the program.

France: In addition to the launch aid that the French government provided for the development of the A380 and A350 aircraft, France provides assistance in the form of reimbursable advances for the development by French manufacturers of products such as planes, aircraft engines, helicopters, and onboard equipment. In February 2013, the government confirmed €1.4 billion in reimbursable advances for the A350 over the 2009-2017 period and a similar scheme for the helicopter X6 to be built by Eurocopter. At the same time, the government announced the implementation of tax and financial assistance for airline companies to restore their competitiveness. The government's 2013 budget included €143 million in reimbursable advances, and €136 million is expected in the 2014 budget. French appropriations for new programs included €91 million in support of research and development in the civil aviation sector in 2013. In 2014, such support is expected to decrease by 3.7 percent to €88 million.

In July 2008, Airbus, the parastatal Caisse des Dépôts et Consignations, and the Safran Group announced the launch of the Aerofund II equity fund, capitalized with €75 million destined for the French aeronautical sector. The equity fund's objective is to support the development of the small and medium sized subcontractors that supply the aeronautical sector. In March 2009, the state's Strategic Investment Fund

(FSI) and Aerofunds I and II purchased a nearly 20 percent stake in Daher, a French company, for €80 million, to help that private aerospace group accelerate its development and seize strategic opportunities. Since its creation in 2008, Aerofund II has made investments in about ten companies, including helping to finance Mecachrome's purchase of Mecahers, and Prosnic's acquisition of Industro. The Fund also helped finance the sale of Esterel Technologies to the U.S. group Ansys in 2012. In 2013, Airbus, the Caisse des Dépôts et Consignations Entreprises, Safran group, EADS and Eurocopter set up Aerofund III, an investment fund designed to raise €150 million for the French aeronautical sector. The goal of the investment fund, run by ACE Management, is to prolong Aerofund II with a target of raising a total of €300 million.

Germany: In 2013, the German Ministry of Economics and Technology suspended the payment of a tranche of a loan to Airbus for the A350 because Airbus announced job cuts. Press reports indicate that the loan totals €1.1 billion and the outstanding amount equals €600 million. A ministry spokesperson said that loans are only possible with concrete commitments by Airbus to German locations. In addition, Airbus continues to receive funds from the 2012-2015 aeronautics research program for a number of projects. The coalition agreement of the new German government pledges further support for the aeronautics program.

Spain: In 2012, the Spanish government granted EADS/Airbus €17.7 million in subsidies, representing 0.6 percent of all public subsidies to companies. In mid-2013, Spain's State Industrial Holding Company informed the National Securities Market Commission, that it planned to reduce its stake in Airbus from 4.2 percent to 3.84 percent. The decision to reduce its stake occurred after corporate restructuring at Airbus was approved by shareholders on March 27, 2013.

Government Support for Aircraft Engines

Member State Measures

United Kingdom: In February 2001, the UK government announced its intention to provide up to £250 million to Rolls-Royce to support development of the Trent 600 and 900, two additional engine models for large civil aircraft. The UK government characterized this engine development aid as an "investment" that would provide a "real rate of return" from future sales of the engines. The European Commission announced its approval of a £250 million "reimbursable advance" without opening a formal investigation into whether the advance constituted illegal state aid under EU law. According to a Commission statement, the "advance will be reimbursed by Rolls-Royce to the UK government in case of success of the program, based on a levy on engine deliveries and maintenance and support activity." Detailed terms of the approved launch aid were not made public. To date, none of the launch aid for the Trent 600 and 900 models has been repaid.

Propulsion is another area considered important to the future of the UK aerospace industry, and the Department for Business, Innovation, and Skills (BIS) has extended support to Rolls-Royce for the development of environmentally friendly engine technologies. This funding is directed through established research funding channels, though the government has provided occasional direct support to Rolls-Royce over the past five years.

The UK also provides repayable funds, known as Repayable Launch Investment (RLI), towards the design and development of civil aerospace projects in the UK. In 2011-2012 the UK RLI expenditure totaled £75 million (\$120 million). BIS forecasts current commitments from 2012-2013 to 2014-2015 to be £160 million (\$256 million) with a further £200 million (\$320 million) forecasted beyond this period. Since

1997, the UK has invested nearly £1 billion (\$1.6 billion) in RLI projects. Some projects that have received funding under the scheme include:

- £114 million (\$182 million) to Bombardier Aerospace (Shorts) in Belfast towards the design and development of CSeries composite wing (July 2008);
- £60 million (\$96 million) to GKN for the design and development of A350XWB trailing edge and rear spar composite wing components (September 2008); and
- £340 million (\$544 million) to Airbus towards the development of the A350XWB (August 2009).

France: In 2005, the French government-owned engine manufacturer, Snecma SA, merged with Sagem, a technology and communications firm, to form the Safran Group. The government supported the Safran SaM146 propulsive engine program, a turbofan engine produced by the PowerJet joint venture between Snecma of France and NPO Saturn of Russia, with a reimbursable advance of €140 million. In 2009, Safran received new reimbursable advances of €69 million.

Other Civil Aircraft

In July 2008, Bombardier Aerospace announced an investment of £519.4 million in Northern Ireland to support the design and manufacture of the wings for its 110 seat to 130 seat CSeries family of aircraft. In an agreement with BIS, the Northern Ireland Executive has offered assistance to the investment of £155 million. This includes a maximum of £130 million (Northern Ireland's contribution of £78 million of repayable Launch Investment assistance for the CSeries and up to £25 million Selective Financial Assistance).

CUSTOMS ADMINISTRATION

Notwithstanding the existence of customs laws that govern all EU Member States, the EU does not administer its laws through a single customs administration. Rather, there is a separate agency responsible for the administration of EU customs law in each of the EU's 28 Member States. No EU institutions or procedures successfully ensure that EU rules on classification, valuation, origin, and customs procedures are applied uniformly throughout the 28 Member States of the EU. Moreover, no EU rules 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.

On some questions, where the customs agencies in different Member States administer EU law differently, the matter may be referred to the Customs Code Committee (Committee). The Committee is an entity established by the Community Customs Code to assist the European Commission. The Committee consists of representatives of the Member States and is chaired by a representative of the Commission. While a stated goal for the Committee is to help reconcile differences among Member State practices and thereby help to achieve uniformity of administration, in practice its success in this regard has been limited.

Not only are the Committee and other EU-level institutions ineffective tools for achieving the uniform administration and application of EU customs law, the EU also lacks tribunals or procedures for the prompt review and EU-wide correction of administrative actions relating to customs matters. Instead, review is provided separately by each Member State's tribunals, and rules regarding these reviews vary from Member State to Member State. Thus, a trader encountering non-uniform administration of EU customs law 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 European Court of Justice (ECJ). The judgments of the ECJ have effect throughout the EU. However, referral of questions to the ECJ generally is discretionary, and ECJ proceedings can take years. Thus, obtaining corrections with EU-wide effect for administrative actions relating to customs matters is a cumbersome and frequently time-consuming process.

The United States has raised each of the preceding concerns with the EU in various fora, including the WTO Dispute Settlement Body. The concerns have taken on new prominence in light of the expansion of the EU and the Trans-Atlantic Trade and Investment Partnership negotiations.

The European Commission has expressed its intent to modernize and simplify customs rules and processes. The Commission issued the Union Modernized Community Customs Code (UMCC) in November 2013, and sent it to the European Council and the European Parliament for co-decision under the ordinary legislative procedure. The Commission expects the UMCC to enter into effect in 2016. The United States will monitor its implementation closely, focusing on its impact on uniform administration of EU customs law.

ELECTRONIC COMMERCE

U.S. businesses and the U.S. Government continue to monitor potential problems related to data privacy regulation and legal liability for companies doing business over the Internet in the EU.

The EU Data Protection Directive (1995/46) allows the transmission of data obtained from persons in EU Member States to third countries only if those countries are deemed by the Commission to provide an adequate level of protection by reason of their domestic law or their international commitments (Article 25(6)). The Commission has thus far recognized Switzerland, Canada, Argentina, Guernsey, the Isle of Man, Jersey, the Faroe Islands, Andorra, New Zealand, Uruguay, and Israel as providing an adequate level of protection. The United States does not yet benefit from a blanket adequacy finding, but the Commission has recognized a series of specific and limited programs and agreements as providing adequacy. The most all-encompassing of these is the U.S.-EU Safe Harbor Framework, but others include the U.S.-EU Agreement on the Transfer of Air Passenger Name Records to the U.S. Bureau of Customs and Border Protection.

The Safe Harbor Framework provides U.S. companies with a simple, streamlined means of complying with the EU rules. It is the result of an agreement that allows U.S. companies that commit to a series of data protection principles (based on the EU Data Protection Directive) and that publicly state their commitment by “self-certifying” on a dedicated website (<http://www.export.gov/safeharbor>) to continue to receive personal data from the EU. The U.S. Department of Commerce, which administers the Framework, reviews every Safe Harbor self-certification and annual re-certification submission to ensure that these include all of the elements required by the Framework. When an organization’s Safe Harbor submission falls short the U.S. Department of Commerce contacts the organization to explain what is lacking and what steps must be taken before the organization’s initial self-certification or re-certification may be finalized. Signing up to the Safe Harbor Framework is voluntary, but the rules are binding on signatories. A failure to fulfill commitments under the Safe Harbor Framework is punishable either as an unfair or deceptive practice under Section Five of the U.S. Federal Trade Commission Act or, for air carriers and ticket agents, under a concurrent U.S. Department of Transportation statute.

On November 27, 2013, following press disclosures on U.S. intelligence activities, the Commission issued a report on the Safe Harbor Framework, which makes thirteen recommendations to improve the

Framework, and an accompanying policy communication on “Rebuilding Trust” in transatlantic data flows calls for the Commission to engage with the United States “as a matter of urgency” to discuss the recommendations identified. The “Rebuilding Trust” document calls for these changes to be made by the summer of 2014, when the Commission will review the functioning of Safe Harbor Framework again. The U.S. Department of Commerce is engaging with the Commission and other stakeholders to discuss the recommendations presented. The U.S. Government actively supports Safe Harbor and will work to ensure that it remains available to support transatlantic data flows which are vital to both the U.S. and EU economies and continues to serve all stakeholders well.

Outside of the programs and agreements that explicitly enjoy an adequacy finding, U.S. companies may receive or transfer employee and customer information from the EU only under one of the exceptions to the EU Data Protection Directive’s adequacy requirements, if they develop binding corporate rules to allow global intra-company transfers and gain EU data protection authorities’ approval of them, which fewer than 50 companies have done at this time. These requirements can be burdensome for many U.S. industries that rely on data exchange between the United States and the EU.

In recent years, a number of U.S. companies have faced obstacles to winning contracts with EU governments and private sector customers because of public fears in the EU that any personal data held by these companies may be collected by U.S. law enforcement and intelligence agencies. Since mid-2011, EU media reports have suggested that U.S. laws, such as the Patriot Act, offer the U.S. Government *carte blanche* to obtain private data of EU citizens when stored by U.S. cloud computing service providers. Following the 2013 intelligence disclosures, U.S. companies have reported they have had greater difficulty winning contracts due to concerns over U.S. Government access to the data they hold. The United States is seeking to correct misconceptions about U.S. law and practice and to engage with EU stakeholders on how personal data is protected in the United States.

The European Commission is currently reviewing the EU Data Protection Directive as part of a broader review of the EU legislative framework for data protection, encompassing both commercial and judicial/law enforcement uses of data. In January 2012, the Commission issued its legislative proposals for a commercial data privacy regulation (directly applicable law for the Member States) and a law enforcement directive (which would need to be transposed into national law), initiating legislative deliberations by the Member States and the European Parliament. In October 2013, the lead committee in the European Parliament approved a package of amendments to the data privacy regulation and directive. However, progress in discussions on the regulation and the directive among the Member States remains slow. Many observers predict that the data privacy reforms will not be enacted before fall 2014, at the earliest. Given the importance of this issue to the business models of many U.S. companies, the United States is closely monitoring the development of this revised framework legislation to ensure that it does not adversely impact transatlantic trade and investment.

Member State Measures

France: Since 2011, sales of electronic books (e-books) by foreign merchants have been subject to a French law that sets a fixed price that French retailers may charge for a particular book. The French Parliament passed a law on October 3, 2013 making it illegal for online stores to offer both free delivery on books and a 5 percent discount on book prices. Since taking office in May 2012, the Hollande administration has undertaken a review of digital economic policy that may result in proposals in 2015 to levy taxes on Internet platforms that distribute AV content and on Internet-capable devices such as smart phones, laptops, and tablets. The government of France, which has the support of a consortium of domestic media and telecommunications companies in this effort, is seeking new funding for France’s information technology infrastructure and cultural industries.

GHANA

TRADE SUMMARY

U.S. goods exports in 2013 were \$1.1 billion, down 19.3 percent from the previous year. Corresponding U.S. imports from Ghana were \$366 million, up 25.7 percent. The U.S. goods trade surplus with Ghana was \$701 million in 2013, a decrease of \$330 million from 2012. Ghana is currently the 75th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ghana was \$3.6 billion in 2012 (latest data available), up from \$3.2 billion in 2011.

IMPORT POLICIES

Tariffs

According to the WTO, Ghana's average most favored nation (MFN) applied tariff rate in 2010 was 13 percent. For agricultural goods, the average applied tariff was 17.5 percent, and for non-agricultural products, it was 12.3 percent. Along with other ECOWAS countries, Ghana administers a common external tariff (CET) with five bands. The five tariff bands are: zero duty on social goods (*e.g.*, medicine, publications); 5 percent duty on imported raw materials; 10 percent duty on intermediate goods; 20 percent duty on finished goods; and 35 percent duty on goods in certain sectors that the government seeks to protect, such as poultry and rice. Ghana currently maintains 190 exceptions to the CET, and the highest applied tariff is 20 percent.

Ghana has bound all agricultural tariffs in the WTO at an average of 97.2 percent, more than five times the average level of its MFN applied rates on agricultural goods. On industrial goods, almost all of Ghana's tariffs are unbound at the WTO, such that Ghana could raise tariffs to any rate at any time without violating its WTO commitments, contributing to uncertainty for traders.

Nontariff Measures

Importers are confronted by a variety of fees and charges in addition to tariffs. Ghana levies a 15 percent value-added tax (VAT) (increased from 12.5 percent effective January 2014) plus a 2.5 percent National Health Insurance levy on the duty-inclusive value of all imports as well as on locally produced goods, with a few selected exemptions. In addition, Ghana imposes a 0.5 percent ECOWAS surcharge on all goods originating in non-ECOWAS countries and charges 0.4 percent of the free on board value of goods (including VAT) for the use of the automated clearing system, the Ghana Community Network.

Under the Export Development and Agricultural Investment Fund (EDAIF) Act, Ghana imposes a 0.5 percent duty on all non-petroleum products imported in commercial quantities. Ghana also applies a one percent processing fee on all duty-free imports. In July 2013, a Special Import Levy of one percent was imposed on the cost, insurance, and freight (CIF) value of goods under chapters 84 and 85 of the Harmonized System schedule which cover, *inter alia*, boilers and certain types of machinery, electrical machinery, mechanical appliances and recording devices, while the import levy applied to all other imports was set at 2 percent, except for some petroleum products and fertilizers. The EDAIF which was amended in December 2013 to expand the scope of exemptions, is scheduled to expire on December 31, 2014.

FOREIGN TRADE BARRIERS

Imports are subject to an inspection fee of 1 percent of the CIF value of the goods. Importers have reported that the flat fee is not based on the cost of the services rendered. Destination inspection companies (DICs) are licensed by the Ghanaian government, and inspection by the DICs accounts for the longest delays in import clearance.

A separate examination fee of 1 percent is applied to imported vehicles. Imported used vehicles that are more than 10 years old incur an additional tax ranging from 2.5 percent to 50 percent of the CIF value. The Customs Division of the Ghana Revenue Authority maintains a price list that is used to determine the value of imported used vehicles for tax purposes. There are complaints that this system is not transparent because the price list used for valuation is not publicly available.

Between May and October each year, there is a temporary ban on the importation of fish, except on imports of canned fish, to protect local fishermen during their peak season.

Certificates are required for imports of food, cosmetics, and agricultural and pharmaceutical goods. Permits are required for poultry and poultry product imports. At the time the permit is issued, a quantity limit is imposed.

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

GOVERNMENT PROCUREMENT

Large public procurements are conducted with open tendering and allow the participation of non-domestic firms; however, single source procurements are common on many government contracts. A draft guideline that applies to current tenders gives a margin of preference of 7.5 percent to 20 percent to domestic suppliers of goods and services in international competitive bidding. Notwithstanding the public procurement law, companies report that locally funded contracts lack full transparency. Supplier or foreign government subsidized financing arrangements appear in some cases to be a crucial factor in the award of government procurements. Allegations of corruption in the tender process are fairly common.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Since December 2003, Ghana's Parliament has enacted seven laws designed to implement Ghana's obligations under the TRIPS Agreement. The laws pertain to copyrights, trademarks, patents, layout-designs (topographies) of integrated circuits, geographical indications, and industrial designs. Ghana is a signatory to the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the World Intellectual Property Organization (WIPO) Internet Treaties (the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty), and the African Regional Industrial Property Organization.

Owners of intellectual property rights have filed very few trademark, patent, or copyright infringement cases in local courts. Companies that initiate cases continue to report prolonged waits for resolution, a possible factor in discouraging other companies from filing cases.

There continues to be virtually no government initiated enforcement. However, the Copyright Office, which is under the Attorney General's Office, periodically initiates raids on physical markets for pirated

works. The Customs Service has also collaborated in the past with concerned companies to inspect import shipments.

SERVICES BARRIERS

On December 31, 2009, Ghana enacted legislation requiring a minimum rate of \$0.19 per minute for terminating international calls into Ghana, significantly increasing the cost of terminating international calls into the country from the prior levels of approximately \$0.07 per minute for fixed networks and \$0.13 per minute for mobile networks. All local and international calls are subject to a tax of \$0.06 per minute.

INVESTMENT BARRIERS

Ghana's investment code excludes foreign investors from participating in eight economic sectors: petty trading; the operation of taxi and car rental services with fleets of fewer than 25 vehicles; lotteries (excluding soccer pools); the operation of beauty salons and barber shops; printing of recharge scratch cards for subscribers to telecommunications services; production of exercise books and stationery; retail of finished pharmaceutical products; and the production, supply, and retail of sachet water.

Foreign investors are required by law to have local partners in the insurance and extractive industries. In the insurance sector, Ghana limits foreign ownership to 60 percent, except for auxiliary insurance services. There is compulsory local participation in the extractive sector. By law, the government of Ghana acquires an automatic 10 percent of all interests in mining, oil, and gas ventures. The 2006 Minerals and Mining Law also allows the government of Ghana to negotiate any other form of participation.

In November 2013, local content regulations applicable to the oil and gas sector entered into force. The most concerning provisions in the regulations are:

- local ownership and content percentages for local private equity participation, procurement of supplies, equipment, and provision of services;
- mandatory local private equity participation in upstream activities, exacerbated by a lack of transparency in the selection of equity partners and the role of the Minister of Energy;
- requirement for the Minister's approval of all contracts/sub-contracts and purchase orders above \$100,000; and
- maximum penalty of a five-year jail sentence for non-compliance.

In September 2012, the newly established Petroleum Commission significantly increased fees for oil and gas service providers. Depending on a company's annual revenues, registration fees and annual renewal fees imposed on foreign companies range from \$70,000 to \$150,000 compared to fees imposed on local companies of between \$5,000 and \$30,000. Prior to the establishment of the Petroleum Commission, the registration fee was \$2,000 and the annual license renewal fee was \$200.

Foreign investment projects must be registered with the Ghana Investment Promotion Center. While the registration process is designed to be completed within five business days, the process often takes significantly longer. Foreign investments are also subject to the following minimum capital requirements: \$200,000 for joint ventures with a Ghanaian partner; \$500,000 for enterprises wholly-owned by a non-Ghanaian; and \$1,000,000 for trading companies (firms that buy or sell imported goods or services) wholly owned by non-Ghanaian entities. Trading companies are also required to employ at least 20 skilled Ghanaian nationals.

FOREIGN TRADE BARRIERS

OTHER BARRIERS

Foreign investors have experienced difficulties and delays in securing required work visas for their non-Ghanaian employees. The process for obtaining required work permits can be unpredictable and take several months from application to delivery. Obtaining access to land may also be challenging for foreign investors. Non-Ghanaians are only permitted to access land on a long-term leasehold basis, and Ghana's complex land tenure system makes establishing clear title on real estate difficult.

Corruption

Foreign investors in Ghana must contend with a highly regulated economy, 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 also remains a concern. The government does not implement anticorruption laws effectively, and some officials engage in corrupt practices. For example, some judicial officials accept bribes to expedite or postpone cases or to "lose" records. There are, however, two important anticorruption instruments awaiting Parliamentary approval and adoption: the Right to Information bill and the National Anti-Corruption Action Plan.

GUATEMALA

TRADE SUMMARY

U.S. goods exports in 2013 were \$5.5 billion, down 3.9 percent from the previous year. Corresponding U.S. imports from Guatemala were \$4.2 billion, down 7.2 percent. The U.S. goods trade surplus with Guatemala was \$1.4 billion in 2013, a decrease of \$96 million from 2012. Guatemala is currently the 41st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Guatemala was \$1.1 billion in 2012 (latest data available), the same as 2011.

Free Trade Agreement

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

IMPORT POLICIES

Tariffs

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

Under the CAFTA-DR, however, 100 percent of U.S. consumer and industrial goods will enter Guatemala duty free by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Guatemala duty free and quota free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Guatemala duty free. Guatemala will eliminate its remaining tariffs on virtually all U.S. agricultural products by 2020 (2023 for rice and chicken leg quarters and 2025 for dairy products). For certain products, tariff-rate quotas (TRQs) permit some duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Guatemala will liberalize trade in white corn through continual expansion of a TRQ, rather than by the reduction of the out-of-quota tariff.

Nontariff Measures

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

Guatemala's denial of claims for preferential treatment for U.S. products under the CAFTA-DR continues to be an occasional source of difficulty in exporting to Guatemala. U.S. companies have raised concerns that the Guatemalan Customs Administration (part of the Superintendence of Tax Administration, or SAT), as well as the Food Safety office in the Ministry of Agriculture and the Food Control Office in the Ministry of Health, have not provided adequate advance notice regarding administrative changes in documentation requirements for imported shipments, such as information required for certifications of origin or certificates of free sale. The United States has raised this issue with the Customs Administration (and other Guatemalan governmental units) and received assurances that future changes would be communicated in advance; Customs information is available on the tax and customs website: <http://portal.sat.gob.gt/sitio/>.

Stakeholders report that Guatemalan customs authorities are challenging declared tariff classifications, many of which are simple products for which the tariff classifications should not be confusing, and trying to reclassify the products into HS codes that are subject to a higher tariff. These practices raise concerns that the Customs Administration appears to be denying U.S. products the preferential treatment under the CAFTA-DR and instead imposing tariffs and other retroactive charges as a means of increasing revenue. The United States will continue to raise these concerns with Guatemala.

In early 2012, the Guatemalan government also approved a new law that modified customs procedures. Importers of U.S. products U.S. companies raised concerns that the customs law created problems and delays for the importation of goods. Due to these complaints, the Guatemalan Congress approved a revised customs law in October 2013. It is not yet clear if, when implemented, the new law will address concerns expressed with the 2012 law. The United States will continue to monitor the progress of the new customs law to address any possible trade obstacles.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases as well as timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Guatemalan government entities, including government ministries and sub-central and state-owned entities, on the same basis as Guatemalan suppliers. The anti-corruption provisions of the Agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

In 2009, the Guatemalan Congress approved reforms to the Government Procurement Law, which simplified bidding procedures, eliminated the fee previously charged to suppliers for bidding documents, and provided an additional opportunity for suppliers to raise objections to the bidding process. Foreign suppliers must submit their bids through locally-registered representatives, a process that can place foreign bidders at a competitive disadvantage.

Some U.S. companies have complained that the procurement process is not transparent, particularly highlighting instances in which a Guatemalan government entity subject to CAFTA-DR obligations makes a direct purchase without issuing a tender or when a CAFTA-DR covered entity does not provide the required minimum 40 days from the notice of procurement for interested parties to prepare and submit bids. There has also been a growing number of complaints from U.S. stakeholders and companies regarding an increasing tendency by some government entities to undertake major procurements through unusual special-purpose mechanisms, such as on an emergency basis, enabling the procuring entity to

make a direct purchase from a pre-selected supplier and avoid competitive bidding through the public tender process, or structuring the requirements of the tender in such a way so as to favor a particular foreign company.

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

EXPORT SUBSIDIES

Under the CAFTA-DR, Guatemala 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, the CAFTA-DR permitted Guatemala to maintain such measures through December 31, 2009, provided that it maintained the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures. The U.S. Government is working with the Guatemalan government to ensure compliance with its CAFTA-DR obligations.

Guatemala provides tax exemptions to investors in free trade zones and maintains duty drawback programs aimed mainly at garment manufacturing and assembly operations or “*maquiladoras*” (firms that are permitted to operate outside a free trade zone and still receive tax and duty benefits). The “Law for the Promotion and Development of Export Activities and Drawback” provides tax and duty benefits to companies that import over half of their production inputs/components and export their completed products. Investors are granted a 10-year exemption from both income taxes and the Solidarity Tax, which is Guatemala’s temporary alternative minimum tax. Additionally, companies are granted an exemption from the payment of tariffs and value-added taxes on imported machinery, and a one-year suspension (extendable to a second year) of the same tariffs and taxes on imports of production inputs and packing material. Taxes are waived when the goods are re-exported.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Guatemala remained on the Watch List in the 2013 Special 301 Report. The United States expressed optimism about the coordination of IPR enforcement efforts in Guatemala, but noted that enforcement efforts weakened in 2012 and that overall prosecutions were significantly down comparable to 2011. The report recognized the 2011 enactment of legislation to strengthen penalties against the production and distribution of counterfeit medications, but highlighted that the United States was not aware of any successful prosecutions under that law in 2012. The severe lack of resources for the IPR prosecutor’s office, trademark squatting, and Guatemalan government use of unlicensed software were noted as significant areas of concern. The report also highlighted the need for Guatemala to continue its enforcement efforts against manufacturers of pirated and counterfeit goods and to take steps to improve the operation of its judicial system to prosecute IPR violations. The United States engaged extensively with Guatemala as it prepared legislative amendments governing protections for geographical indications, in anticipation of action on applications received in 2013 from the European Union to register a range of GIs in Guatemala. During that ongoing engagement, the United States has stressed the need for use of CAFTA-DR consistent protections and processes, including providing public notice and an opportunity for opposition and cancellation, and transparency and impartiality in decision making.

The United States will continue to monitor Guatemala’s implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Some professional services may only be supplied by professionals with locally recognized academic credentials. Public notaries must be Guatemalan nationals. At least one U.S. citizen has complained that such restrictions prevent him from practicing that profession in Guatemala even though he has met all of the professional requirements. Foreign enterprises may provide licensed professional services in Guatemala only through a contract or other relationship with an enterprise established in Guatemala.

INVESTMENT BARRIERS

Some U.S. companies operating in Guatemala have complained that complex and unclear laws and regulations continue to constitute practical barriers to investment. Resolution of business and investment disputes through Guatemala's judicial system is also extremely time-consuming, and civil cases can take many years to resolve. Government institutions including the judicial system can be prone to third-party influence, which interferes with the due process of law and disadvantages U.S. companies on business dispute litigation.

Two U.S. companies operating in Guatemala filed claims under the Investment Chapter of the CAFTA-DR against the government of Guatemala with the Centre for the Settlement of Investment Disputes (ICSID) in 2007 and 2010. An ICSID tribunal issued its ruling on the first case brought by the Railroad Development Corporation in June 2012 and found that the Guatemalan government had breached the minimum standard of treatment obligation under Article 10.5 of the CAFTA-DR when it declared a railway equipment contract that it had previously negotiated with the investor to be contrary to the interests of the State. The ICSID awarded the investor \$14.6 million in compensation. The Guatemalan government paid the full amount awarded by the ICSID tribunal to the company in November 2013. In December 2013, an ICSID tribunal issued an award finding in the second investment case brought by Teco Guatemala Holdings LLC finding that the Guatemalan government had breached the minimum standard of treatment obligation under Article 10.5 of the CAFTA-DR when it repudiated specific assurances it had previously provided to the company regarding the methodology that would be used to calculate and revise electricity tariffs in the country. The tribunal awarded that investor \$21.1 million in damages and ordered Guatemala to pay an additional \$7.52 million to cover costs and fees the investor incurred in prosecuting its claim.

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

The United States continues to engage with Guatemala to ensure fair and transparent treatment for U.S. companies in commercial and investment-related cases, consistent with CAFTA-DR provisions.

OTHER BARRIERS

Many U.S. firms and citizens have found corruption in the government, including in the judiciary, to be a significant concern and a constraint to successful investment and access to government procurement tenders in Guatemala. Administrative and judicial decision-making appear at times to be inconsistent, nontransparent, and very time-consuming.

HONDURAS

TRADE SUMMARY

U.S. goods exports in 2013 were \$5.3 billion, down 7.8 percent from the previous year. Corresponding U.S. imports from Honduras were \$4.5 billion, down 2.3 percent. The U.S. goods trade surplus with Honduras was \$735 million in 2013, down \$340 million from 2012. Honduras is currently the 42nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Honduras was \$881 million in 2012 (latest data available), up from \$821 million in 2011.

Free Trade Agreement

The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or Agreement) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006 and for the Dominican Republic in 2007. The CAFTA-DR entered into force for Costa Rica on January 1, 2009. The CAFTA-DR significantly liberalizes trade in goods and services as well as includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environment.

IMPORT POLICIES

Tariffs

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

Under the CAFTA-DR, nearly all textile and apparel goods that meet the Agreement's rules of origin became duty free and quota free immediately, thus creating new opportunities for U.S. fiber, yarn, fabric, and apparel manufacturers. By 2015, 100 percent of U.S. consumer and industrial goods will enter Honduras duty free.

Currently, more than half of U.S. agricultural exports now enter Honduras duty free. Honduras will eliminate its remaining tariffs on virtually all U.S. agricultural products by 2020 (2023 for rice and chicken leg quarters, and 2025 for dairy products). For certain products, tariff-rate quotas (TRQs) permit some duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Honduras will liberalize trade in white corn through continual expansion of a TRQ, rather than by the reduction of the out-of-quota tariff.

Nontariff Measures

Under the CAFTA-DR, all CAFTA-DR countries, including Honduras, committed to improve transparency and efficiency in administering customs procedures. All CAFTA-DR countries, including Honduras, also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all CAFTA-DR countries agreed to share with each other information to combat illegal trans-shipment.

FOREIGN TRADE BARRIERS

In August 2011, Honduras passed a law establishing a new inter-institutional Presidential Commission for the Modernization of Customs Services (COPREMSA) with the intent to improve the transparency and efficiency of customs procedures. COPREMSA's board of public and private sector representatives is developing more efficient permitting (licensing) processes and deploying interoperable management systems. The U.S. Government is supporting COPREMSA's work through the Pathways to Prosperity "Customs Modernization and Border Management" program.

The Dirección Ejecutiva de Ingresos (DEI), the Honduran customs and tax authority, has assumed responsibility for verification of origin certifications. The DEI verifies that origin certifications from producers, exporters, or importers comply with the requirements of the CAFTA-DR and other international agreements.

Certain products are exempted from a 12 percent value added tax. Honduras suspended all tax exemptions for 60 days in 2013 and established a presidential commission to make recommendations on which exemptions should be eliminated permanently. The commission targeted imported products for exclusion from the exemption list, particularly agricultural goods that the United States exports to Honduras, with the stated intention of assisting domestic producers. As of December 2013, the National Congress had not acted on the commission's recommendations.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Honduran government entities, including key ministries and state-owned enterprises, on the same basis as Honduran suppliers. The anticorruption provisions in the CAFTA-DR require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties. Implementation of the CAFTA-DR eliminated the requirement that U.S. firms must act through a local agent (with at least 51 percent Honduran ownership) to participate in public tenders.

Since the CAFTA-DR came into effect, Honduran government agencies have routinely declared "emergencies" to circumvent competitive bidding procedures for public procurements, including for large infrastructure projects. Further, information on public tenders frequently is not available in a timely fashion and official bidding processes are not always followed.

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

EXPORT SUBSIDIES

Honduras currently employs the following export incentive programs: Free Trade Zone of Puerto Cortes (ZOLI), Export Processing Zones (ZIP), and Temporary Import Regime (RIT).

Honduras provides tax exemptions to firms in free trade zones. Under the CAFTA-DR, Honduras may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, Honduras may maintain such duty waiver measures for such time as it is an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures. The U.S. Government is working with the Honduran government in an effort to ensure compliance with its CAFTA-DR obligations.

FOREIGN TRADE BARRIERS

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2010, Honduras reestablished its intellectual property rights (IPR) prosecutor's office as an independent entity within the Public Ministry, reversing a 2009 decision to merge it into the common crimes office. While the IPR prosecutor's office has achieved successes in seizing counterfeit goods, the United States remains concerned about effective IPR enforcement in Honduras given that its IPR enforcement office lacks necessary personnel and resources to wage a truly effective campaign. Reports of cable signal theft are a growing concern. The United States engaged extensively with Honduras as it prepared legislative amendments governing protections for geographical indications, in anticipation of action on applications from the European Union to register a range of GIs in Honduras, which were received in 2013. During that ongoing engagement, the United States has stressed the need for use of CAFTA-DR consistent protections and processes, including providing public notice and opportunity for opposition and cancellation, and transparency and impartiality in decision making. The United States will continue to monitor Honduras' implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Telecommunications

Hondutel, the government-owned incumbent telecommunications operator, officially lost its monopoly on fixed-line telephony services on December 25, 2005. The announced sale of 49 percent of Empresa Hondureña de Telefonía Movil (Ehmovitel), a new mobile services subsidiary of Hondutel, did not occur in 2013. Although there are regulations in place that allow the government to grant licenses, permits, and concessions for different telecommunications services in Honduras, competitive services continue to be provided through sub-operator agreements signed between Hondutel and private companies.

INVESTMENT BARRIERS

Honduran law places certain restrictions on foreign ownership of land within 40 kilometers of the coastlines and national boundaries. However, recognizing that the constitutional prohibition of foreign property ownership in Honduras was a barrier to the development of tourism and the economic potential of Honduras' coastal and island areas, foreigners are allowed to purchase properties (with some acreage restrictions) in designated tourism zones established by the Ministry of Tourism in order to construct permanent or vacation homes.

Inadequate land title procedures have led to numerous investment disputes involving U.S. nationals who are landowners in Honduras. Resolving disputes in court can be very time consuming. There have been claims of widespread corruption in land sales and property registry, and in the dispute resolution process, including claims against attorneys, real estate companies, judges, and local officials. The property registration system is highly unreliable, which represents a major impediment to investment. In addition, the lack of implementing regulations can lead to long delays in the awarding of titles in certain regions. A law passed in April 2008 authorized the government to award certain agricultural lands that have been under dispute for more than two years to squatters with only nominal compensation to legal titleholders. A number of properties owned by U.S. citizens are potentially subject to confiscation under this law. Although widespread concerns remain regarding the protection of land rights, in 2012 the primary supplier of a U.S. company successfully negotiated with the National Land Institute to avoid the expropriation of its land. However, this type of resolution typically requires involvement by the highest level government officials and rarely occurs through the normal judicial or legislative procedures.

FOREIGN TRADE BARRIERS

OTHER BARRIERS

Some U.S. firms and citizens have reported corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in Honduras. These reports suggest that corruption is pervasive in government procurement, issuance of government permits, real estate transactions (particularly land title transfers), performance requirements, and the regulatory system. The telecommunications, health, and energy sectors appear to be particularly problematic. In response to concerns expressed by investors and the donor community, the government is currently implementing the first four year (2011-2014) transparency and anticorruption plan to address transparency in government processes, including in contracting, hiring, permitting, and procurement. In addition, the government is working to improve transparency and good governance at the municipal level and within federal ministries and has succeeded, for example, in reducing the time it takes to award environmental licenses.

U.S. industry has expressed concern that some investors in Honduras have at times been subject to practices that might be considered anticompetitive. In 2006, the Honduran Congress enacted a competition law, establishing an antitrust enforcement commission, the Commission for the Defense and Promotion of Competition, to combat such conduct. The Commission, consisting of three commissioners with investigative authority, commenced operations in 2007. In November 2010, after a two-year investigation, the Commission fined two cement companies HNL 87 million (approximately \$4.6 million) and 6 sugar companies a total of HNL 62 million (approximately \$3.1 million) for the violation of competition law applying collusive prices. Both sets of fines were reversed on legal appeal, however. In 2012 the Commission began reviewing two new cases and those investigations will be completed by the three new commissioners appointed in August 2013.

Some U.S. firms operating in Honduras have expressed concern about a December 2011 Ministry of Transport decree issued without notice and opportunity to comment that set rates for trucking services within Honduras. The companies are particularly concerned about the precedent of government intervention in private contracts as well as the impact on Honduras' international competitiveness. A lawsuit was filed by several in the international shipping industry to challenge the decree.

HONG KONG

TRADE SUMMARY

U.S. goods exports in 2013 were \$42.5 billion, up 13.3 percent from the previous year. Corresponding U.S. imports from Hong Kong were \$5.6 billion, up 3.3 percent from 2012. The U.S. goods trade surplus with Hong Kong was \$36.8 billion in 2013, an increase of \$4.8 billion from 2012. Hong Kong is currently the 9th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Hong Kong were \$6.4 billion in 2012 (latest data available), and U.S. imports were \$7.0 billion. Sales of services in Hong Kong by majority U.S.-owned affiliates were \$35.0 billion in 2011 (latest data available), while sales of services in the United States by majority Hong Kong-owned firms were \$4.2 billion.

The stock of U.S. foreign direct investment (FDI) in Hong Kong was \$47.8 billion in 2012 (latest data available), up from \$40.0 billion in 2011. U.S. FDI in Hong Kong is primarily concentrated in nonbank holding companies, wholesale trade, and finance/insurance sectors.

IMPORT POLICIES

Hong Kong is a special administrative region (SAR) of the People's Republic of China and the Hong Kong Basic Law provides for a high degree of autonomy in all matters but defense and foreign affairs. For trade, customs, and immigration purposes, Hong Kong is an independent administrative entity with its own tariffs, trade laws, and regulations, and is a separate Member of the WTO and APEC. The Hong Kong government pursues a market-oriented approach to commerce. Hong Kong is a duty-free port, with few barriers to trade in goods and services and few restrictions on foreign capital flows and investment.

COMPETITION POLICY

The Legislative Council passed Hong Kong's first comprehensive competition law in June 2012, after six years of public consultation and study. Broadly speaking, the new Competition Ordinance (Ordinance) addresses anticompetitive agreements and abuses of market power that prevent, restrict, or distort competition. The Ordinance includes additional prohibitions on certain mergers and acquisitions in the telecommunications field that could substantially lessen competition in Hong Kong. The maximum penalties under the Ordinance are 10 percent of the company's turnover obtained in Hong Kong for each year of violation, up to a maximum of 3 years, and disqualification from direct or indirect involvement in the management of a company for up to 5 years. The law exempts 575 of Hong Kong's 581 statutory bodies from its coverage.

The government established a Competition Commission (Commission) and a Competition Tribunal (Tribunal) in 2013. The Commission is empowered to investigate anticompetitive conduct and promote public understanding of the value of competition. The Tribunal is in charge of hearing and adjudicating cases brought before it by the Commission after due investigation. The Commission is drafting regulatory guidelines, which the government will make public for consultation in 2014 and introduce to the Legislative Council in 2015. The substantive provisions of the Ordinance will not enter into effect until after the Legislative Council has reviewed the guidelines and made the provisions effective.

FOREIGN TRADE BARRIERS

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Hong Kong provides robust intellectual property rights (IPR) protection and enforcement. Hong Kong has strong laws in place, a dedicated and effective enforcement capacity, a judicial system that supports enforcement efforts with deterrent fines and prison sentences, and youth education programs that discourage IPR-infringing activities. Hong Kong remains vulnerable, however, to some forms of IPR infringement, such as online copyright piracy facilitated by the rapid growth of unauthorized file sharing over peer-to-peer networks and end-user business software piracy.

Although the Hong Kong Customs and Excise Department (HKCED) routinely seizes IPR infringing products arriving from mainland China and elsewhere, stakeholders report that counterfeit pharmaceuticals, luxury goods, and other infringing products continue to enter Hong Kong, destined for both the local market and places outside of Hong Kong. During the period between May and June 2013, HKCED carried out a special operation targeting the sale of counterfeit and infringing goods on Internet auction sites. Customs officers arrested 40 people, and seized 30 computers and 2,282 counterfeit and infringing goods, including handbags, clothing, sunglasses, shoes, and socks. In 2013, there was an increase in the use of courier delivery services in Hong Kong to smuggle infringing goods from China destined for the United States and European countries. Between January and November 2013, HKCED seized 84,000 infringing products (worth \$1.2 million) – such as electronic goods, clothing, and pirated optical discs – in the offices of local courier companies.

In June 2012, the Legislative Council shelved a bill to amend the 1997 Copyright Ordinance, after lengthy debate. The government drafted proposed amendments 2010 and introduced to the Legislative Council in June 2011, after industry groups failed to reach agreement on a voluntary framework to address online infringement. At the time, the government said it was shelving the bill to concentrate on passing urgent social and livelihood-related bills before the legislative session ended in July 2012. In addition, there was concern that the bill did not adequately protect parody. In November 2013, the Hong Kong government completed a four-month public consultation on a copyright exception for parody. It is unclear when a new bill might be submitted.

In February 2011, the government initiated a dialogue to elicit views from the public on whether to create an original patent grant system in Hong Kong to replace the re-registration system based on patents granted in the United Kingdom, the EU, and mainland China. Public consultations concluded in December 2011. In February 2013, the government announced three measures to further development of the Hong Kong patent system: (1) introducing an original grant patent system with examination supported by China's State Intellectual Property Office, while maintaining the current re-registration system; (2) retaining the short-term patent system with refinements; and (3) developing, over a longer term, a regulatory regime on patent agency services. The Intellectual Property Department is working on an implementation plan for the new system, which is expected to come into force sometime in 2016 or 2017.

INDIA

TRADE SUMMARY

U.S. goods exports in 2013 were \$21.9 billion, down 1.0 percent from the previous year. Corresponding U.S. imports from India were \$41.8 billion, up 3.2 percent. The U.S. goods trade deficit with India was \$20.0 billion in 2013, up \$1.5 billion from 2012. India is currently the 18th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to India were \$11.9 billion in 2012 (latest data available), and U.S. imports were \$18.5 billion. Sales of services in India by majority U.S.-owned affiliates were \$16.4 billion in 2011 (latest data available), while sales of services in the United States by majority India-owned firms were \$9.3 billion.

The stock of U.S. foreign direct investment (FDI) in India was \$28.4 billion in 2012 (latest data available), up from \$24.6 billion in 2011. U.S. FDI in India is led by the professional, scientific, and technical services, finance/insurance services and the information services sectors.

IMPORT POLICIES

The United States has actively sought bilateral and multilateral opportunities to open India's market, and the government of India has pursued ongoing economic reform efforts. Nevertheless, U.S. exporters continue to encounter tariff and nontariff barriers that impede imports of U.S. products into India. The U.S. Trade Representative and India's Minister of Commerce and Industry chair the United States-India Trade Policy Forum, to discuss the full range of bilateral trade and investment issues outlined in this chapter. Other bilateral dialogues, such as the Information and Communication Technology Working Group and the Commercial Dialogue, also work to increase U.S. exports by highlighting areas and sectors of bilateral commercial opportunity and resolving practical issues that affect doing business in India.

Tariffs and other Charges on Imports

The structure of India's customs tariff and fees system is complex and characterized by a lack of transparency in determining net effective rates of customs tariffs, excise duties, and other duties and charges. The tariff structure of general application is composed of a basic customs duty, an "additional duty" (also commonly referred to as a "countervailing duty"), a "special additional duty," and an education assessment ("cess").

The additional duty, which is applied to all imports except for wine, spirits, and other alcoholic beverages, is applied on top of the basic customs duty, and is intended to correspond to the excise duties imposed on similar domestic products. The special additional duty is a four percent *ad valorem* duty that applies to all imports, including alcoholic beverages, except those imports exempted from the duty pursuant to an official customs notification. The special additional duty is calculated on top of the basic customs duty and the additional duty. In addition, there is a three percent education cess (surcharge) applied to most imports, except those exempted from the cess pursuant to an official customs notification. India charges the cess on the total of the basic customs duty and additional duty (not on the customs value of the imported product). A landing fee of one percent is included in the valuation of all imported products unless exempted through separate notification.

While India publishes applied tariff and other customs duty rates applicable to imports, there is no single official publication publically available that includes all relevant information on tariffs, fees, and tax rates on imports. However, in April 2010, as part of its computerization and electronic services drive, India initiated a web-based Indian Customs Electronic Commerce/Electronic Data Interchange Gateway, known as ICEGATE (<http://icegate.gov.in>). It provides options, among other things, for calculating duty rates, electronic filing of entry documents (import goods declarations) and shipping bills (export goods declarations), electronic payment, and online verification of import and export licenses. In addition to being announced with the annual budget, India's customs rates are modified on an *ad hoc* basis through notifications in the Gazette of India and contain numerous exemptions that vary according to the product, user, or specific export promotion program, rendering India's customs system complex to administer and open to administrative discretion.

India's tariff regime is also characterized by pronounced disparities between bound rates (*i.e.*, the rates that under WTO rules generally cannot be exceeded) and the most favored nation (MFN) applied rates charged at the border. According to the WTO, India's average bound tariff rate was 48.6 percent, while its simple MFN average applied tariff for 2012 was 13.7 percent. Given this large disparity between bound and applied rates, U.S. exporters face tremendous uncertainty because India has considerable flexibility to change tariff rates at any time. While India has bound all agricultural tariff lines in the WTO, over 30 percent of India's non-agricultural tariffs remain unbound, *i.e.*, there is no WTO ceiling on the rate.

Despite its goal of moving toward Association of Southeast Asian Nations (ASEAN) tariff rates (approximately 5 percent on average), India has not systematically reduced the basic customs duty in the past five years. India also maintains very high tariff peaks on a number of goods, including flowers (60 percent), natural rubber (70 percent), automobiles and motorcycles (60 percent to 75 percent), raisins and coffee (100 percent), alcoholic beverages (150 percent), and textiles (some *ad valorem* equivalent rates exceed 300 percent). Rather than liberalizing its customs duties, India instead operates a number of complicated duty drawback, duty exemption, and duty remission schemes for imports. Eligibility to participate in these schemes is usually subject to a number of conditions, including an export obligation.

Many of India's bound tariff rates on agricultural products are among the highest in the world, ranging from 100 percent to 300 percent. India's average bound tariff for agricultural products is 118.3 percent. While many Indian applied tariff rates are lower (averaging 33.5 percent on agricultural goods in 2012), they still present a significant barrier to trade in agricultural goods and processed foods (*e.g.*, potatoes, apples, grapes, canned peaches, chocolate, cookies, and frozen French fries and other prepared foods used in quick-service restaurants). The large gap between bound and applied tariff rates in the agriculture sector allows India to use tariff policy to make frequent adjustments to the level of protection provided to domestic producers, creating uncertainty for traders. For example, in January 2013, India issued a customs notification announcing a doubling of the tariff on imports of crude edible oils.

Imports are subject to state-level value-added or sales taxes and the Central Sales Tax as well as various local taxes and charges. Since 2007, India has allowed importers to apply for a refund of the special additional duty paid on imports subsequently sold within India and for which the importer has paid state-level value-added taxes. Importers report that the refund procedures are cumbersome and time-consuming. In addition, U.S. industry identifies various state level taxes and other charges on imported alcohol that appear to be higher than those imposed on domestic alcohol. The central government has taken steps and continues to work with state governments to adopt a national goods and services tax (GST) that would replace most indirect taxes, including various charges on imports. Implementation of a national GST, however, will first require amending the Indian Constitution.

Import Licenses

India maintains a “negative list” of imported products subject to various forms of nontariff regulation. The negative list is currently divided into three categories: banned or prohibited items (*e.g.*, tallow, fat, and oils of animal origin); restricted items that require an import license (*e.g.*, livestock products and certain chemicals); and “canalized” items (*e.g.*, some pharmaceuticals) importable only by government trading monopolies and subject to cabinet approval regarding import timing and quantity. India, however, often fails to observe transparency requirements, such as publication of timing and quantity restrictions in its Official Gazette or notification to WTO committees.

For purposes of entry requirements, India has distinguished between goods that are new, and those that are secondhand, remanufactured, refurbished, or reconditioned. This distinction has resulted in barriers to trade in goods that are secondhand, remanufactured, refurbished, or reconditioned. India allows imports of secondhand capital goods by the end users without an import license, provided the goods have a residual life of five years. India’s official Foreign Trade Policy treats remanufactured goods the same as secondhand products, without recognizing that remanufactured goods have typically been restored to original working condition and meet the technical and/or safety specifications applied to products made from virgin materials. Refurbished computer spare parts can only be imported if an Indian chartered engineer certifies that the equipment retains at least 80 percent of its life, while refurbished computer parts from domestic sources are not subject to this requirement. India began requiring import licenses for all remanufactured goods in 2006. U.S. industry representatives report that meeting this requirement, like other Indian import licensing requirements, has been onerous. Problems that industry representatives have reported with the import licensing scheme for remanufactured goods include: excessive details required in the license application, quantity limitations set on specific part numbers, and long delays between application and grant of the license.

India subjects imports of boric acid to stringent restrictions, including arbitrary import quantity limitations and conditions applicable only to imports used as insecticide. Traders (*i.e.*, wholesalers) of boric acid for non-insecticidal use cannot import boric acid for resale because they are not end users of the product and consequently cannot obtain no-objection certificates (NOCs) from the relevant Indian government ministries and departments or import permits from the Ministry of Agriculture. NOCs are required before applying for import permits from the Ministry of Agriculture’s Central Insecticides Board & Registration Committee. Meanwhile, local refiners continue to be able to produce and sell boric acid for non-insecticidal use subject only to a requirement to maintain records showing they are not selling to end users who will use the product as an insecticide.

Customs Procedures

U.S. exporters have raised concerns regarding India’s application of customs valuation criteria to import transactions. India’s valuation procedures allow Indian customs officials to reject the declared transaction value of an import when a sale is deemed to involve a lower price than the ordinary competitive price, effectively raising the cost of exporting to India beyond applied tariff rates. U.S. companies have also faced extensive investigations related to their use of certain valuation methodologies when importing computer equipment. Companies have reported being subjected to excessive searches and seizures of imports.

Furthermore, as explained above, India does not assess the basic customs duty, additional duty, and special additional duty separately on the customs value of a given imported product. Rather, India assesses each of these duties cumulatively; that is, the additional duty is assessed on the sum of the actual (or transaction)

value and the basic customs duty, while the special additional duty is assessed on the sum of the actual (or transaction) value, the basic customs duty, and the additional duty. This raises concerns about the potential for importers paying higher duties than they should be liable for on the basis of the actual value of their imported product.

India's customs officials generally require extensive documentation, inhibiting the free flow of trade and leading to frequent and lengthy processing delays. In large part this is a consequence of India's complex tariff structure, including the provision of multiple exemptions which vary according to product, user, or intended use. While difficulties persist, India has shown improvement in this area through the automation of trade procedures – including through the ICEGATE (<http://icegate.gov.in>) portal discussed above – and other initiatives.

GOVERNMENT PROCUREMENT

India lacks an overarching government procurement policy, and as a result, its government procurement practices and procedures vary between the states, between the states and the central government, and between different ministries within the central government. Government procurement in India is not transparent. Foreign firms are disadvantaged when competing for Indian government contracts due to preferences afforded to Indian state-owned enterprises and the prevalence of such enterprises. Moreover, India's defense "offsets" program requires companies to invest 30 percent or more of the value of contracts above 3 billion rupees (approximately \$56 million) in Indian produced parts, equipment, or services. It is not uncommon for the Defense Ministry to request significant changes to previously-accepted offset agreements.

India's November 2011 National Manufacturing Policy (NMP) calls for increased use of local content requirements in government procurement in certain sectors (*e.g.*, information and communications technology (ICT) and clean energy). Consistent with this approach, India issued the Preferential Market Access (PMA) notification in February 2012, which required government entities to meet their needs for electronic products in part by purchasing domestically manufactured goods. India issued a revised PMA policy in December 2013. The revised policy continues to require that domestically manufactured goods constitute a certain percentage of the electronic products procured by government entities. The revised PMA policy also applies the same requirement to "procurement of electronic products made under all Centrally Sponsored Schemes and grants made by [the] Central Government."

India is not a signatory to the WTO Government Procurement Agreement, but became an observer to the WTO Committee on Government Procurement in February 2010.

EXPORT SUBSIDIES

India maintains several export subsidy programs, including exemptions from taxes for certain export-oriented enterprises and for exporters in Special Economic Zones, as well as duty drawback programs that appear to allow for drawback in excess of duties levied on imported inputs. India also provides pre-shipment and post-shipment financing to exporters at a preferential rate. Numerous sectors (*e.g.*, textiles and apparel, paper, rubber, toys, leather goods, and wood products) receive various forms of subsidies, including exemptions from customs duties and internal taxes, which are tied to export performance.

After several consecutive years in which it did not submit a subsidies notification, in 2010 and 2011 India submitted to the WTO Committee on Subsidies and Countervailing Measures (SCM Committee) notifications covering the 2003-2009 time period, each of which notify only one central government

program providing for preferential tax incentives related to Free Trade Zones, Special Economic Zones, and Export Processing Zones. These notifications were substantially incomplete, as they failed to notify several well-known Indian subsidies, including export subsidy programs at the central level. India did not notify any state level subsidy programs. Because of India's failure to notify its subsidy programs in a timely manner, USTR "counter-notified" 50 Indian subsidy programs to the WTO SCM Committee in October 2011 under Article 25.10 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). India has since filed one notification covering certain central and state fisheries-subsidy programs during the 2007-2010 time period, but has not notified many other subsidy programs that continue to operate in India.

In February 2010, the United States submitted to the SCM Committee a formal request that the WTO Secretariat conduct a calculation of the export competitiveness of Indian textile and apparel products. The resulting calculation, published in March 2010, indicated that, with respect to textile and apparel products, India had met the definition of "export competitiveness" set out in Article 27.6 of the SCM Agreement. As a result, India must phase out export subsidies for those products over a period of eight years, in accordance with the SCM Agreement. Since the calculation, India has announced some reductions in duty drawback rates for textile products, as well as its intention to eliminate certain subsidy programs. However, India not only continues to offer subsidies to its textiles and apparel sector in order to promote exports, but it has also extended or expanded such programs and even implemented new export subsidy programs that benefit the textiles and apparel sector. As a result, the Indian textiles sector remains a beneficiary of many export promotion measures (*e.g.*, Export-Oriented Units, Special Economic Zones, Export Promotion Capital Goods, Focus Product and Focus Market Schemes) that provide, among other things, exemptions from customs duties and internal taxes based on export performance.

India's Foreign Trade Policy 2009-2014 outlines a special initiative to increase agricultural exports, including a scheme called Vishesh Krishi Gram Upaj Yojana (VKGUY – "Special Agriculture Produce Scheme") aimed at boosting exports of fruits, vegetables, flowers, some forest products, and related value-added products. Under the plan, exports of these items qualify for a duty-free credit that is equivalent to 5 percent of their free-on-board export value. The credit is freely transferable and can be used to import a variety of inputs and capital goods. To mitigate the impact of the global economic slowdown on exports, the government has made exports of several additional agricultural products eligible under VKGUY, such as corn, barley, soybean meal, marine products, meat and meat products, skimmed milk powder, and tea.

India, the world's second-largest wheat producer, announced in July 2012 that it had authorized the export of 2 million tons of wheat from government public-stockholding reserves. The government of India permitted exports of this wheat at prices below the government's costs, including the price of wheat purchased from domestic farmers at minimum support prices as well as charges for local levies, transportation, and storage. In December 2012, the government of India announced an additional 2.5 million tons of wheat exports from government-held stocks, which were shipped through August 2013. In August 2013 the government authorized an additional 2 million tons of wheat exports from government-held stocks. It also lowered the minimum price at which those stocks could be sold to \$260 per ton F.O.B., significantly below the government's acquisition cost of \$306 per ton, plus storage, handling, inland transportation cost and other charges for exports.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

India remained on the Priority Watch List in the 2013 Special 301 Report because of concerns regarding weak protection and enforcement of intellectual property rights (IPR). Recent patent-related actions have only heightened these concerns. These include the March 2012 decision of the Controller General of

Patents, Designs and Trademarks to effectively require an innovator to manufacture in India in order to avoid being forced to license an invention to third parties, and provisions in India's National Manufacturing Policy that seek to curtail patent rights to facilitate technology transfer in the clean-energy sector. In addition, an April 2013 Indian Supreme Court decision appears to confirm that India's Patent Law creates a special, additional criterion for patentability for select technologies, like pharmaceuticals, which could preclude issuance of a patent even if the applicant demonstrates that the invention meets the internationally-recognized criteria for patentability.

India also continues to lack effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical and agrochemical products. Additionally, India's 2012 Copyright Law amendments failed to effectively implement the WIPO Internet Treaties and protect against circumvention of technological protection measures. Stronger protection and enforcement is needed for trademarks and copyrights,

SERVICES BARRIERS

The Indian government has a strong ownership presence in major services industries such as banking and insurance, while private firms dominate some of the fastest growing areas of the services sector, such as information technology and business consulting. Foreign investment in businesses in certain major services sectors, including financial services and retail, is subject to limitations on the amount of foreign equity permitted in the business. Foreign participation in professional services is significantly restricted, and in the case of legal services, prohibited entirely.

Insurance

Foreign investment in the insurance sector is limited to 26 percent of paid-up capital. The Ministry of Finance introduced the Insurance Laws (Amendment) Bill in Parliament in late 2008 to allow foreign equity participation of up to 49 percent and also allow entry of foreign re-insurers. The Parliament's Standing Committee on Finance recommended against increasing the 26 percent foreign equity cap. However, in September 2012, the Indian Cabinet re-affirmed its commitment to increase the foreign equity ceiling to 49 percent in the insurance sector.

As lawmakers continue to consider permitting increased foreign investment in the insurance sector, many existing investors are approaching 10 years of doing business in India. Under current regulations, at the 10 year mark, any partner in an insurance enterprise is required to divest its equity stake down to 26 percent. While this requirement does not affect foreign investors, whose stakes are already capped at 26 percent, this requirement may serve to compel some of their Indian joint venture partners to divest a portion of their stakes. Foreign investors may therefore find themselves having to take on additional Indian partners. Although the Insurance Regulatory and Development Authority has said that it will seek to clarify its plans regarding these regulations, foreign investors continue to operate in an environment of extreme uncertainty.

Banking

Although India allows privately held banks to operate in the country, the banking system is dominated by state-owned banks. State-owned banks account for roughly 76 percent of total assets and 84 percent of all bank branches in the Indian banking system. 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 severely limited by nontransparent quotas on branch office expansion. Only one license to open an

additional branch has been issued to a U.S. bank since March 2009, even though several U.S. banks have applied.

Foreign banks also face restrictions on direct investment in Indian private banks. Unlike domestic banks, foreign banks are not authorized to own more than 5 percent of an Indian private bank without approval by the Reserve Bank of India (RBI). Total foreign ownership of any private bank from all sources (foreign direct investment, foreign institutional investors, and non-resident Indians) cannot exceed 74 percent. In addition, voting rights for any shareholders in private banks are capped at 10 percent.

In the past, although foreign banks were authorized to open wholly-owned Indian subsidiaries, they had not done so because of the RBI-imposed caps on foreign ownership of Indian private banks. Recently, however, the RBI released framework guidelines governing the establishment by foreign banks of wholly-owned subsidiaries in India. These guidelines contain several provisions that U.S. industry has requested that the government of India clarify. The guidelines do not necessarily require foreign banks that have been operating in India since before August 2010 to restructure their Indian operations into wholly-owned Indian subsidiaries. However, the guidelines incentivize foreign banks to do so by offering Indian subsidiaries of foreign banks treatment similar to domestic banks when it comes to opening branches.

The passage of certain amendments to the Banking Regulation Act at the end of 2012 allowed Indian business conglomerates and non-bank financial institutions to establish new private banks. However, the RBI restricted total foreign shareholding in any bank established by such entities to 49 percent for the first five years, after which the limit would be the same as that applicable to foreign ownership of other private banks, *i.e.*, 74 percent.

Audiovisual Services

U.S. companies continue to face difficulties with India's "Downlink Policy." Under this policy, international content providers that transmit programming into India via satellite must establish a registered office in India or designate a local agent. U.S. companies have reported that this policy is overly burdensome and can result in having a taxable presence in India. India also requires that foreign investors have a net worth of Rs. 50 million (approximately \$800,000) in order to be allowed to downlink one content channel. A foreign investor must have an additional Rs. 25 million (approximately \$400,000) of net worth for each additional channel that the investor is allowed to downlink. While 100 percent foreign ownership of Indian entertainment and general interest channels is permitted, foreign investment in Indian news and current affairs channels is limited to 26 percent.

Accounting

Foreign accounting firms face obstacles to entering the Indian accounting services sector. Foreign accounting firms may only practice in India if their home country provides reciprocity to Indian firms. Only accounting firms structured as partnerships under Indian law may provide financial auditing services, and only Indian-licensed accountants may be equity partners in an Indian accounting firm.

Legal Services

The Bar Council of India (BCI) is the governing body for the legal profession in India. Membership in the BCI is mandatory to practice law in India, but is limited to Indian citizens. Foreign law firms are not allowed to open offices in India.

Indian lawyers have filed suit in the Bombay and Madras High Courts against a group of foreign law firms, challenging the ability of foreign attorneys to provide any type of legal services in India – including advising on matters of foreign (*i.e.*, non-Indian) or international law – under ambiguous provisions of the 1961 Advocates Act. The Bombay High Court issued a judgment in December 2009, finding that non-litigation advisory services provided by foreign lawyers fell within the purview of the current Advocates Act, and therefore could be provided only by Indian lawyers. However, the judgment also noted that the issue of foreign firms being able to practice law in India was under consideration by the government, and directed the government to “take [an] appropriate decision on this issue as expeditiously as possible.” In a separate case before the Madras High Court, the court ruled on February 21, 2012, that the Advocates Act did not prevent foreign lawyers from advising clients on foreign law and international legal issues (*e.g.*, in connection with international arbitrations) on a “temporary” basis. The BCI has appealed the Madras High Court judgment to the Indian Supreme Court.

Architecture

Although Indian companies continue to demand high quality U.S. design for new buildings and infrastructure development, foreign architecture firms are finding it increasingly difficult to do business in India due to the legal environment. An ambiguous Indian legal regime for architectural and related services has resulted in court cases against foreign design firms seeking to perform work in India and harassment of potential clients of foreign design firms. This legal regime causes significant losses of business for U.S. companies.

Telecommunications

India eliminated the 74 percent cap on FDI in Indian wireless and fixed telecommunications providers in August 2013, though government approval is required above 49 percent FDI. However, U.S. companies note that India’s initial licensing fee (approximately \$500,000 for a service-specific license or \$2.7 million for an all India Universal License) for telecommunications providers serves as a barrier to market entry for smaller market players.

In September 2012, India revised its limits on foreign investment in cable operators and “direct-to-home” (DTH) broadcasting services to allow up to 49 percent foreign direct investment without prior approval from the government, and to allow up to 74 percent with prior government approval (provided that cable operators invest in technical upgrades that support digitization and addressability).

The government of India continues to hold equity in three telecommunications firms. It holds: a 26 percent interest in VSNL, the leading provider of international telecommunications services; a 56 percent stake in MTNL, which primarily serves Delhi and Mumbai; and a 100 percent stake in BSNL, which provides domestic services throughout the rest of India. These ownership stakes have caused private carriers to express concern about the fairness of India’s general telecommunications policies. For example, valuable wireless spectrum was set aside for MTNL and BSNL instead of being allocated through competitive bidding. Although BSNL and MTNL did not pay a preferential price for their spectrum, they received their spectrum well ahead of privately owned firms.

In May 2011 India amended the licenses required for telecommunications service providers with a view to addressing security concerns posed by telecommunications equipment. These amendments, however, contain provisions of concern to the United States, including: (1) a requirement for telecommunications equipment vendors to test all imported information and communications technology (ICT) equipment in laboratories in India beginning in July 2014; (2) a requirement to allow both the telecommunications

service provider that contracted with the vendor, as well as Indian government agencies, to inspect the vendor's manufacturing facilities and supply chain and to perform security checks for the duration of the contract to supply equipment to the telecommunications service provider; and (3) a provision imposing on vendors, without the right to appeal and other due process guarantees, strict liability and possible "blacklisting for doing business in the country" when the vendor has taken "inadequate" precautionary security measures. In September 2013 India obtained Common Criteria (CC) "authorizing nation" status for ICT product testing, as a result of which Indian testing will be recognized by other Common Criteria countries as long as Indian testing labs adhere to specified standards. However, India has not revoked the domestic testing requirement for imported ICT equipment scheduled to take effect in July 2014. Government officials have indicated that they expect to introduce requirements for India-specific domestic testing for telecommunications equipment and other security-sensitive products in addition to the internationally accepted CC testing.

U.S. satellite operators have long raised concerns about the closed and protected satellite services market in India. Even though current Indian regulations do not preclude the use of foreign satellites, India's regulations provide that "proposals envisaging use of Indian satellites will be accorded preferential treatment." In addition, foreign satellite capacity must in practice be made available through the Indian Space Research Organization (ISRO), effectively requiring foreign operators to sell capacity to a direct competitor. U.S. companies have noted that this requirement creates additional costs, allows ISRO to negotiate contract terms with the goal of moving the service to one of its satellites once capacity is available, and puts ISRO in a position of being able to determine the market growth rate. Although the Telecom Regulatory Authority of India (TRAI) has in the past recommended that India adopt an "open skies" policy and allow competition in the satellite services market, no measures have been adopted to date to implement TRAI's recommendations for further liberalization.

Distribution Services

In November 2011, India raised the cap on FDI in retailers selling a single brand of product from 51 percent to 100 percent, subject to case-by-case government approval and contingent, among other things, on a requirement to source at least 30 percent of the value of products sold, from Indian small and medium sized enterprises. The government revised this policy in September 2012 to permit the local-sourcing requirement to be met by purchases from any Indian firm.

Also in September 2012, India approved a policy lifting its FDI ban and permitting up to 51 percent FDI in companies in the multi-brand retail sector, but left to each Indian state the final decision on whether to authorize such FDI in its territory. In addition, where such FDI is allowed, the policy imposes conditions on entry, including requirements to: invest at least approximately \$100 million, of which at least 50 percent must be in "back-end infrastructure" (*e.g.*, processing, distribution, quality control, packaging, logistics, storage, and warehouses), within three years of the initial investment; open stores only in cities that have been identified by the respective state government; and source at least 30 percent of the value of products sold, from "Indian 'small enterprises' which have a total investment in plant [and] machinery not exceeding [\$1 million]." The government of India increased the upper limit on Indian small enterprises to \$2 million in August 2013.

The September 2012 retail policy announcements also explicitly prohibit FDI in single-brand and multi-brand retail "by means of [electronic] commerce."

Indian states have periodically challenged the activity of direct selling (the marketing and selling of products to consumers away from fixed locations) as violations of the Prize Chits and Money Circulation

Schemes (Banning) Act of 1978, creating uncertainty for companies operating in the direct selling industry. This central government legislation contains no clear distinction between fraudulent activities such as Ponzi schemes, on the one hand, and legitimate direct-selling operations, on the other hand. Enforcement of the Prize Chits Act is reserved to the states, which have adopted varying implementing guidelines and/or taken unexpected enforcement actions on the basis of the ambiguous provisions of the Act. Raids and seizures of property were undertaken in 2006 by an Indian state against a U.S. direct-selling company, which had been operating in India with the approval of the Foreign Investment Promotion Board. The case remains under adjudication in Indian courts.

Industry groups have asked the Department of Industrial Policy and Promotion to issue guidance establishing a definition of direct selling and clarifying ambiguities, including uncertainty related to commissions earned in connection with the sale of products. In 2012, the Ministry of Finance issued draft guidelines designed to guide the preparation of state measures implementing the Prize Chits Act. Rather than clarifying the distinction between fraudulent schemes and legitimate business operations, however, the draft guidelines contain provisions making many standard direct selling activities, including activities that go to the core of the direct selling business model, inconsistent with the Prize Chits Act.

Postal and Express Delivery

In 2011, the Department of Posts announced a proposed bill to replace the 1898 Post Office Act. The Department of Posts invited public comment on a draft of the bill in 2012. This bill seeks, *inter alia*, to establish a new licensing and registration scheme for persons providing courier services, potentially granting India Post regulatory authority over its private sector competitors; and to require that private operators providing express delivery of items weighing 50 grams or less and letters weighing 150 grams or less charge twice the rate charged for the same delivery by India Post's Express Mail Service. Many stakeholders raised concerns with these and other aspects of the bill and with India's draft National Postal Policy during an October 2012 meeting called by the Department of Posts. The draft Postal bill is still under review.

Education

Foreign providers of higher education services interested in establishing a presence in India face a number of barriers, including a requirement that representatives of Indian states sit on university governing boards; quotas limiting enrollment; caps on tuition and fees; policies that create the potential for double-taxation; and difficulties repatriating salaries and income from research. A Foreign Education Providers Bill was expected to address some of these issues, but it has not yet been approved by Parliament.

INVESTMENT BARRIERS

Equity Restrictions

India continues to regulate FDI by sector. The Department of Industrial Policy and Promotion (DIPP) periodically revises FDI policies through consolidated press notes. The most recent revision of the Consolidated FDI Policy was made effective from April 2013, and the next revision is expected to be released in April 2014, though it is not uncommon for DIPP to issue amendments to the Policy throughout the year.

Beginning in 2002, India allowed 100 percent FDI in the pharmaceutical sector for several years with no requirement of government approval. In December 2012, India modified that policy to require approval by

the Foreign Investment Promotion Board for any FDI in brownfield investments while maintaining the “automatic” approval route for greenfield investments. Following further government review, in January 2014 India reaffirmed this policy of allowing 100 percent FDI in the pharmaceutical sector but requiring government approval only for brownfield investments.

India’s stringent and nontransparent regulations and procedures governing shareholding in local enterprises inhibit investment and increase risk to new market entrants. Price control regulations in some sectors, such as the pharmaceutical sector, have further undermined the attractiveness for foreign investors of increasing their equity holdings in India.

OTHER BARRIERS

In July 2010, India issued guidelines for the Jawaharlal Nehru National Solar Mission (JNNSM), requiring that eligible solar project developers source certain materials from domestic manufacturers in order to receive preferential power rates. In the first part of Phase I of the JNNSM, all crystalline silicon cells had to be manufactured in India. India significantly expanded these local content requirements in August 2011 for the second part of Phase I, such that all crystalline cells *and* modules (except thin-film) had to be manufactured in India. Solar thermal projects were required to meet a 30 percent local content threshold under both parts of Phase I. In October 2013, India issued guidelines for the first set of projects under Phase II of the JNNSM. These guidelines bifurcated these projects into two groups: the first group is required to use crystalline cells and modules (including thin-film) that are manufactured in India, and the second group has no restrictions relating to the origin of the equipment used. These restrictions have effectively blocked imports of certain U.S. solar panel technologies for use in the JNNSM, affecting a large segment of U.S. solar manufacturers. The United States initiated a WTO dispute in February 2013 challenging the JNNSM Phase I local content requirements, and included the Phase II local content requirements in a dispute filed in February 2014.

India has steadily increased export duties on iron ore and its derivatives. In February 2011, India increased the export duty on both iron ore fines and lumps from 5 and 15 percent, respectively, to 20 percent on both, and increased that export duty to 30 percent in January 2012. In February 2012 India changed the export duty on chromium ore from Rs. 3,000 (approximately \$56) per ton to 30 percent *ad valorem*, an increase at current chromium ore price levels. In recent years certain Indian states and stakeholders have increasingly pressed the central government to ban exports of iron ore. India’s export duties affect international markets for raw materials used in steel production.

In the agriculture sector, India has established tariff-rate quotas for corn and dairy products. Access to the tariff-rate quotas is complicated by requirements on who can be the end user of the imported products. These requirements often lead to low quota fill rates.

INDONESIA

TRADE SUMMARY

U.S. goods exports in 2013 were \$9.1 billion, up 13.6 percent from the previous year. Corresponding U.S. imports from Indonesia were \$18.9 billion, up 4.9 percent. The U.S. goods trade deficit with Indonesia was \$9.8 billion in 2013, down \$211 million from 2012. Indonesia is currently the 33rd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Indonesia were \$2.1 billion in 2012 (latest data available), and U.S. imports were \$476 million. Sales of services in Indonesia by majority U.S.-owned affiliates were \$3.2 billion in 2011 (latest data available), while sales of services in the United States by majority Indonesia-owned firms were \$87 million.

The stock of U.S. foreign direct investment (FDI) in Indonesia was \$13.5 billion in 2012 (latest data available), up from \$12.0 billion in 2011. U.S. FDI in Indonesia is primarily concentrated in the mining sector.

IMPORT POLICIES

In recent years, Indonesia has enacted numerous regulations on imports that have increased the burden for U.S. exporters. Import licensing procedures and permit requirements, product labeling requirements, pre-shipment inspection requirements, local content and domestic manufacturing requirements, and quantitative import restrictions impede U.S. exports. Numerous other measures have been adopted or are being considered in the context of draft legislation, including new food law, trade law, industry law, and quarantine law. In 2013, Indonesia intensified domestic discussions of a revised Negative Investment List. The Indonesian government has increasingly adopted such measures as it pursues the objective of self-sufficiency. These measures are also being adopted as Indonesia reduces tariffs to implement its preferential trade agreements with countries such as China, Australia, Japan, South Korea, New Zealand, and India. The United States will continue to press Indonesia to resolve U.S. concerns regarding these measures.

In August 2013, Indonesia announced a package of policy measures to increase exports, reduce imports, and bolster investment. In December, the Ministry of Finance increased the income tax on imports from 2.5 percent to 7.5 percent for over 500 tariff lines, largely affecting consumer goods.

Tariffs

In 2012, Indonesia's average most-favored-nation applied tariff was seven percent. Indonesia periodically changes its applied rates. In December 2011, the Ministry of Finance increased applied import duties for designated grain and oilseed products from zero percent to five percent. In August 2012, the Ministry of Finance reduced import duties on soybeans from five percent to zero percent through the end of 2012 to counter rising international soybean prices. The import duty on soybeans returned to five percent in January 2013 but was reduced to zero again in October 2013 in response to soybean price increases. In 2009, 2010, and 2011, Indonesia increased its applied tariff rates for a range of imported goods that compete with locally manufactured products, including electronic products, electrical and non-electrical milling machines, chemicals, cosmetics, medicines, iron wire and wire nails, and a range of agricultural products including milk products, animal or vegetable oils, fruit juices, coffee, and tea.

Indonesia's simple average bound tariff of 37 percent is much higher than its average applied tariff. Most Indonesian tariffs are bound at 40 percent, although bound tariff levels exceed 40 percent or remain unbound on automobiles, iron, steel, and some chemical products. In the agricultural sector, tariffs on more than 1,300 products have bindings at or above 40 percent. Tariffs on fresh potatoes, for instance, are bound at 50 percent, although the applied rate is 20 percent. The high bound tariff rates, combined with unexpected changes in applied rates, create uncertainty for foreign companies seeking to enter the Indonesian market

U.S. motorcycle exports remain severely restricted by the combined effect of a 60 percent tariff, a luxury tax of 75 percent, a 10 percent value-added tax, and the prohibition of motorcycle traffic on Indonesia's highways. In 2010, Indonesia converted its applied tariff on imported distilled spirits from 150 percent *ad valorem* to 125,000 rupiah (approximately \$15) per liter.

Indonesia has extensive preferential trade relationships with other countries. Under the ASEAN Free Trade Agreement, duties on imports from ASEAN countries generally range from zero percent to 5 percent, except for products specified on exclusion lists. Indonesia also provides preferential market access to Australia, China, Japan, Korea, India, Pakistan, and New Zealand under regional ASEAN agreements and to Japan under a bilateral agreement. In accordance with the ASEAN-China FTA, in August 2012, Indonesia increased the number of goods from China receiving duty-free access to 10,012 tariff lines. Indonesia is currently negotiating bilateral agreements with Iran, India, Australia, New Zealand, South Korea, and the European Free Trade Association. In addition, Indonesia is studying potential FTAs with Chile, Turkey, Tunisia, Mexico, South Africa, and Egypt. Indonesia is also participating in negotiations for the Regional Comprehensive Economic Partnership, which includes the ten ASEAN members and six additional countries (Australia, China, India, Japan, Korea, and New Zealand).

Indonesia imposes a progressive export tax on cocoa and palm oil exports. The cocoa export tax rate ranges from a minimum of 5 percent to a maximum of 15 percent and is calculated based on a monthly average of export prices. The minimum palm oil export tax rate is 2 percent, and the maximum rate is 22.5 percent. The Indonesian government also imposes export taxes on mineral ores and is considering imposing export taxes on other products, including coconut, base metals, and coal.

Luxury Taxes

Luxury goods (defined as goods not considered necessities), imported or locally produced, may be subject to a luxury tax of up to 200 percent, although the current range is 10 percent to 75 percent for goods listed in the implementing regulations as subject to the luxury tax. In May 2013, Indonesia introduced regulation GR-41, which lowers the Luxury Goods Sales Tax base rates for automobiles that meet certain environmental requirements. This tax is now 75 percent for motor vehicles using advanced diesel/petrol engine technology, dual petrol gas engines, biofuel engines, or hybrid technology, and with fuel consumption of 20 km/liter to 28 km/liter; 50 percent for those same motor vehicles with fuel consumption of more than 28 km/liter; and zero percent for motor vehicles under the government's Low Carbon Emission programs that have spark ignition under 1,200 cc or compression ignition under 1,500 cc (excluding sedans and station wagons).

Although Indonesia has eliminated its luxury tax on imported distilled spirits, the current excise tax regime imposes higher excise taxes on imported spirits than on domestic spirits.

Import Licensing

Indonesian importers must comply with numerous and overlapping import licensing requirements that impede access to Indonesia's market. Under Ministry of Trade Decree 27/MDAG/PER/5/2012 as amended by Decree 59/MDAG/PER/9/2012, all importers are required to obtain an import license as importers of goods for further distribution or for their own manufacturing, but not for both. However, companies that operate under an import license for their own manufacturing are allowed to import finished products provided they are market test products or complementary goods. The decrees also require companies to demonstrate a "special relationship" with the foreign company. The "special relationship" must be consularized by the Indonesian Embassy located in the country in which the foreign company is located. Only then may the companies import products from more than one section of the HS tariff code.

In addition, the Indonesian government requires non-automatic import licensing procedures on a broad range of products, including electronics, household appliances, textiles and footwear, toys, food and beverage products, and cosmetics. The measure, originally known as Decree 56 in 2009, has been extended twice by the Ministry of Trade, most recently in December 2012 through Ministry of Trade Regulation 83/M-DAG/PER/12/2012. Regulation 83/2012 will remain in effect until December 31, 2015. The decree also requires pre-shipment verification by designated companies (known in Indonesia as "surveyors") at the importers' expense and limits the entry of imports to designated ports and airports. Indonesia informally limits application of the decree to "final consumer goods." While the Indonesian government appears to exempt selected registered importers from certain requirements of this decree, the approval process to qualify as a registered importer is opaque, ill-defined, and potentially discriminatory. The United States continues to seek withdrawal of the measure.

Ministry of Trade Regulation 82 of 2012, as amended by Regulation 38 of 2013, and Ministry of Industry Regulation 108, in effect since January 2013, impose burdensome import licensing requirements for cell phones, handheld computers, and tablets and may prevent U.S. hardware companies from becoming importers of record. Under Regulation 82, importers of cell phones, laptop computers, and tablets can no longer sell directly to retailers or consumers. In addition, importers must have at least three years experience and must use at least three distributors to qualify for a Ministry of Trade importer license. In addition, Regulation 38 requires an importer to commit to establish an "industry" within 3 years of obtaining its import permit. Under Regulation 108, an importer must provide product identification numbers for each imported item in order to receive a Ministry of Industry importer license. Companies are unable to provide identification numbers months in advance and, as such, may need to apply for both licenses on a per shipment basis.

Indonesia maintains other additional non-automatic licensing requirements on textiles, clothing, and other "made-up goods" such as curtains and blankets, which limit market access for a wide range of products. Only approved local producers are authorized to import products, and these products are permitted for use only as inputs in domestic production, not for resale or transfer. Approval must be obtained for both the quantity and timing of imports. The United States continues to press Indonesia to eliminate these requirements.

Import Licensing for Agricultural Products

Import licensing requirements also apply to horticultural products. In August 2013, Indonesia adopted two ministerial regulations on the importation of horticultural products. These regulations are Ministry of Agriculture Regulation 86/2013 (replacing Regulation No 47/2013, 60/2012, and 3/2012) and Ministry of Trade Regulation 47/2013 (amending Regulation No 16/2013, which replaced regulations No. 60/2012 and 30/2012). The regulations require Indonesian importers to obtain three permits in order to import

horticultural products: (1) a Registered Importer (RI) and/or a Producer Importer (PI) designation from the Ministry of Trade; (2) an Import Recommendation of Horticultural Products (RIPH) from the Ministry of Agriculture; and (3) an Import Approval (SPI) from the Ministry of Trade. Additionally, before applying for recognition as an RI or PI, an importer must obtain an Importer Identification Number (General or Producer) and must prove that it has met certain criteria.

RIPHS and Import Approvals are issued on a biannual basis and are valid for one six-month semester. RIPHS specify, *inter alia*, the product name, HS code, country of origin, manufacturing location (for industrial materials), and entry point for all horticultural products the applicant wishes to import. After securing an RIPH, an importer must obtain an Import Approval from the Ministry of Trade before importing horticultural products. An Import Approval specifies the total quantity of a horticultural product (by tariff classification) that an importer may import during the period for which the Approval is valid. Importers cannot amend existing Import Approvals or apply for additional ones outside the application window. Furthermore, importers must import at least 80 percent of the quantity specified on their Import Approval, or risk losing the right to import in the future.

Indonesia adopted similar rules for the importation of animals and animal products in August and September 2013. Ministry of Agriculture regulation 84/2013 (replacing regulations 50/PERMENTAN/OT.140/9/2011 and 63/PERMENTAN/OT.140/6/2013) and Ministry of Trade regulation 46/2013 (replacing regulation 22/M-DAG/PER/5/2013) require importers, in order to import animals or animal products, to obtain: (1) a RI-Animal and Animal Product determination from the Ministry of Trade; (2) a Recommendation from the Ministry of Agriculture; and (3) an Import Approval from the Ministry of Trade. Additionally, to obtain an RI determination, the importer must be certified as a business establishment, possess a trading license and importer identification number, and meet other requirements.

Recommendations and Import Approvals for animals and animal products are issued quarterly. Recommendations may be valid for up to the remainder of the current year, and SPIs are valid for a fixed term of three months. The Directorate of Veterinary Public Health and Postharvest issues Recommendations, and importers may apply for SPIs only after obtaining a Recommendation for a given product. Recommendations specify, *inter alia*, the name, tariff category, entry point, country of origin, and intended use (which the regulations limit to certain sectors) of the product(s) to be imported. Import approvals specify the quantity of each product that may be imported. Importers must demonstrate actual importation of at least 80 percent of the quantity specified in their Approval from the previous year or risk losing their RI designation.

Similar to the prior import regulations, the new import regulations restrict the import of poultry and poultry products. The regulations governing animals and animal products maintain a positive list of products that may be imported, with the proper permits. The regulations provide for the import of fresh or frozen poultry (chicken, turkey, or duck) carcasses but not for the import of poultry parts, resulting, in effect, in a ban on the import of poultry parts. Additionally, although the regulations provide for the import of whole chicken carcasses, in practice, Indonesia does not issue import permits covering this product.

The licensing regimes for horticultural products and animals and animal products have significant trade restrictive effects on imports and the United States has repeatedly raised its concerns with Indonesia bilaterally and at the WTO. Indonesia failed to address these concerns. As a result, in January 2013, the United States requested consultations with Indonesia under the WTO's dispute settlement procedures, challenging the regimes' consistency with Indonesia's WTO obligations. After the consultations failed to resolve the concerns, the United States requested establishment of a WTO dispute settlement panel to address them, and a panel was established in April 2013. In August 2013, New Zealand joined the

dispute by filing its own request for consultations to address Indonesia's measures. At the same time, the United States filed a revised consultations request to address recent modifications to Indonesia's measures and to facilitate coordination with co-complainant New Zealand. The United States and New Zealand held consultations with Indonesia in September 2013.

Additional import licensing and registration requirements apply to other agricultural products, including animal and animal products, sugar, and dairy.

Pharmaceutical Market Access

The United States continues to have serious concerns about barriers to Indonesia's market for pharmaceutical products. Ministry of Health Decree No. 1010/MENKES/PER/XI/2008 requires foreign pharmaceutical companies either to manufacture locally or to entrust another company that is already registered as a manufacturer in Indonesia to obtain drug approvals on its behalf. Among its requirements, Decree 1010 mandates local manufacturing in Indonesia of all pharmaceutical products that are five years past patent expiration. It also contains a technology transfer requirement. A subsequent pair of regulations, Regulation 1799 and BPOM's (Indonesian Food and Drug Regulatory Agency) updated regulation on drug registration (most recently revised in Regulation 27 of 2013), provides additional information about the application of the local manufacturing requirements and lays out several exceptions to local manufacturing and technology transfer requirements. In September 2012, Indonesia issued Presidential Regulation 76/2012, granting compulsory licensing for nine HIV/AIDS and Hepatitis B treatment drugs. The United States will continue to monitor the implementation of these regulations.

A bill on *halal* certification has been under discussion in the Indonesian Parliament for several years and would require mandatory *halal* certification of pharmaceuticals as well as other products. The United States will continue to monitor the status of this proposed bill, including the potential impact on access to affected products.

Indonesia begins implementation of universal health care coverage (UHC) in January 2014. Routine purchases of pharmaceuticals and medical devices covered under UHC must be made from electronic catalogs developed by the Ministry of Health. There are reportedly few products from U.S. companies included in the Ministry of Health's electronic catalogs. U.S. companies will thus be restricted to competing for sales of their products primarily in the reimbursement (private insurance) market. The United States will continue to follow this issue.

Quantitative Restrictions

Indonesia removed quantitative restrictions on most agricultural products in August 2013 (MOA regulations 84/2013, 86/2013 and MOT regulations 46/2013 and 47/2013). Under current regulations, an importer is required on SPI applications made to the Ministry of Trade to request a quantity of product that the importer will be permitted to import. The Indonesian government has stated that it will approve any quantity requested, with the caveat that an importer must import at least 80 percent of the approved amount or lose the right to import in the future.

The Indonesian government also stated that the import of many agricultural products, including meat and some horticultural products, will be subject to a target price system, whereby imports will be permitted as long as domestic prices are above a set target price. In the event that prices fall below a set target price, the government reserves the right to stop ("postpone") imports.

While the removal of quantitative restrictions is a welcome change, the new system has not yet been tested, and the Indonesian government has not yet demonstrated how the new SPIs and RIPs will be

issued. Exporters have expressed concern that if imports are permitted on a quarterly basis for animal products, the limited validity of SPIs (three months) will prevent the United States from shipping to Indonesia or drive up costs. Importers have also reported that the SPI and RIPH application process lacks transparency and that many parts of the application system did not function during the two-week period that the application window was open in late 2013.

Indonesia imposes an “unofficial” restriction on corn imports. Unofficially, since 2012, only feed millers can import corn. They must apply for an import permit from the Ministry of Agriculture. The import permit will specify the volume of corn that can be imported. The volume will be set based on the level of domestic feed production.

Indonesia bans salt imports during the harvest season. It requires salt importers to be registered and to purchase domestic supplies as well as imports. Indonesia also maintains a seasonal ban on imports of sugar, in addition to limiting the annual quantity of sugar imports based on domestic production and consumption forecasts. In late 2011, Indonesia banned exports of raw and semi-processed rattan. This ban remains in effect.

Indonesia applies quantitative limits on the importation of wines and distilled spirits. Companies seeking to import these products must apply to be designated as registered importers authorized to import alcoholic beverages, with an annual company-specific quota set by the Ministry of Trade.

Mining firms operating in Indonesia may not export unprocessed ore unless they have the Indonesian government’s prior approval to do so *via* a contract of work or plans to build a smelter in Indonesia to process that ore. A 2009 mining law requires companies to process ore locally before shipping it abroad. Although scheduled to enter into force in 2014, Indonesia started implementing the law in 2012, by imposing an export tax of 20 percent on exports of mineral ores. A Supreme Court ruling made public in January 2013, which struck down the unprocessed ore export ban provisions of the Ministry of Energy and Mineral Resources regulation, and a subsequent Ministry promise to continue the ban, has further confused the situation. Foreign and domestic mining companies operating in Indonesia are concerned that a complete export ban would severely limit or stop operations. On January 12, 2014, Indonesia implemented the ban on unprocessed exports of mineral ores, including on nickel and bauxite. However for six mineral ores, including copper, Indonesia will allow export of mineral ore subject to a progressive export tax that will increase every six months through the end of 2016. For instance, for copper, the export tax is 25 percent in the first half of 2014 and will increase to 60 percent in the second half of 2016. U.S. companies have expressed concern that this export tax effectively functions as a ban. The United States will continue to raise concerns on this issue with the Indonesian government.

Indonesia also effectively bans the export of steel scrap.

Product Registration

Beginning in late 2008 and continuing through 2013, Indonesia’s food and drug agency (BPOM) slowed its process for reviewing applications for the registration of processed foods, beverages, and other products, including health supplements. Although BPOM reportedly has improved the efficiency of its product registration system, such as through the implementation in early 2013 of an e-registration system for low-risk products, concerns remain about proposed changes to the registration requirements and submission process that would further complicate the process. The United States will continue to monitor developments in this area.

Customs Barriers

U.S. firms continue to report that Indonesian customs relies on a schedule of reference prices to assess duties on some imports, rather than using actual transactions as required by the WTO Agreement on Customs Valuation. Indonesian customs 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.

In late 2010, Indonesian customs changed its methodology for assessing import duties on motion pictures from import duties “per meter” to a calculation based on royalties, significantly increasing duties payable. Following a disruption in trade, and as a result of bilateral consultations between the U.S. and Indonesian Governments, the Ministry of Finance adopted a new specific tariff based on a “per minute” calculation rather than royalties. The Finance Ministry also changed the application of its value-added tax on movie imports. Overall, the incidence of duties and taxes under the current system continues to be higher than it was in 2010, though trade has resumed.

In 2013, Indonesia issued Finance Regulation No. 51/2013, which provides tax incentives for foreign investors and labor intensive industries that decide to re-invest in Indonesia. In January 2012, the Ministry of Agriculture announced that, in order to comply with priorities set by the Ministry of Trade, the port of Jakarta and several other major ports would be closed to horticulture imports beginning in March 2012. More than 90 percent of Indonesian imports of U.S. fresh fruits and vegetables (more than \$200 million annually) move through the port of Jakarta, Tanjung Priok, and are destined for the Jakarta market. Despite this announcement, since June 2012, U.S. horticulture exports were able to continue using Tanjung Priok port as a result of the U.S.-country recognition status, approved by the Ministry of Agriculture. Australia, New Zealand, and Canada have also been allowed to continue using Tanjung Priok. In January 2013, the Ministry of Agriculture renewed the U.S.-country recognition status.

State Trading

In April 2008, Indonesia granted the National Logistics Agency (BULOG) exclusive authority to import standard unbroken rice. Indonesia cited “food security” (with the Indonesian government separately detailing its aspirations for food self-sufficiency) and price management considerations as the principle objectives of the authorization. BULOG is not allowed to import rice before, during, or immediately after the main harvest period (January/February annually). This requirement effectively prohibits any rice imports during the first quarter of the year. Private firms are only allowed to import broken rice for processing and specialty rice varieties, such as basmati, jasmine, and sushi rice for retail or food service. Importers of broken and specialty rice must obtain a special importer identification number from the Ministry of Agriculture.

GOVERNMENT PROCUREMENT

Indonesia grants special preferences to encourage domestic sourcing and to maximize the use of local content in government procurement. It also instructs government departments, institutes, and corporations to utilize domestic goods and services to the maximum extent feasible. Presidential Regulation 54/2010 requires procuring entities to seek to maximize local content in procurement, use foreign components only when necessary, and designate foreign contractors as subcontractors to local companies. Presidential Regulation 2/2009 stipulates that all state administrations should “optimize” the use of domestic goods and services and give price preferences for domestic goods and providers. Ministry of Industry Regulation 15/2011 provides for the creation of an Accelerated Use of Local Product National Team to optimize local product use in the procurement of goods and services.

Indonesia's 2012 Defense Law mandates priority for local materials and components and requires defense agencies to use locally produced defense and security goods and services whenever available. In addition, when an Indonesian government entity procures from a foreign defense supplier due to lack of availability from an Indonesian supplier, there is a requirement for trade balancing, incorporation of local content, and/or offset production. The amount of domestic value or local content required will increase over the succeeding five years. Initially, the domestic value required is 35 percent of the total contract value and will increase by 10 percent every year for the subsequent 5 years, after which 85 percent of the value should be compensated by trade balancing, incorporation of local content or offset production. The implementing regulations for the 2012 Defense Law have yet to be finalized, but U.S. defense firms already meet existing informal Indonesian government policy requiring 35 percent of the contract value of defense procurements to be sourced domestically. Contractors reportedly will be able to meet the new formalized requirement through various methods, including co-production, joint ventures, buybacks, knowledge transfer, and training.

In 2012, Indonesia became an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Indonesia remained on the Priority Watch List in the 2013 Special 301 report. Key concerns in Indonesia include continuing widespread copyright piracy and trademark counterfeiting, an inadequate number of criminal prosecutions, and non-deterrent penalties for those who are convicted. U.S. industry reports that one of its most significant frustrations remains the nontransparent and non-deterrent court system, which also impedes the ability of rights holders to obtain information about cases directly affecting their interests. Further, law enforcement and customs officials lack *ex officio* investigation and seizure authority, limiting their ability to enforce IPR laws effectively without a specific complaint from rights holders. As such, rates of physical counterfeiting and piracy, as well as online piracy, are extremely high (an estimated 86 percent of business software is unlicensed) while piracy rates at malls and in the retail sector are also high. Furthermore, counterfeiting activity extends to counterfeit products that present serious risks to human health and safety, such as counterfeit pharmaceutical products. Enforcement efforts are insufficient to keep pace with broad-based piracy and counterfeiting in Indonesia. The Indonesian government is in the process of amending intellectual property laws, including with respect to copyrights, industrial designs, trademarks, and patents. The United States has engaged the Indonesian government during the legislative process, and works with the Indonesian government to develop a mutually agreed Intellectual Property Action Plan to address deficiencies in IPR protection and enforcement, public education and outreach.

SERVICES BARRIERS

Legal Services

Only Indonesian citizens may be licensed as lawyers in Indonesia. Foreign lawyers may only work in Indonesia as "legal consultants" with the approval of the Ministry of Justice and Human Rights. A foreign law firm seeking to enter the market must establish a partnership with a local firm.

Express Delivery and Logistics Services

In September 2009, the Indonesian legislature passed a law with restrictions on the provision of postal services, broadly defined to include courier, express delivery, and other logistics services. The 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. Implementing Regulation No. 15/2013 under the law, issued in March 2013, states that only an Indonesian legal entity can apply for

a license and any foreign ownership of a company offering postal services be limited to a maximum 49 percent.

Health Services

Changes to the negative list of foreign investment restrictions in 2010 allow for 67 percent foreign ownership of private specialist hospitals in all regions of Indonesia, in contrast to the previous regulation which limited foreign investors to the cities of Medan and Surabaya. However, foreign ownership is prohibited for health research centers, private maternity hospitals, and general or public hospitals.

Most foreign healthcare professionals may act only as consultants/trainers to Indonesian healthcare professionals. Although the Doctors Practice Law 29/2004 and Minister of Health Regulation No. 512/2007 allow foreign doctors to practice in Indonesia, a 2004 technical note by Indonesia's Investment Coordinating Board banned foreign doctors from practicing in Indonesia, creating uncertainty in the market. In practice, it is nearly impossible for foreign doctors to obtain a license due to strong opposition from the Indonesian Doctors Association.

Financial Services

Nonbank financial service suppliers may do business in Indonesia as a joint venture or be partly owned by foreigners but cannot operate in Indonesia as a branch of a foreign entity. A single entity, either foreign or Indonesian, may own no more than 40 percent of an Indonesian bank. Bank Indonesia may grant exceptions and allow for greater than 40 percent ownership of Indonesian banks in certain cases. In the insurance sector, the 2007 Investment Law limits foreign equity to 80 percent for new investors. In December 2013, Bank Indonesia adopted a new regulation No. 15/49/DPKL restricting foreign ownership in private credit reporting firms to 49 percent.

Energy Services

Article 79 of Presidential Regulation No. 35/2004, which regulates contractor activities in the upstream oil and gas sector, provides that contractors must “prioritize” the use of domestic services, including energy-related services, as well as technologies, and engineering and design capabilities (see below).

Maritime Cabotage

Indonesia's 2010 Law No. 17 on Shipping requires all vessels operating in Indonesian waters to be Indonesian flagged. Indonesian law further limits foreign ownership of Indonesian-flagged vessels 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. In response to concerns raised by the United States and others, the Ministry of Transportation issued Regulation No. 48/2011 allowing certain classes of non-transportation vessels to be eligible for a three-month renewable waiver from the domestic flagged-vessel requirements when there is no suitable Indonesian-flagged vessel available. The three-month waivers are often not long enough to cover the duration of a project and they were scheduled to begin phasing out in December 2012. The Indonesian government reports that it plans to move to one-month waivers, which would further add to investor uncertainty and regulatory burden, but so far it has continued to grant three-month waivers. The United States will continue to press Indonesia on this issue.

Audit and Accounting Services

Foreign public accounting firms must be affiliated with a local public accounting firm to conduct business in Indonesia. A foreign accounting firm must use the name of its local affiliate in addition to the foreign firm's name in presentations and disclosures. Indonesia allows a maximum of 10 percent foreign national staff for each level of management in the affiliated local accounting firm. Foreign accountants can operate in the country if they have a license from the Ministry of Finance and are a member of the Indonesian Institute of Certified Public Accountants. In affiliated accounting firms, the ratio of foreign audit signing partners to local signing partners cannot exceed one to four.

Film

A September 2009 Law on Film imposed a 60 percent local content requirement for local exhibitors and included the authority to implement unspecified import restrictions to achieve that quota, prohibitions against the dubbing of foreign films, and prohibitions against foreign companies distributing or exhibiting films. The law also restricted vertical integration across segments of the film industry but that restriction has not been implemented fully to date.

The temporary postponement of a 2008 regulation requiring all local and imported movies, both theatrical prints and home video copies, to be replicated locally, with penalties on exhibitors for failing to do so, was replaced by consecutive one-year suspensions issued by the Minister of Culture and Tourism. In November 2013, Tourism and Creative Economy Minister Pangestu issued a decree suspending implementation until January 1, 2015. The United States continues to advocate for the permanent suspension and repeal of this regulation.

Construction, Architecture, and Engineering

Foreign construction firms are only allowed to be subcontractors or advisors to local firms in areas where the Indonesian government believes that a local firm is unable to do the work. For Indonesian government-financed projects, foreign companies must form joint ventures with local firms.

Education

Indonesia limits foreign investment in primary, secondary, and tertiary educational institutions through special licenses. Foreign investment in non-formal education is limited to 49 percent. Law 12/2012 on Higher Education liberalizes the tertiary education sector and allows foreign universities to operate in Indonesia if they are accredited in their country of origin, collaborate with local universities, are non-profit, support national interests, and prioritize the appointment of Indonesian citizens as faculty and staff. In order for a foreign national to provide educational services, he or she must be authorized by the Ministry of Education and the Ministry of Manpower. Authorization is granted on a case-by-case basis and only when there are no Indonesian instructors capable of filling the position.

Franchising

In 2012 and 2013, Indonesia's Ministry of Trade made three major regulatory changes in the franchising sector that threaten to have a significant chilling impact on future operations of foreign franchisors. In August 2012, Indonesia promulgated Ministry Regulation No. 53/2012, which establishes a local content requirement obliging an Indonesian franchisee to source 80 percent of its equipment and inventory domestically, unless a waiver is granted. While implementing rules remain vague, this sourcing requirement could have a significant negative impact in the development of new franchising agreements

in Indonesia. This new requirement is not expected to be fully enforced against existing licensed franchisees until 2017.

In October 2012, the Ministry of Trade issued regulation 68/2012 restricting the number of outlets that can be owned by a modern retail franchisee, such as supermarkets, to 150 before they must sub-franchise a portion of additional units to another local sub-franchisee. In February 2013, the Ministry of Trade issued regulation 7/2013 restricting the number of outlets that can be owned by food and beverage franchisee to 250. Under these regulations, companies have five years to come into compliance. These requirements could force some major U.S. and other foreign firms to divest a large number of outlets. It remains unclear when enforcement of this regulation will commence.

In December 2013, the Ministry of Trade issued a new regulation 70/2013, building on the localization requirements of the above regulations requiring modern retail establishments, such as shopping centers, minimarkets, and hypermarkets, to sell 80 percent domestic product within two years of the implementation of the regulation in June 2014. The regulation also limits modern retail establishments to sell a maximum of 15 percent of their stock as private label products and retailers must comply within two years of the regulation's implementation.

INVESTMENT BARRIERS

Indonesia's investment climate continues to be characterized by legal uncertainty, economic nationalism, and the disproportionate influence of local business interests. Indonesian government requirements often compel foreign companies to do business with local partners and to purchase goods and services locally.

Indonesia's 2007 Investment Law significantly increased the number of sectors in which foreign investment is restricted and increased foreign equity limitations in sectors such as telecommunications, pharmaceuticals, film and creative industries, and construction. Pursuant to presidential regulation, Indonesia continues to review the Investment Law and its "negative list" of restricted sectors. The most recent revisions to the list, in 2010, increased restrictions in sectors such as delivery services, while foreclosing foreign investment entirely in others, such as with respect to telecommunications towers (resulting in some firms being forced to exit the market). While the ongoing process of transferring investment-related decisions from central to provincial and district governments has helped reduce some burdensome bureaucratic procedures, the process has also led to inconsistencies between national and regional or local laws.

In 2010, the Indonesian legislature introduced a new horticulture law which reduced permissible foreign equity in horticulture-related business activities from 95 percent to 30 percent.

In 2013, Indonesia continued to consider revisions to the negative list. In late December, a revised list was sent to the president for approval. The revised list appears to contain limited easing of restrictions in a few sectors, including pharmaceuticals, while increasing restrictions in other areas, including distribution and logistics. The revised list also appears to retain the 30 percent restriction in horticulture-related business activities previously contained in the 2010 Horticulture Law.

Energy and Mining

Over the past several years, the Indonesian government has introduced regulatory changes to increase government control and local content levels in the energy and mining sectors.. The regulatory changes have raised costs for foreign businesses and raised questions about the sanctity of contracts already in force with the Indonesian government.

In the oil and gas sector for example, Government Regulation 79, signed in December 2010, allows the Indonesian government to change the terms of certain existing production sharing contracts, while eliminating the tax deductibility of certain expenses, changing the terms and criteria for cost recovery, and placing limits on allowable costs for goods, services, and salaries. Criminalization of the civil production sharing contract added to uncertainty in 2013, as U.S. company contractors and employees were convicted, fined, and imprisoned for doing work that was approved and defended in court by relevant government regulators.

Article 79 of Presidential Regulation No. 35/2004, which regulates contractor activities in the upstream oil and gas sector, provides that contractors must “prioritize” the use of domestic services, including energy-related services, as well as domestic technologies, and engineering and design capabilities. Foreign energy and energy services companies have noted that these local preference policies severely undermine their ability to make successful contract bids and decisions about sourcing and personnel that are necessary to efficiently and profitably operate in the Indonesian market. Indonesia’s implementation of its local preference and local content policies in this sector is also becoming more restrictive.

In 2011, Indonesia’s oil and gas regulator tightened rules relating to how such content is measured with respect to oil and gas projects. Once fully implemented, the new criteria are intended to achieve an average of 91 percent local content by 2025, up from 61 percent in 2012. Moreover, under the new rules, the goods and services of companies without majority Indonesian shareholding can no longer qualify as “local” content. As a result, foreign energy service companies have been placed at a disadvantage *vis-à-vis* majority Indonesian-owned companies, which can more easily meet local content requirements, but are often less able to meet the technical requirements of a project, often complicating and delaying project tendering processes.

The Indonesian House of Representatives continues to pressure the oil and gas regulator to maintain or increase the local content requirements, leading to increased uncertainty in the market. The United States will continue to monitor developments in this area.

In 2013, the Indonesian government initiated taxation of oil and gas exploration companies in the form of a land tax on all the area in an exploration block regardless of the size of the actual area used for exploration. It also instituted a similar tax on the subsea area of an offshore exploration block and began charging taxes on all equipment and buildings used in exploration.

In 2013, upstream oil and gas regulator SKK Migas, through policy PTK 51 of 2013, began delaying indefinitely cost recovery reimbursement to oil and gas companies with whom disputes arise with respect to reimbursement amounts. At the same time, the Indonesian government increased pressure on oil and gas companies to repatriate export earnings into Indonesian state-owned banks, per Bank of Indonesia Regulation 13 of 2011 as amended by Regulation 14 of 2012, subjecting such earnings to Indonesian banking law and regulations despite production sharing contract language allowing companies to retain such earnings abroad.

A new regulation promulgated by the Ministry of Energy and Mineral Resources in 2013, Regulation 31/2013, also limits the amount of time expatriates can work in Indonesia’s oil and gas sector to four years and sets an age limit of those expatriates at 55 years old, requirements that U.S. companies believe will significantly affect staffing patterns and technical capacity if implemented.

Indonesia’s 2009 Mining Law replaced a system based on contracts between a company and the central government with one based on licenses issued by local agencies. The law and its implementing regulations impose onerous requirements on companies doing business in this sector, including local content requirements, domestic demand requirements, and a requirement to process raw materials in

Indonesia prior to export. Because the mining licenses are subject to future regulatory, permitting, and tax changes, they provide significantly less certainty than the contract of work system. However, the Indonesian government is requiring companies with contracts of work to renegotiate those existing contracts in order to increase government royalty rates, increase local content requirements, require domestic smelting of minerals, decrease the size of mining areas, and make other changes that significantly alter the economic potential of these projects. The law's implementing regulations also reduced foreign ownership in the sector (to 49 percent within 10 years of the start of production). The United States will continue to press Indonesia on this range of issues.

Telecommunications

Telecommunications providers face myriad investment restrictions. Foreign ownership is capped at 65 percent for suppliers of value-added and mobile telecommunications services and 49 percent for suppliers of fixed network services. While these ownership limitations are higher than those required of Indonesia pursuant to its GATS commitments, the ownership limitation on suppliers of fixed services represents a step backward from past practice, where up to 95 percent ownership was previously allowed.

Regulations signed by the President in November 2012 to implement the 2008 Electronic Transactions Law may require companies operating in Indonesia to build or hire data and disaster recovery centers inside Indonesia. Further draft implementing regulations under consideration define "service providers" broadly such that the regulation would cover almost all online transactions, creating a significant hurdle to companies seeking to do business in Indonesia. The U.S. Government continues to engage the Indonesian government on this issue.

U.S. stakeholders have raised concerns about a spate of local content requirements in the telecommunications sector. Recent Ministry of Communication and Information Technology regulations, Regulation 07/2009 and Regulation 19/2011, require that equipment used in wireless broadband services should contain local content of at least 30 percent for subscriber stations and 40 percent for base stations, and that all wireless equipment should contain 50 percent local content within 5 years. Indonesian telecommunication operators are also required, pursuant to Decree 41/2009, to expend a minimum of 50 percent of their total capital expenditures for network development on locally sourced components or services.

OTHER BARRIERS

Although the Indonesian government and the Corruption Eradication Commission continue to investigate and prosecute high-profile corruption cases, many investors consider corruption a significant barrier to doing business in Indonesia. Other barriers to trade and investment include poor coordination within government, the slow pace for land acquisition for infrastructure development projects, poor enforcement of contracts, an uncertain regulatory and legal framework, 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.

IRAQ

TRADE SUMMARY

U.S. goods exports in 2013 were \$2.0 billion, down 1.3 percent from the previous year. Corresponding U.S. imports from Iraq were \$13.3 billion, down 30.9 percent. The U.S. goods trade deficit with Iraq was \$11.3 billion in 2013, down \$5.9 billion from 2012. Iraq is currently the 60th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Iraq was \$1.2 billion in 2012 (latest data available), up from \$468 million in 2011.

Membership in the World Trade Organization

Iraq is not a member of the World Trade Organization (WTO), at present. The WTO established a Working Party in 2004 to examine the terms and conditions for Iraq's accession to the WTO. Iraq submitted its Memorandum on the Foreign Trade Regime in September 2005. The Working Party met for a second time in April 2008 to continue the examination of Iraq's foreign trade regime, but has not met since. The United States continues to play a role in providing technical assistance for Iraq's preparations for WTO accession negotiations.

IMPORT POLICIES

Tariffs

On January 2, 2014, the government of Iraq started to implement the first phase of a 2010 tariff law that replaces the across-the-board 5 percent tariff rate enacted a decade ago by the Coalition Provisional Authority, with a much broader scale of some lower, and mostly higher, tariff rates. The 2010 law establishes rates on agricultural goods ranging from zero (for seeds) to 50 percent (for pork products, sugar, and tobacco) and 80 percent (for water and beverages). Tariffs on industrial goods range from duty free (some stones, minerals, organic and inorganic chemicals, dyes, rubber, wood pulp, some paper, locomotives, and aircraft), 5 percent to 15 percent (pharmaceuticals), 10 percent to 20 percent (apparel), 30 percent (bicycles, motorcycles, various electrical goods, electronic, information technology goods, and finished plastics) to 40 percent (carpets).

According to Council of Ministers (COM) Resolution 541 of December 10, 2013, several categories of goods were subject to immediate implementation: alcohol, tobacco, perfume, and certain cosmetic and toiletry products. On January 7, 2014, the COM granted an exemption from the first stage of tariff implementation to several broad categories of products: imports for public sector consumption, construction materials and equipment, food, agricultural supplies and equipment, and imports tied to government investment contracts. As of February 2014, it remains unclear how the government of Iraq will ultimately implement the 2010 tariff law in its entirety.

Certificates of Origin

Companies exporting to Iraq face lengthy and burdensome delays and must expend funds and manpower to obtain Certificates of Origin (COOs) for their products. To obtain a COO, U.S. companies must obtain clearances from a local chamber of commerce, the governor of the relevant state, and the U.S. Department of State, as well as the approval of the Commercial Attaché's Office at the Iraqi Embassy in Washington

D.C. The Iraqi COO requirement is especially onerous for complex equipment that includes parts from many countries. Reported use of COOs as an inappropriate means to attempt to assess conformity with human health or safety standards, instead of or in addition to the official standards and conformity assessment procedures, raises further concerns. Reports that COOs will now be required for companies seeking to provide services in Iraq also raise concerns.

The government of Iraq requires that U.S. companies complete this lengthy documentation verification and consularization process after precertification inspection but before shipment. To alleviate resulting delays, in June 2013 the Council of Ministers Secretariat issued guidance that allowed healthcare goods and foodstuffs to be immediately released from Iraqi Customs and imposed a limit of 90 days on responsible government ministries to submit certificate of origin documentation. The directive requires private sector importers to pay a security deposit equivalent to the amount of the fine for not having a COO. The new guidance resulted in some U.S. shipments being released from Iraqi customs, but it has not been implemented consistently.

U.S. officials continue to stress to the government of Iraq that many countries in the region have stopped requiring COOs or limited their use for only those products for which preferential tariffs under preferential trade arrangements are sought. The United States has encouraged the government of Iraq to limit these requirements.

Product Standards and Food Safety

Iraq's mandatory technical regulations are often based on standards that are technologically obsolete. Although Iraq is in the process of updating its standards and increasing its participation in international bodies that develop new standards, its adoption of modern international standards is still limited. Iraq's Center of Standardization and Quality Control (COSQC) often does not recognize testing by national authorities such as the U.S. Department of Agriculture's Food Safety Inspection Service (FSIS), although work is underway for COSQC to recognize FSIS testing in lieu of additional testing requirements specific to Iraq.

GOVERNMENT PROCUREMENT

There are significant challenges to the Iraqi central government's ability to tender. It faces institutional capacity problems on issues including, due diligence, project award, approvals, implementation, financing and payment. The United States is providing technical assistance to address some of these weaknesses. For tenders solely done at the provincial level, the tender process may differ and is reportedly easier to navigate in many instances.

For information on Iraqi government procurement policies related to the Arab League Boycott, please see the Arab League Boycott section.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Iraq currently does not have adequate statutory protection for intellectual property rights (IPR). The government of Iraq is in the process of developing a new IPR law to address certain obligations in the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs). The draft law covers patents, trademarks, and copyrights. Strong implementing regulations will be needed to consolidate IPR protection and enforcement functions, which are currently spread across several ministries, into a "one-stop" IPR office. The Central Organization on Standards and Quality Control (COSQC), an agency within the Ministry of Planning, handles the patent registry and the industrial design registry; the Ministry of Culture handles copyrights, and the Ministry of Industry and Minerals houses the office that registers

trademarks. The new draft law has been stalled in the constitutional review process since mid-2007. The government of Iraq's ability to enforce and protect IPR remains very limited.

The United States is continuing efforts to bolster the government of Iraq's understanding of IPR and build the government of Iraq's capacity to protect these rights. In June 2012, the Federal Court of Cassation, the highest civil court in Iraq, upheld a finding by the Baghdad-based Commercial Court that ruled in favor of the U.S. firm Westinghouse in a trademark dispute, setting a positive precedent for IPR enforcement in Iraq.

INVESTMENT BARRIERS

The lack of clear and definitive implementing regulations for the National Investment Law and its amendment remains a source of delay and confusion in the approval of investment projects. Once fully implemented, the law would establish a legal framework for investment. Potential investors, however, would still face laws, regulations, and administrative procedures that continue to make Iraq's overall regulatory environment opaque. More than 950 firms – both foreign and domestic – have filed for investment licenses in Iraq to date, but fewer have moved to execute the license. Obtaining licenses in the Iraqi Kurdistan Region (IKR), for example, requires application at the respective branch office in each governorate. In addition, Iraqi government line ministries may require additional approval which can delay or prevent potential investments in a particular province from moving forward. At the same time, Provincial Investment Commissions (PICs) have been active in assisting regional investors. However, National Investment Commission (NIC) and PIC Commissioners and their staff often lack training and expertise, and are still establishing their operations to serve as effective “one-stop shops” for investors to ease their entrance into the Iraqi market.

The absence of other laws in areas of interest to foreign investors also creates ambiguity. Iraq's Legislative Action Plan for the Implementation of WTO Agreements, the legislative “road map” for Iraq's eventual WTO accession, requires competition and consumer protection laws that are critical. The Council of Representatives passed a Competition Law and a Consumer Protection Law in 2010; however, the Competition and Consumer Protection Commissions authorized by these laws have yet to be formed. Without these Commissions, investors do not have recourse against unfair business practices such as price-fixing by competitors, bid rigging, or abuse of dominant position in the market. In the Iraqi Kurdistan Region, the Kurdistan regional government implemented the Consumer Protection Law by passing Law 9 of 2010.

OTHER BARRIERS

Transparency

The way in which the Iraqi government promulgates regulations is opaque and arbitrary. Regulations imposing taxes on citizens or private businesses are required to be published in the official government gazette. However, there is no corresponding requirement for the publication of internal ministerial regulations. This allows government agencies to create internal requirements, procedures, or other “guidelines” with little or no oversight, which can result in additional burdens for investors and other businesspersons.

ISRAEL

TRADE SUMMARY

U.S. goods exports in 2013 were \$13.7 billion, down 3.7 percent from the previous year. Corresponding U.S. imports from Israel were \$22.7 billion, up 2.5 percent. The U.S. goods trade deficit with Israel was \$8.9 billion in 2013, up \$1.1 billion from 2012. Israel is currently the 23rd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Israel were \$4.1 billion in 2012 (latest data available), and U.S. imports were \$5.2 billion. Sales of services in Israel by majority U.S.-owned affiliates were \$2.7 billion in 2011 (latest data available), while sales of services in the United States by majority Israel-owned firms were \$2.6 billion.

The stock of U.S. foreign direct investment (FDI) in Israel was \$10.2 billion in 2012 (latest data available), up from \$9.3 billion in 2011. U.S. FDI in Israel is primarily concentrated in the manufacturing sector.

The United States-Israel Free Trade Agreement

Under the United States-Israel Free Trade Area Agreement (FTA), signed in 1985, the United States and Israel agreed to implement phased tariff reductions culminating in the complete elimination of duties on all products by January 1, 1995. While tariffs on non-agricultural goods traded between the United States and Israel have been eliminated as agreed, tariff and nontariff barriers continue to affect a significant number of key U.S. agricultural product exports.

To address the differing views between the two countries over how the FTA applies to trade in agricultural products, in 1996 the United States and Israel signed an Agreement on Trade in Agricultural Products (ATAP), which established a program of gradual and steady market access liberalization for food and agricultural products effective through December 31, 2001. Negotiation and implementation of a successor ATAP was successfully completed in 2004. This agreement was effective through December 31, 2008, and granted improved access for select U.S. agricultural products. The ATAP has been extended six times, most recently through December 31, 2014, to allow time for the negotiation of a successor agreement. The ATAP provides U.S. food and agricultural products access to the Israeli market under 1 of 3 different categories: unlimited duty-free access, duty-free tariff-rate quotas (TRQs), or preferential tariffs, which are set at least 10 percent below Israel's most-favored nation rates.

IMPORT POLICIES

Agriculture

U.S. agricultural exports that do not enter duty free under WTO, FTA, or ATAP provisions face restrictions, such as a complicated TRQ system and high tariffs. These products include higher value goods that are sensitive for the Israeli agricultural sector, such as dairy products, fresh fruits, fresh vegetables, almonds, wine, and some processed foods. According to industry estimates, the elimination of levies on processed foods, including a broad range of dairy products, could result in increased sales by U.S. companies in the range of \$30 million to \$55 million. The removal of quotas and levies on dried fruits could result in an increase in sales by U.S. exporters of up to \$12 million. U.S. growers of apples, pears, cherries, and stone fruits estimate that the elimination of Israeli trade barriers would lead to an

increase of \$5 million to \$15 million in export sales of these products. Industry estimates that full free trade in agriculture could also result in U.S. cheese exports increasing significantly. Similarly, industry estimates that removing levies on food product inputs used in U.S.-based restaurant chains operating in Israel could save these chains millions of dollars annually and lead to their expansion in Israel.

Customs Procedures

Some U.S. exporters have reported difficulty in claiming preferences for U.S. goods entering Israel under the FTA, specifically related to the presentation of certificates of origin to Israeli customs authorities. In 2012, the U.S. Government engaged in discussions with Israel to clarify and resolve this issue. However, no resolution had been reached.

GOVERNMENT PROCUREMENT

Israel has offset requirements that it implements through international cooperation (IC) agreements. Under IC agreements, foreign companies are required to offset government contracts by agreeing to localization commitments to invest in local industry, co-develop or co-produce with local companies, subcontract to local companies, or purchase from Israeli industry. Israel is a signatory 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.

U.S. suppliers suspect that the size and nature of their IC proposals can be a decisive factor in close tender competitions, despite an Israeli court decision that prohibits the use of offset proposals in determining the award of a contract. Small and medium sized U.S. exporters are often reluctant to commit to make purchases in Israel in order to comply with the IC requirements, and, as a result, their participation in Israeli tenders is limited. In 2012, as part of the revised GPA, Israel committed to phase out its offsets on procurement covered by the GPA.

In addition, the inclusion of unlimited liability clauses in many government tenders discourages U.S. firms from competing. When faced with the possibility of significant legal costs for unforeseeable problems resulting from a government contract, most U.S. firms are forced to insure against the risk, which raises their overall bid price and reduces their competitiveness.

The United States-Israel Reciprocal Defense Procurement Memorandum of Understanding (MOU), extended in 1997, is intended to facilitate defense cooperation in part by allowing companies from both countries to compete on defense procurements in both countries on as equal a basis as possible, consistent with national laws and regulations. However, U.S. suppliers have expressed concern about the lack of transparency and apparent lack of justification for excluding U.S. suppliers from various Ministry of Defense (MOD) tendering opportunities. The MOU, which has benefited Israeli defense industries by opening up the U.S. procurement market to Israeli products, has not significantly opened the market for U.S. suppliers interested in competing for MOD procurements funded by Israel.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The United States removed Israel from the Special 301 report on March 1, 2014. Israel has passed patent legislation that satisfies the remaining commitments Israel made in a Memorandum of Understanding (MOU) on February 18, 2010 concerning several longstanding issues regarding Israel's intellectual property rights (IPR) regime for pharmaceutical products. These issues include improving data

protection, the terms of patents for pharmaceutical products, and provisions on the publication of patent applications in Israel.

The United States remains concerned with the limitations of Israel's copyright legislation and its interpretation of its commitments for data protection on biologic pharmaceuticals. Israel has continued enforcement efforts over IPR infringement.

SERVICES BARRIERS

Telecommunications

Only selected private Israeli broadcast television channels are allowed to carry advertising. These channels received broadcast licenses and the advertising privilege in exchange for certain local investment commitments. Israeli law largely prohibits other broadcast channels, both public and private, from carrying advertisements. Foreign channels that air through the country's cable and satellite networks are permitted to carry a limited amount of advertising aimed at the domestic Israeli audience. Currently, the regulations allow foreign channels no more than 25 percent of their total advertising time to target the Israeli market.

Israel does not have an independent regulator for the telecommunications sector.

ELECTRONIC COMMERCE

Israel's Electronic Signature Bill regulates signatures on electronic media. Loopholes in the law allow the consumer to decline to pay for any merchandise for which he or she did not physically sign, which serves as a disincentive to the establishment of online businesses. The Ministry of Justice maintains a register of entities authorized to issue electronic certificates attesting to the signature of the sender of an electronic message. The Registrar of Databases, which falls under the authority of the Ministry, requires that any firm or individual holding a client database secure a license to do so.

JAPAN

TRADE SUMMARY

U.S. goods exports in 2013 were \$65.1 billion, down 6.9 percent from the previous year. Corresponding U.S. imports from Japan were \$138.5 billion, down 5.4 percent. The U.S. goods trade deficit with Japan was \$73.4 billion in 2013, down \$3.0 billion from 2012. Japan is currently the 4th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Japan were \$46.5 billion in 2012 (latest data available), and U.S. imports were \$26.9 billion. Sales of services in Japan by majority U.S.-owned affiliates were \$76.8 billion in 2011 (latest data available), while sales of services in the United States by majority Japan-owned firms were \$100.0 billion.

The stock of U.S. foreign direct investment (FDI) in Japan was \$134.0 billion in 2012 (latest data available), up from \$126.0 billion in 2011. U.S. FDI in Japan is mostly in the finance/insurance, and manufacturing sectors.

Overview

Japan is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 11 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States and Japan, the TPP negotiating partners currently include Australia, Brunei, Canada, Chile, Mexico, New Zealand, Peru, Singapore, Malaysia, and Vietnam.

In addition to the TPP negotiations, the United States also will continue to address trade-related concerns and issues with Japan through bilateral as well as other fora.

IMPORT POLICIES

Beef Import System

At the end of January 2013, the United States and Japan agreed on new terms and conditions which paved the way for expanded exports of U.S. beef and beef products to Japan. Under these terms, which entered into effect on February 1, 2013, Japan permits the import of beef from cattle less than 30 months of age, compared to the previous limit of 20 months, among other steps. In an accompanying letter exchange, Japan also confirmed the ongoing bovine spongiform encephalopathy risk assessment by the Food Safety Commission, which includes a consideration of raising the age limit above 30 months for beef and beef product imports from the United States, taking into account international standards. This issue is discussed in detail in USTR's 2014 Report on Sanitary and Phytosanitary Measures.

Rice Import System

Japan's highly regulated and nontransparent importation and distribution system for imported rice limits meaningful access to Japan's consumers. In 1999, Japan established a tariff-rate quota (TRQ) of approximately 682,000 metric tons (milled basis) for imported rice. The Staple Food Department of the Ministry of Agriculture, Forestry and Fisheries (MAFF) manages imports of rice within the TRQ through periodic ordinary minimum access (OMA) tenders and through simultaneous buy-sell 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 in the industrial food processing or feed sector and for re-export as food aid. U.S. rice exports to Japan in 2013 were valued at nearly \$197 million, totaling 288,695 metric tons. Only a small fraction of this rice reaches Japanese consumers identified as U.S. rice, despite industry research showing Japanese consumers would buy U.S. high quality rice if it were more readily available. The U.S. Government continues to monitor Japan's imports in light of its WTO import commitments.

Wheat Import System

Japan requires wheat to be imported through MAFF's Food Department, which then resells the wheat to Japanese flour millers at prices substantially above import prices. These high prices discourage wheat consumption by increasing the cost of wheat-based foods in Japan. In 2007, MAFF revised its wheat import regime to allow more frequent adjustment to the resale price so that prices more closely reflect international price movements. The U.S. Government continues to carefully monitor the operation of Japan's state trading entity for wheat and its potential to distort trade.

Pork Import Regime

Japan is the largest export market for U.S. pork and pork products on a value basis, with shipments valued at nearly \$1.89 billion (424,858 metric tons) in 2013, accounting for nearly one-third of the value of total U.S. shipments to all destinations in that year. The import tariff for chilled and frozen pork is established by a gate price system that applies a 4.3 percent *ad valorem* tariff when the import value is greater than or equal to the administratively established reference price. When the value of imports falls below the reference price, the importer pays an additional specific duty equal to the difference between the import value and the reference price.

Beef Safeguard

In 2013, Japan again became the largest export market for U.S. beef and beef products on both a value and volume basis. Shipments to Japan reached \$1.39 billion (234,617 tons), accounting for nearly 23 percent of total U.S. beef and beef product exports (value basis) to all destinations in that year. In 1995, as part of the results of the Uruguay Round, Japan was allowed to institute a beef special safeguard (SSG) to protect domestic producers in the event of an import surge. The SSG is triggered when the import volume of beef increases by more than 17 percent from the level of the previous Japanese fiscal year on a cumulative quarterly basis. When triggered, beef tariffs rise to 50 percent from 38.5 percent for the rest of the Japanese fiscal year. Although U.S. exports have increased since further market opening at the start of 2013, the safeguard was not triggered.

Fish and Seafood Products

U.S. fish and seafood exports to Japan were valued at \$710 million in 2013, an 8 percent decrease from 2012, and accounting for 12 percent of total U.S. fish and seafood exports to all destinations in that year. Tariffs on several fish and seafood products remain an impediment to U.S. exports and also pose an impediment for importers who rely on U.S. raw product for their processing operation. Other market access issues remain and include Japan's import quotas on Alaska pollock, cod, Pacific whiting, mackerel, sardines, squid, and Pacific herring, as well as on specific products such as pollock roe, cod roe, and surimi. Although Japan has reduced tariffs, increased import quota volumes, and eased the administrative burdens associated with those quotas, the import quotas remain a deterrent to U.S. exports. The United States is urging Japan to continue to eliminate tariffs and remove nontariff obstacles to U.S. exports of fish and seafood.

High Tariffs on Beef, Citrus, Dairy, Processed Food, and Other Agricultural Products

Japan maintains high tariffs and other border measures that hinder U.S. exports of agricultural and other food products, including grains, sugar, pork, red meat, citrus, wine, dairy, and a variety of processed foods. Examples of double digit import tariffs include 38.5 percent on beef, 32 percent on oranges imported during the period December to May, 40 percent on processed cheese, 29.8 percent on natural cheese, 22.4 percent on shredded frozen mozzarella cheese, 20 percent on dehydrated potato flakes, 17 percent on apples, 10.5 percent on frozen sweet corn, 20.4 percent on cookies, up to 17 percent on table grapes depending on the season of the year, and 15 percent to 57.7 percent on wine depending on the tariff classification. These high tariffs generally apply to food products that Japan produces domestically. Addressing tariffs and improving market access for these and other products remains a high U.S. priority.

Wood Products and Building Materials

Japan maintains tariffs on imports of certain manufactured wood products, which remain of serious concern to the U.S. Government.

On April 1, 2013, Japan's Forestry Agency (FA) announced the Wood Use Point Program (WUPP), which provides 56 billion yen (approximately \$574 million) to promote the use of local wood. At this time, only two foreign wood species have been provisionally approved for inclusion in the program and it remains unclear whether additional foreign woods species will be approved before the program expires or program funds are depleted. Moreover, before receiving subsidy benefits, the species that have been provisionally approved are required to undergo an extensive review involving approval by each of Japan's prefectures. The U.S. Government has raised strong concerns about the WUPP as a subsidy that appears to promote the use of domestic Japanese wood products over imported wood products and will continue to urge Japan to address concerns regarding possible discriminatory treatment of imported wood products under the WUPP.

Leather/Footwear

Japan continues to apply a tariff-rate quota (TRQ) on leather footwear that substantially limits imports into Japan's market, negatively impacting market access for U.S.-made and U.S.-branded footwear. The U.S. Government continues to seek improved market access for U.S. exports in this sector.

Customs Issues

The U.S. Government continues to urge Japan to take a variety of steps to improve customs processing and to facilitate other expeditious and lower-cost solutions in the distribution sector. The U.S.

Government has encouraged Japan to raise the Customs Law *de minimis* ceiling from JPY 10,000 (approximately \$102) to a higher level. Strengthening Japan's system for advanced rulings would also improve transparency and predictability for U.S. exporters.

SERVICES BARRIERS

Japan Post

The U.S. Government remains neutral as to whether Japan Post should be privatized. However, as modifications to the postal financial institutions and network subsidiary could have serious ramifications for competition in Japan's financial market, the U.S. Government continues to monitor carefully the Japanese government's postal reform efforts and to call on the Japanese government to ensure that all necessary measures are taken to achieve a level playing field between the Japan Post companies and private sector participants in Japan's banking, insurance, and express delivery markets.

In the area of express delivery services, the U.S. Government remains concerned by unequal conditions of competition between Japan Post Company and international express delivery providers. The U.S. Government urges Japan to take action to enhance fair competition by leveling the playing field, including with respect to customs procedures and requirements as well as by prohibiting the subsidization of Japan Post Company's international express service with revenue from non-competitive (monopoly) postal services.

The U.S. Government also continues to urge the Japanese government to ensure that the postal reform process, including implementation of revisions to the Postal Privatization Law, is fully transparent, including by providing full and meaningful use of public comment procedures and opportunities for interested parties to express views to government officials and advisory bodies before decisions are made. Timely and accurate disclosure of financial statements and related notes is a key element in the postal reform process, as is the continued public release of meeting agendas, meeting minutes, and other relevant documents.

Insurance

Japan's private insurance market is the second largest in the world, after that of the United States, with direct net premiums of JPY 38,080 billion (approximately \$390 billion) in Japanese fiscal year 2012. In addition to the offerings of Japanese and foreign private insurers, insurance cooperatives (*kyosai*) and Japan Post Insurance, a wholly government-owned entity of the Japan Post Group, also provide substantial amounts of insurance to consumers. Given the size and importance of Japan's private insurance market as well as the scope of the obstacles that remain to market access, the U.S. Government continues to place a high priority on ensuring that the Japanese government's regulatory framework fosters an open and competitive insurance market.

Postal Insurance: Japan's postal life insurance system remains a dominant force in Japan's insurance market. At the end of Japanese fiscal year 2012, there were approximately 41.7 million postal life and postal annuity insurance policies in force. In comparison, 138 million life and annuity policies were in force with all other life insurance companies combined. The U.S. Government has long-standing concerns about the postal insurance company's negative impact on competition in Japan's insurance market and continues to closely monitor the implementation of reforms. A critical objective, from the U.S. Government's perspective, is to establish equivalent conditions of competition between the Japan Post companies and the private sector, consistent with Japan's WTO obligations. It is also critical for Japan to ensure full transparency in the implementation of laws and regulations related to Japan Post Group companies.

The U.S. Government continues to urge the Japanese government to take steps in the insurance sector related to Japan Post in order to address a range of level playing field concerns, including differences in supervisory treatment between Japan Post Group's financial institutions and private sector companies, access to the Japan Post Company network for private providers (including the process of selection of financial products), and cross-subsidization among the Japan Post businesses and related entities.

The U.S. Government continues to urge the Japanese government not to allow the Japan Post Group to expand the scope of operations for its financial services companies before a level playing field is established. The current restraints on the scope of these operations – including the cap on the amount of insurance coverage and limits to the types of financial activities and products Japan Post entities can offer – have helped to limit the extent to which the uneven playing field harms private insurance companies. The U.S. Government welcomed the statement by Deputy Prime Minister Taro Aso on April 12, 2013, that the Japanese government will refrain from approving new or modified cancer insurance and/or stand-alone medical products of Japan Post Insurance until it determines that equivalent conditions of competition with private sector insurance suppliers have been established, and that Japan Post Insurance has a properly functioning business management system in place, which Japan expects will take at least several years to achieve. In addition, before final decisions are made, it is vital that Japan's process for approving new products be transparent and open to all parties, including active solicitation and consideration of private sector views, along with careful analysis and full consideration of actual competitive conditions in the market.

Kyosai: Insurance businesses run by cooperatives (kyosai) hold a substantial share of insurance business in Japan. Some kyosai are regulated by their respective agencies of jurisdiction (e.g., the Ministry of Agriculture, Forestry and Fisheries or the Ministry of Health, Labor and Welfare) instead of by the FSA, which regulates all private sector insurance companies. These separate regulatory schemes create a nontransparent regulatory environment and afford kyosai critical business, regulatory, and other advantages over their private sector competitors.

The U.S. Government remains concerned about the reversal of progress toward giving FSA supervisory authority over kyosai that have insurance operations that are neither regulated by the FSA nor by any other government agency. The 2005 Insurance Business Law revisions would have achieved this by requiring unregulated kyosai to come under FSA supervision; the Japanese government, however, has delayed and, in some cases provided exemptions to, implementation.

Bank Sales of Insurance: In December 2007, the Japanese government fully liberalized the range of insurance products eligible for sale through banks. As a follow-up, the U.S. Government asked Japan to review market conduct rules, including the limits on sales of designated products and treatment of customer data, to ensure they do not limit the effectiveness of bank sales of insurance products or impede consumer convenience and choice. With minor revisions made to these rules in 2012, the U.S. Government continues to call on the Japanese government to conduct in the near term a fact-based and transparent review of the bank sales channel that includes meaningful opportunities for input from interested stakeholders and that takes into account global best practices to further enhance policyholder protection and improve consumer choice.

Local Incorporation of Foreign Insurance Operations: The U.S. Government urges the Japanese government to continue allowing foreign insurance providers choice of juridical form in accessing the Japanese markets and to afford U.S. insurance providers meaningful opportunities to provide their input on any actions that would affect the provision of insurance. The U.S. Government welcomes the current treatment of branches of foreign insurance companies by Japan's Financial Service Agency (FSA) as described in its "Annual Supervisory Policy for Insurance Companies, etc. for Program Year 2013."

Policyholder Protection Corporations: The Life and Non-life Policyholder Protection Corporations (PPCs) are mandatory policyholder protection systems created to provide capital and management support to insolvent insurers. In March 2012, the Japanese government extended the existing system of government pre-funding of the PPCs for an additional five years, until March 2017. The U.S. Government continues to urge Japan to consider more fundamental changes in the PPC systems, including through full and meaningful deliberations with interested parties, before renewing these measures again.

Other Financial Services

While improvements have been made in Japan's financial services sector, such as the FSA's continued commitment to its Better Markets Initiative, the U.S. Government continues to urge reforms in the areas of online financial services, defined contribution pensions, credit bureaus, and sharing of customer information. While the FSA continues to enhance its engagement and outreach with both domestic and foreign financial firms operating in Japan, more improvement in this sector is needed, particularly with respect to transparent practices such as enhancing the effectiveness of the no-action letter and related systems, providing written interpretations of Japan's financial laws, and soliciting input from all interested parties on concerns and potential improvements related to the inspection process.

Telecommunications

The U.S. Government continues to urge Japan to ensure fair market opportunities for emerging technologies and business models, and ensure a regulatory framework appropriate for addressing converged and Internet-enabled services, and maintain competitive safeguards on dominant carriers. The U.S. Government also continues to urge Japan to improve transparency in rulemaking and ensure the impartiality of its regulatory decision making.

Fixed-line Interconnection: In March 2013, Japan's Ministry of Internal Affairs and Communications (MIC) approved both Nippon Telegraph and Telephone (NTT) East and NTT West's interconnection rates based on the Long Run Incremental Cost Method for Japanese fiscal year 2013. In March 2013, MIC also authorized Japanese fiscal year 2013 interconnection fees for the "Next Generation Network", including ethernet data transmission, operated by NTT East and NTT West. These interconnection rates still remain high by international standards.

Dominant Carrier Regulation: NTT continues to dominate Japan's fixed line market through its control over almost all "last-mile" connections. As Japan's broadband users transition from digital subscriber line (DSL) (where competition, ensured through regulation, was robust) to optical fiber, competitors have raised concerns that the more lightly regulated fiber-based services will allow NTT to expand its dominant position through control of the fiber-to-the-home (FTTH) market, where it holds a market share of about 72.1 percent as of the end of June 2013. NTT's authority to bundle its fixed-line services with NTT DOCOMO's mobile service is also of concern, as it appears to undermine the rationale for structurally separating the companies.

Universal Service Program: Current cross-subsidization of NTT West by NTT East using interconnection revenue (ostensibly to address NTT West's higher network costs resulting from the higher number of rural subscribers) appears redundant given the existence of the universal service fund.

Mobile Termination: Like most countries, Japan uses the "Calling Party Pays" system, imposing the entire cost of termination on the calling party (enabling mobile subscribers to benefit from free incoming calls). Mobile interconnection rates still remain high by international standards and particularly compared

to fixed-line rates in Japan. However, following new guidelines from MIC on calculating interconnection rates, NTT DOCOMO, the dominant incumbent mobile carrier, announced in February 2010 that it would lower its termination rates by over 10 percent, continuing incremental rate reductions implemented over the past 10 years. In March 2013, NTT DOCOMO announced a decision to cut interconnection fees for calls to other wireless service operators by up to 4.3 percent, retroactive to April 2012. MIC is encouraging all wireless carriers to follow the new guidelines. In contrast to NTT DOCOMO, however, other mobile operators' termination rates remain high, and mediation efforts to reduce these rates have not been successful.

New Mobile Wireless Licenses: Starting in 2005, MIC began opening the market to new mobile providers beyond the three main incumbents by assigning blocks of spectrum to a limited number of new wireless entrants. In March 2012, Softbank was awarded 900MHz frequencies, and in June 2012, NTT DOCOMO, KDDI, and eAccess (acquired by Softbank in January 2013) were awarded 700MHz spectrum. While Softbank launched its 900MHz networks in 2013, the 700MHz frequencies will not be utilized until 2015. In July 2013, MIC awarded additional frequencies in the 2,625 MHz to 2,645 MHz bands to UQ Communications, a subsidiary of KDDI, to provide advanced Broadband Wireless Access systems. Unlike most advanced economies, Japan does not use auctions to allocate spectrum, and the factors MIC used to determine how to evaluate applications have raised questions related to the fairness of the allocation process. Although the Japanese government has previously considered introducing legislation to that allows for auctions as an option to assign commercial spectrum, it remains unclear whether such legislation will be introduced.

Information Technologies (IT)

Health IT: The U.S. Government has urged Japan to improve the quality and efficiency of healthcare by rapidly implementing health IT that is based on international standards, promotes technology neutrality and interoperability, and allows patients greater access to their own health records. Engagement between U.S. and Japanese Government health IT experts continues to address health IT issues of mutual interest.

Privacy: Separate and inconsistent privacy guidelines among Japanese ministries have created an unnecessarily burdensome regulatory environment with regard to the storage and general treatment of personally identifiable information in Japan. The U.S. Government has urged Japan to introduce greater uniformity in the enforcement of the Privacy Act across the central government through policy standardization and consistent implementation of guidelines. The U.S. Government also has urged the Japanese government to reexamine the provisions and application of the Privacy Act, so as to foster appropriate sharing of data, to ensure full transparency, and to consult widely as privacy guidelines for online advertising are developed. The United States has been working with Japan through the Asia-Pacific Economic Cooperation (APEC) to facilitate Japan's participation in the Cross Border Privacy Rules system, a voluntary system of commercial data privacy standards. Completion of this process, begun in June 2013, is expected in spring 2014.

Consumption Tax on Online Content from Abroad: In 2012, the Ministry of Finance (MOF) announced that it intends to begin levying a consumption (value-added) tax on music and books distributed online from overseas to consumers in Japan. Such products offered by firms with a physical presence in Japan are already subject to a consumption tax. MOF proposes to introduce a mandatory registration system for foreign firms, modeled on that used in the European Union. On March 1, 2013, MOF submitted to the Diet a tax reform bill, but it did not include any provisions to levy the consumption tax on music and books distributed online from overseas, and MOF has indicated it is still considering an effective framework of imposing the tax on online content from overseas. MOFA plans to levy the consumption

tax on online content from abroad beginning in October 2015, when the consumption tax is scheduled to rise to 10 percent. The U.S. Government is continuing to monitor developments.

Legal Services

Japan imposes restrictions on the ability of foreign lawyers to provide international legal services in Japan in an efficient manner. The U.S. Government continues to urge Japan to further liberalize the legal services market. Legislation was submitted to the Diet in March 2012 that would allow foreign lawyers to form Japanese professional corporations that are permitted to establish branch offices within Japan, but the legislation did not pass and has not been reintroduced. In addition to this legislation, another important step would be to allow foreign lawyers to establish multiple branch offices in Japan, whether or not they have established a professional corporation. The U.S. Government also urges Japan to take other important measures, including ensuring that no legal or Bar Association impediments exist to Japanese lawyers becoming members of international legal partnerships and accelerating the registration process for new foreign legal consultants.

Educational Services

The U.S. Government continues to urge the Japanese government to work with foreign universities to find a nationwide solution that grants tax benefits comparable to those provided to Japanese schools and allows them to continue to provide their unique contributions to Japan's educational environment.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Japan generally provides strong intellectual property rights (IPR) protection and enforcement. The U.S. Government, however, continues to urge Japan to improve IPR protection and enforcement in specific areas through bilateral consultations and cooperation, as well as in multilateral and regional fora.

The U.S. Government also has urged Japan to continue to reduce piracy rates, including adopting methods to protect against piracy in the digital environment. Police and prosecutors lack *ex officio* authority to prosecute IPR crimes on their own initiative, without a rights holder's complaint. The U.S. Government also seeks improvements to Japan's Internet Service Provider liability law to promote cooperation between right holders and Internet service providers.

Japan took steps to revise its Customs Law and Unfair Competition Law in 2011 and its Copyright Law in 2012, which extended protection for technological protection measures, among other things. The U.S. Government recommends that Japan further strengthen its laws to provide effective criminal and civil remedies against the unauthorized circumvention of technological protection measures used by rights holders to protect their works and against the trafficking in tools used to circumvent them.

In other areas, although Japan provides a 70 year term of protection for cinematographic works, it only provides a 50-year term for all other works protected by copyright and related rights. The U.S. Government continues to urge Japan to extend the term of protection for all subject matter of copyright and related rights in line with emerging international trends. While the U.S. Government welcomed clarifications to Japan's Copyright Law in 2010 that the statutory private use exception does not apply in cases where a downloaded musical work or a motion picture is knowingly obtained from an infringing source, the U.S. Government continues to urge the Japanese government to expand this limitation on the private use exception to cover all works protected by copyright and related rights.

The U.S. Government continues to monitor developments related to Japan's announcement in October 2011 of plans to introduce a *sui generis* system for the protection of geographical indications (GIs) within five years. The U.S. Government urges Japan to ensure that certain core principles are upheld involving the scope of GI protection and GI registration safeguard procedures, including protecting the prior rights of owners of existing trademarks, safeguarding the use of generic terms, and ensuring objection and cancellation procedures, as it considers changes to its existing system for protecting GIs.

GOVERNMENT PROCUREMENT

Japan is a signatory to the WTO Agreement on Government Procurement (GPA). Japan applies a threshold of 15 million SDRs (approximately \$23.98 million) for procurement of construction services by sub-central entities and many government enterprises covered under the GPA, which is three times the threshold applied by the United States and most other GPA Parties.

The U.S. Government continues to emphasize the importance of improving the bidding process for government contracts in Japan, including by increasing transparency in tendering decisions and taking steps that facilitate improved opportunities for participation by qualified bidders.

Construction, Architecture, and Engineering

U.S. companies annually obtain far less than 1 percent of projects awarded in Japan's massive public works market, estimated at \$225 billion in 2013. Two bilateral public works agreements are in effect: the 1988 United States-Japan Major Projects Arrangements (MPA, updated in 1991) and the 1994 United States-Japan Public Works Agreement, which includes the Action Plan on Reform of the Bidding and Contracting Procedures for Public Works (Action Plan). The MPA includes a list of 42 projects in which international participation is encouraged. Under the Action Plan, Japan must use open and competitive procedures for procurements valued at or above the thresholds established in the GPA.

Problematic practices continue to limit the participation of U.S. design/consulting and construction firms in Japan's public works sector, including bid rigging (*dango*), under which companies consult and prearrange a bid winner (*see "Broadening Measures to Combat Bid Rigging" under the Anticompetitive Practices section*). The U.S. Government continues to press Japan to take more effective action to address this pervasive problem. The U.S. Government continues to monitor Japan's public works sector.

Specifically, the U.S. Government is paying special attention to certain major projects covered by the public works agreements that are of particular interest to U.S. companies. These include major expressway projects; major public buildings, railroad and railroad station procurements, urban development and redevelopment projects; planned port facilities expansion projects; major private finance initiative projects; and the MPA projects still to be undertaken or completed. The U.S. Government is also monitoring developments related to environmental remediation, "green" building, design, and procurement.

Procurement of Information Technology

Lack of transparency, excessive reliance on sole-source contracting, and restrictions on intellectual property ownership, among other factors, hinder the participation of U.S. companies in Japanese government IT procurement. The U.S. Government therefore has urged Japan to introduce greater competition, transparency, and fairness in government procurement of IT through steps such as implementation of national government-wide policies that reflect international technology trends and standards and that follow principles of technology neutrality and interoperability. In August 2012, Japan

appointed its first central government Chief Information Officer (CIO). The U.S. Government encourages Japan to use the new CIO's position to reform government procurement of IT in the ways described above.

INVESTMENT BARRIERS

Despite being the world's third largest economy, Japan continues to have the lowest inward foreign direct investment (FDI) as a proportion of total output of any major OECD country. According to OECD statistics, FDI stock at the end of 2012 was only 3.4 percent of GDP in Japan, compared to 30.6 percent on average for all OECD members. Inward foreign merger and acquisition (M&A) activity, which accounts for up to 80 percent of FDI in other OECD countries, also lags in Japan.

While the Japanese government has previously recognized 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, Prime Minister Shinzo Abe announced his goal to double Japan's inward FDI stock by 2020 and reconfirmed the target in his published growth strategy. It is unclear, however, how aggressively Japan's government will adopt reforms and other policies to promote this target.

While progress toward this new target will be measured in part by the numbers of transactions and monetary values of M&As, the Japanese government has done little to explicitly encourage inward investment through M&A as a policy priority. Even before the financial crisis of 2008 and 2009, questions existed regarding the adequacy of measures taken to promote a level of cross-border inbound M&A necessary to achieve the government's target. After peaking at 309 in 2007, numbers of annual inbound M&A transactions declined to 112 in 2012. A variety of factors make inbound M&A difficult in Japan, including attitudes toward outside investors, inadequate corporate governance mechanisms that protect entrenched management over the interest of shareholders, cross-shareholdings, aspects of Japan's commercial law regime (*see Commercial Law section*), and a relative lack of financial transparency and disclosure.

ANTICOMPETITIVE PRACTICES

Improving Anti-Monopoly Compliance and Deterrence

Japan's Anti-Monopoly Act (AMA) provides for both administrative and criminal sanctions against cartels. Criminal prosecutions, which should have the strongest deterrent effect against anticompetitive behavior, have been few, and penalties against convicted company officials have been weak. The U.S. Government has continually urged Japan to take steps to maximize the effectiveness of enforcement against serious violations of the AMA. While the Japanese government has taken some steps to address these concerns, particularly through AMA amendments enacted in June 2009, the U.S. Government continues to urge the Japan Fair Trade Commission (JFTC) to make further improvements, including by improving the economic analysis capabilities of JFTC staff, to strengthen its ability to enforce the AMA effectively.

Improving Fairness and Transparency of JFTC Procedures

Japan introduced a system in January 2006 that empowered the JFTC to make determinations of AMA violations without a prior formal administrative hearing. Respondents are only afforded the right to seek administrative review of the JFTC decision after the decision is put into place. Although the JFTC allows companies subject to a proposed cease-and-desist or surcharge payment order to review the evidence

relied upon by JFTC staff and to submit evidence and make arguments in their defense prior to issuance of a final order, questions have arisen as to whether the current system provides sufficient due process protections. In December 2013, the Japanese Diet enacted an AMA amendment bill to eliminate the *ex post* hearing system and to allow appeals of JFTC orders to go directly to the Tokyo District Court. The new system will be implemented by July 2015. The U.S. Government continues to raise concerns about procedural fairness issues related to the JFTC's investigative and pre-decisional processes.

Broadening Measures to Combat Bid Rigging

The U.S. Government continues to raise concerns with the problem of bid rigging in Japan, and urges that further measures are taken to prevent conflicts of interest in government procurement, improve efforts to eliminate involvement in bid rigging by government officials, and expand administrative leniency programs.

OTHER SECTORAL AND CROSS-SECTORAL BARRIERS

Transparency

Advisory Groups: Although advisory councils and other government-commissioned study groups are accorded a significant role in the development of regulations and policies in Japan, the process of forming these groups can be opaque and nonmembers are too often not uniformly offered meaningful opportunities to provide input into these groups' deliberations. The U.S. Government continues to urge Japan to ensure the transparency with respect to the formation and operation of advisory councils and other groups convened by the government by adopting new requirements to ensure that ample and meaningful opportunities are provided for all interested parties, as appropriate, to participate in, and directly provide input to, these councils and groups.

Public Comment Procedure (PCP): Many U.S. companies remain concerned by inadequate implementation of the PCP by Japanese ministries and agencies. Examples include cases where comment periods appear unnecessarily short, as well as cases where comments do not appear to be adequately considered given the brief time between the end of the comment period and the issuance of a final rule or policy. The U.S. Government has stressed the need for Japan to ensure additional revisions are made to further improve the system, such as doubling the standard public comment period for rulemaking from 30 days to 60 days.

Commercial Law

Foreign investment into Japan remains constrained by a range of issues, including conditions for using tax-advantaged merger tools for inward-bound investment to Japan, securities law and capital market issues inherent in cross-border stock-for-stock transactions, and corporate governance systems that do not adequately reflect the interests of shareholders. The U.S. Government continues to urge Japan to identify and eliminate impediments to cross-border mergers and acquisitions, including the availability of reasonable and clear incentives for many such transactions, and to take measures to ensure that shareholder interests are adequately protected when Japanese companies adopt anti-takeover measures or engage in cross-shareholding arrangements. The U.S. Government also continues to urge Japan to improve further its commercial law and corporate governance systems in order to promote efficient business practices and management accountability to shareholders in accordance with international best practices. Areas ripe for improvement include facilitating and encouraging active and appropriate proxy voting, setting minimum requirements for and ensuring the independence of outside directors, augmenting the role of outside directors on corporate boards, strengthening protection of minority shareholders by

clarifying fiduciary duties of directors and controlling shareholders, and encouraging the stock exchanges to adopt listing rules and guidelines that improve the corporate governance of listed companies in a manner that protects the interests of minority shareholders.

Based on 2012 Ministry of Justice Legislative Council recommendations, the Japanese government submitted to the Diet in November 2013 a bill to amend the Companies Act to require firms to appoint at least one outside director, or to disclose at annual shareholders' meetings why such an appointment would be "inappropriate." The amendments would also have required introduction of the audit and supervisory form of corporate governance and tightened the requirements governing outside directors. The Diet did not pass the amendments in the fall 2013 session, although the bill may be taken up again in the next regular session in early 2014.

Automotive

A variety of nontariff barriers have traditionally impeded access to Japan's automotive market. Overall sales of U.S.-made vehicles and automotive parts in Japan remain low, which is a serious concern. The U.S. Government has expressed strong concern with the overall lack of access to Japan's automotive market for U.S. automotive companies. Barriers include, but are not limited to, issues relating to standards and certification, a range of transparency issues including the lack of sufficient opportunities for stakeholder input in the development of standards and regulations, barriers that hinder the development of distribution and service networks, and the lack of equivalent opportunities for U.S. models imported under the preferential handling procedure (PHP) certification program to benefit from financial incentive programs. The U.S. Government urges Japan to address these and other barriers in Japan's automotive market.

Medical Devices and Pharmaceuticals

Japan continues to be one of the most important markets for U.S. medical device and pharmaceutical exports. According to the latest official figures from the Ministry of Health, Labor and Welfare's Annual Pharmaceutical Production Statistics, the Japanese market for medical devices and materials in 2012 was just over \$32.4 billion (up 8.7 percent from 2011 in yen terms). Japan's total imports of U.S. medical devices exceeded \$7.3 billion in 2012. According to the American Medical Devices and Diagnostics Manufacturers' Association, approximately 60 percent of "new medical devices" approved in Japan were from its member companies. The pharmaceuticals market in Japan was valued at \$120.9 billion in 2012 (up 2.9 percent from 2011 in yen terms). Japan's total imports of U.S. pharmaceuticals totaled \$6.6 billion in 2012, which comprises a 5 percent market share. The total market share of U.S.-origin pharmaceuticals in Japan would be significantly higher than suggested by official statistics (approaching 20 percent) if local production by U.S. firms and compounds licensed to Japanese manufacturers were also included.

Prime Minister Shinzo Abe's economic revitalization and growth strategy, introduced in June 2013, calls for promotion of the pharmaceutical and medical device industries. Among other measures, the strategy includes steps to accelerate regulatory approvals to reduce the so-called "lag" time between application and approval of new medical devices pharmaceuticals as well as steps to reward innovative medical devices and pharmaceuticals. These and other measures that Japan plans to take should improve opportunities for U.S. medical devices and pharmaceuticals.

The Japanese government has made progress in several areas, including the reduction of lengthy approval periods for medical devices and pharmaceuticals as well as Diet passage in November 2013 of amendments to the Pharmaceutical Affairs Law that will enable further improvements to the regulatory

review process, including the establishment of a distinction between the characteristics of medical devices and pharmaceuticals. The U.S. Government continues to urge Japan to adopt an approach that is fully consistent with international standards with respect to issues such as the Quality Management System for medical devices, and also to improve performance goals for product reviews by setting clearer performance targets.

The U.S. Government continues to urge Japan to implement predictable and stable reimbursement policies that reward innovation and provide incentives for companies to invest in the research and development of advanced healthcare products and pharmaceuticals. With regard to medical devices, U.S. firms have expressed concerns about Japan's application of, and changes to, the Foreign Average Price (FAP) rule, a mechanism to cut prices of medical devices in Japan based on the simple average of prices for the same or similar products in the United States, Germany, France, the United Kingdom, and Australia. The U.S. medical device industry has cited the FAP rule as a major factor that has impeded the introduction of innovative medical technology to the market.

With regard to pharmaceuticals, the U.S. Government welcomes Japan's decision in April 2012 to continue the new premium system trial for an additional two years. The new premium, which minimizes downward price revisions on new drugs for which there are no corresponding generics, has considerably improved the development of new drugs and unapproved indications in Japan. Making this new system permanent would help increase the predictability and attractiveness of the Japanese market, help further reduce lag time for introduction of pharmaceuticals, and promote long-term investment in Japanese life sciences work. The U.S. Government continues to urge the Japanese government to make the new premium system permanent.

Although the level of transparency in Japan's drug and medical device reimbursement decision making processes has improved in recent years, the U.S. Government continues to urge Japan to build further on recent improvements to foster a more open and predictable market.

Nutritional Supplements

Japan has taken steps to streamline import procedures and to open its JPY 1,185 billion (approximately \$12 billion) nutritional supplements market, although many significant market access barriers remain. Burdensome restrictions on health claims are a major concern. Currently, only those products approved as Foods for Specified Health Uses (FOSHU) or Foods with Nutrient Function Claims (FNFC) are allowed to have health or structure/function claims. Producers of most nutritional supplements, however, are unable to obtain FOSHU or FNFC approval due to FOSHU's costly and time-consuming approval process and due to the limited range of vitamins and minerals that qualify for FNFC. These processes apply to both imported and domestic products.

Other concerns include long lead times for food additive applications; the difficulties associated with using unregistered food additives (including organic solvents) as processing ingredients for use in nutritional supplements; high import duties for nutritional supplements compared to duties on pharmaceuticals containing the same ingredient(s); lack of transparency in new ingredient classifications; and lack of transparency in the development of health food regulations.

Prime Minister Abe's regulatory reform plans outlined in Japan's Revitalization Strategy in a Cabinet decision of June 14, 2013, includes plans to implement a new functional labeling system by the end of March 2015. In order to establish this new system, Japan will reportedly reference the U.S. labeling system for dietary supplements. If implemented, this could be a significant step forward in reducing regulatory barriers and expanding the dietary supplement market in Japan by enabling the Japanese

consumer to obtain more functional information regarding dietary supplements. The U.S. Government will closely monitor these developments.

Cosmetics and Quasi-Drugs

Japan is the world's second largest market for cosmetics and quasi-drugs after the United States. In 2012, U.S. exports of cosmetics and personal care products to Japan were estimated at \$437.5 million, second only to France. Despite this market presence by U.S. products, regulatory barriers continue to limit timely consumer access to safe and innovative products, generating unnecessary costs. Unlike the over-the-counter drug monograph system in the United States, Japan requires premarket approval for certain products, such as a category called "medicated cosmetics" that are classified as quasi-drugs under the Pharmaceutical Affairs Law. The quasi-drug approval process includes requirements that are burdensome, lack transparency, and do not appear to enhance product safety, quality, or efficacy. In addition, restrictions on advertising claims for cosmetics and quasi-drugs prevent companies from informing customers of product benefits necessary for making informed choices. Overly complex import notification procedures and a burdensome foreign manufacturer accreditation process act as additional market access barriers for U.S. firms. Enhanced communication between the U.S. and Japanese Governments and industries has led to some improvements in the Japanese regulatory system.

Proprietary Ingredient Disclosure Requirement for Food and Dietary Supplements

As part of its product classification process for new-to-market food and dietary supplement products, Japan mandates that all ingredients and food additives be listed by name along with content percentages, and include a description of the manufacturing process. In addition to being burdensome, this process risks the release of proprietary information to competitors.

Aerospace

Japan is among the largest foreign markets for U.S. civil aerospace products. The civil aerospace market in Japan is generally open to foreign firms, and some Japanese firms have entered into long-term relationships with U.S. aerospace firms. The U.S. Government continues to monitor Japan's development of indigenous aircraft.

Military procurement by the Ministry of Defense (MOD) accounts for approximately half of the domestic production of aircraft and aircraft parts and continues to offer the largest source of demand in the aircraft industry. Although U.S. firms have frequently won contracts to supply defense equipment to Japan, many contracts for defense equipment are not open to foreign bids. MOD's general preference is that defense products and systems be developed and produced in Japan, and it will often opt for local development and/or production, even when a foreign option exists that could fulfill the requirements more efficiently, at a lower cost, and with better interoperability with Japan's allies.

Although Japan has considered its main space launch vehicle programs as indigenous for many years, U.S. firms continue to participate actively in those space systems. Japan is also developing a global positioning system navigation satellite constellation known as the "quasi-zenith" satellite system (QZSS). At the conclusion of the United States-Japan Consultative Committee meeting on October 3, 2013, the Governments of the United States and Japan released a joint statement in which the two nations welcomed the establishment of the United States-Japan Comprehensive Dialogue on Space, as well as the conclusion of the U.S.-Japan Space Situational Awareness Sharing Agreement, and expressed their desire to improve maritime domain awareness by leveraging satellite capabilities.

Civil Aviation

Japan has been taking steps to bolster aviation operations through the liberalization of regulations and investment in infrastructure. Japan is the United States' largest aviation partner in the Asia-Pacific region, and a bilateral Open Skies regime has been in place since 2010. Operations between the United States and Tokyo's Haneda Airport, however, are limited because Japan strictly controls access to Haneda airport. Limited additional access to the airport will become available in March 2014 for long-haul international flights, and the U.S. Government continues to be interested in a commercially meaningful expansion of access to Haneda for U.S. airlines.

In the general aviation sector, the United States and the APEC-member economies, including Japan, have reached consensus on best practices for the treatment and regulation of international business aviation operations. The U.S. Government will continue to work with the Japan Civil Aviation Bureau to promote greater liberalization in the business aviation sector, including work through APEC's Transportation Working Group.

Transport and Ports

The U.S. Government has had longstanding concerns about barriers to entry to, and the lack of competitiveness in, Japanese ports. Long-term relationships, a lack of transparency, licensing requirements, and other practices and requirements have greatly limited the ability of foreign shipping companies to do business in Japan. On January 26, 2011, the U.S. Federal Maritime Commission (FMC) issued an Order terminating a proceeding that it had opened in 1995 to investigate these practices. In its 2011 Order, the FMC stated that concerns about practices and requirements in Japan had not been completely eliminated, and that it will remain watchful for unfavorable conditions in the U.S.-foreign ocean-borne trade.

JORDAN

TRADE SUMMARY

U.S. goods exports in 2013 were \$2.1 billion, up 18.2 percent from the previous year. Corresponding U.S. imports from Jordan were \$1.2 billion, up 3.6 percent. The U.S. goods trade surplus with Jordan was \$890 million in 2013, up \$279 million from 2012. Jordan is currently the 59th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Jordan was \$189 million in 2012 (latest data available), up from \$182 million in 2011.

The United States-Jordan Free Trade Agreement

Under the terms of the United States-Jordan Free Trade Area Agreement (FTA), which entered into force on December 17, 2001, the United States and Jordan completed the final phase of tariff reductions on January 1, 2010. There are now zero duties on nearly all products, with exceptions for alcoholic beverages and mature subject materials. Following consultations under the U.S.-Jordan Joint Committee, Jordan endorsed the U.S.-Jordan Joint Principles on International Investment and Joint Principles for Information and Communication Technology (ICT) Services.

IMPORT POLICIES

Tariffs and Other Charges

Jordan is a member of the WTO and is in the process of reducing its tariffs as called for by its WTO accession commitments. As of 2012, Jordan's simple average applied tariff is 10.9 percent, with a maximum rate of 180 percent that applies to certain products. Most raw materials and intermediate goods used for manufacturing/production in the industrial sector face zero duties.

Jordan's General Sales Tax law allows the government to impose a "Special Tax" at the time of importation in addition to the general sales tax. Over the past several years, Jordan increased special taxes on certain goods. For example, the government applies a special tax on automobiles and trucks of 17.5 percent and on perfumes of 25 percent.

Agriculture

Import licenses, or advance approvals to import goods, are required for specific food and agricultural goods. The authorities granting such licenses and approvals are the Ministry of Agriculture and the Ministry of Health.

Import Licenses

In addition to the special requirements for certain agricultural products, Jordan requires that importers of commercial goods be registered traders or commercial entities. The Ministry of Industry and Trade occasionally issues directives requiring import licenses for certain goods or categories of goods and products in newly emerging or protected sectors. In 2010, the government of Jordan issued directives requiring a special import license prior to the importation of telecommunications and security equipment.

GOVERNMENT PROCUREMENT

Jordan is an observer to the WTO Committee on Government Procurement. In 2002, it commenced the process of acceding to the WTO Agreement on Government Procurement (GPA), with the submission of its initial entry offer. Subsequently, it has submitted several revised offers, in response to requests by the United States and other GPA Parties for improvements. Negotiations on Jordan's accession continue with no major breakthrough to date.

EXPORT SUBSIDIES

Net profits generated from most export revenue will remain fully exempt from income tax except for net profits from exports in the mining sector, exports governed by specific trade protocols, and foreign debt repayment schemes, which are subject to income tax. Under WTO rules, the tax exemption was initially set to expire on January 1, 2008. At the request of Jordan, WTO members extended the waiver through December 2015, subject to an annual review.

In addition, 98 percent of foreign inputs used in the production of exports are exempt from customs duties; all additional import fees are assessed on a reimbursable basis.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The Jordanian government continues to take steps to provide more comprehensive protection of intellectual property rights (IPR). It appointed a special prosecutor for IPR and is working to enforce existing laws more effectively. Despite recent efforts by law enforcement officials to crack down on unauthorized products, enforcement in certain areas (especially digital media) generally remains weak. Jordanian agencies responsible for IPR enforcement lack resources and capacity. Prosecution efforts should be strengthened, particularly with respect to utilizing *ex officio* authority to bring charges in criminal cases.

INVESTMENT BARRIERS

Jordanian laws set limitations on foreign ownership in certain sectors, subject to exceptions where the government deems appropriate. Certain potential U.S. investors view the Jordanian government as being too selective in creating exceptions to the policy of limiting foreign ownership.

KAZAKHSTAN

TRADE SUMMARY

U.S. goods exports in 2013 were \$1.1 billion, up 24.2 percent from the previous year. Corresponding U.S. imports from Kazakhstan were \$1.4 billion, down 11.2 percent. The U.S. goods trade deficit with Kazakhstan was \$295 million in 2013, down \$388 million from 2012. Kazakhstan is currently the 74th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kazakhstan was \$11.4 billion in 2012 (latest data available), down from \$11.8 billion in 2011.

WTO Accession

Kazakhstan intensified its work on negotiations for its accession to the WTO in 2013, advancing both technical and substantive aspects of the negotiations. The accession package under negotiation consists of: (1) schedules of goods and services market access commitments; (2) a Working Party report and Protocol of Accession recording how Kazakhstan will implement WTO provisions; and (3) commitments on domestic agricultural support and export subsidies.

The United States and Kazakhstan signed a WTO bilateral agreement on market access for goods on November 22, 2010 and a market access agreement on services on September 21, 2011.

During 2013, the Working Party on Kazakhstan's accession met four times, developing a revised draft Working Party report to reflect the changes that have taken place in Kazakhstan's trade regime and legal framework as a result of its entry into a customs union (CU) with the Russian Federation and Belarus. Major issues that remain under negotiation include: (1) localization policies in procurement for commercial purposes by state-owned and state-controlled enterprises; (2) trade-related investment measures in the oil, gas, and mining industries; (3) agricultural policies (including domestic support, export subsidies, and tariff-rate quotas (TRQs) on U.S. meat and poultry exports; (4) necessary commitments on SPS measures; and (5) adjustments to Kazakhstan's tariff commitments in light of its membership in the CU.

IMPORT POLICIES

Russia-Kazakhstan-Belarus Customs Union

On January 1, 2010, the Russia-Kazakhstan-Belarus CU adopted a common external tariff (CET) with the majority of the tariff rates set at the level that Russia applied at that time. On July 1, 2010, a common CU Customs Code entered into effect, and on July 1, 2011, the CU Parties abolished all customs posts on their internal borders, allowing for the free flow of most goods among the CU countries. Establishment of the CU also introduced new customs control procedures for importers from non-CU countries. Beginning in early 2012, the Eurasian Economic Commission (EEC) replaced the CU Commission as the supranational body charged with implementing external trade policy for CU Parties and with coordinating economic integration among CU Parties with the goal of establishing a Eurasian Economic Union by 2015.

As a consequence of its membership in the CU, Kazakhstan's import tariffs, trade in transit rules, nontariff import measures (*e.g.*, tariff-rate quotas, and import licensing.), and customs policies (*e.g.*,

customs valuation, customs fees, and country of origin determinations) are based on CU legal instruments. On these and other issues involving goods, CU Agreements and CU/EEC Decisions establish the basic principles that are implemented at the national level through domestic laws, regulations, and other measures. CU Agreements and CU/EEC Decisions also cover issues such as border enforcement of intellectual property rights, trade remedy determinations, establishment and administration of special economic and industrial zones, and the development of technical regulations and sanitary and phytosanitary measures. Generally, industry reports that the cost of importing has gone up as a result of Kazakhstan's entry into the CU due to an increase in fees for registration and import duties on some products, as well as new licensing requirements for numerous goods.

Tariffs and Quotas: With the implementation of the common external tariff (CET) with Belarus and Russia, Kazakhstan increased the tariff rate on more than 5,400 tariff lines. As a result of Russia joining the WTO, in 2012, the CU adopted Russia's WTO schedule of tariff bindings. In 2013, tariffs on about 5,000 out of a total of 11,000 tariff lines decreased by 1 percent to 2 percent, reflecting Russia's tariff reductions resulting from its WTO commitments. These incremental reductions have not reduced Kazakhstan's tariff rates to the levels they were at prior to establishment of the CU.

According to CU regulations, Kazakhstan is currently allowed to apply tariffs that differ from the CET on 59 tariff lines, but those tariffs must be harmonized with the CET rate by 2015. The 59 tariff lines cover pharmaceuticals and medical equipment. In addition, a CU Party is permitted to increase or reduce tariffs for up to six months on selected goods in exceptional cases and with permission of the EEC. In 2012, Kazakhstan introduced protective tariffs on candy and cotton wool that will be applied through September 2014.

In 2010, Kazakhstan established tariff-rate quotas (TRQs) on imports of poultry, beef, and pork, as part of its obligations within the CU. In 2012, U.S. exporters raised concerns about the trade-limiting effects of these TRQs and the manner in which they are calculated and allocated. For the past three years, the TRQ allocations consistently have not been made in a timely manner, which has further limited market access for U.S. goods such as poultry. In December 2012, Kazakhstan established revised in-quota quantities for beef, pork, and poultry that fell short of the historical level of U.S. exports to the market. For 2014, Kazakhstan is expected to maintain prior TRQ levels and allocation mechanisms. Kazakhstan has begun allocating 10 percent of the TRQ to new suppliers, each of which is eligible to import no more than 2.5 thousand tons per year.

In September 2013, the EEC allowed Kazakhstan to introduce an import quota for combine harvesters from third countries. In contrast to Russia, Kazakhstan will not introduce a special 26.7 percent import duty but will allow importation of a limited number of combine harvesters from third countries at the previously established 5 percent tariff. Kazakhstan's quota will allow for the importation of 300 units in 2014, 309 units in 2015, and 204 units in 2016 (through August 21). Under the EEC decision, the program may be suspended if Kazakhstan uses more than 70 percent of its quota allotment during the first half of 2014.

Licensing: In connection with its membership in the CU, Kazakhstan increased the number of goods subject to import or export licensing. Precious metals and stones, documents from national archives, and items of cultural value are among the products now subject to export licensing. Products with cryptographic functionalities, even commonplace consumer electronic products, are subject to import and export licensing procedures or a one-time notification requirement. (For more information on industry concerns with the CU's import licensing regime for products with cryptographic capabilities, see the discussion in the section on the Russian Federation.) Kazakhstan maintains a ban on the export of light distillates, kerosene, and gasoline.

Customs: Although Kazakhstani officials have pursued some reforms of customs procedures, businesses continue to raise concerns that Kazakhstan's customs practices are significant barriers to trade.

EXPORT POLICIES

In 2010, the government of Kazakhstan reintroduced a duty on the export of crude oil. This reintroduction resulted in a \$1 billion dispute with the consortium of international oil companies operating the Karachaganak condensate field. In 2011, the government determined that export duties do not apply to Production Sharing Agreements, which have tax stability clauses and thus settled the dispute.

GOVERNMENT PROCUREMENT

The lack of transparency and efficiency in government procurement remains a major challenge for local and foreign companies. The government recognizes this, and is taking steps to streamline its procurement process. Kazakhstan moved to an electronic procurement system on July 1, 2012. Resident and non-resident companies may participate in electronic tenders once they receive an electronic signature from the Ministry of Transport and Communication. The system's performance to date has varied.

In the fall of 2013, the government submitted to Parliament a bill to change existing laws on government procurement. The amendments are expected to reduce opportunities for corruption and to improve the quality of purchased goods and services. The proposed bill establishes a state-owned company to act as a unified operator for government procurement including arranging and conducting tenders and auctions on budget expenditures at both the national and regional level.

The government's continuing support for the increased use of local content adversely impacts U.S. suppliers and is a subject of intense discussions in Kazakhstan's WTO accession process. In 2009 and 2010, Kazakhstan amended its Law on Government Procurement to increase the percentage of local content required in government procurement and purchases by state-owned and state-controlled enterprises, which applies to both domestic and foreign suppliers. Potential suppliers must receive a certificate from the Ministry of Industry and New Technologies confirming the local content of goods and/or services. Starting January 1, 2014, companies from EEC countries can use EEC goods and services to meet local content requirements in Kazakhstan.

The National Welfare Fund and government-owned holding company, Samruk-Kazyna, accounts for at least 16 percent of Kazakhstan's GDP. Through share ownership, Samruk-Kazyna manages some of Kazakhstan's largest national companies, including Kazakhstan TemirZholy (national railway), KazMunaiGas (national oil and gas company), KEGOC (electrical utility), and their subsidiaries. These enterprises are subject to the Samruk-Kazyna local content requirements. Samruk-Kazyna and its subsidiaries conduct procurement of goods and services in accordance with the Rules of Procurement, approved by the Board of Directors of the Fund on May 26, 2012. The Rules stipulate criteria for the evaluation of bids and provide for price preferences of up to 20 percent for locally produced goods and services. In 2013, Samruk-Kazyna proposed new rules on procurement in order to comply with WTO standards. These rules would come into force after Kazakhstan's WTO accession and would cancel bill-back allowances and other forms of preferential treatment given to locally produced goods and services. According to the new rules, however, only qualified suppliers will be eligible to participate in Samruk-Kazyna tenders. Furthermore, a designated Samruk-Kazyna subsidiary would rank potential bidders in order to include them into a list of qualified suppliers.

Kazakhstan has offered to become an observer to the Agreement on Government Procurement (GPA) and will initiate negotiations to join the GPA within an agreed time period.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To facilitate its WTO accession and attract foreign investment, Kazakhstan continues to modernize its legal regime for protecting intellectual property rights (IPR). Kazakhstan has taken steps towards implementing international IPR standards. For example, the government has introduced amendments to its trademark legislation to address obligations under the TRIPS Agreement.

Pursuant to statutes enacted in November 2005 that authorized stronger penalties, authorities have conducted numerous raids in the past against distributors of pirated products. The government's efforts have helped to expand the Kazakhstani market for licensed, non-infringing products. However, customs controls need to be applied more effectively against imported IPR-infringing goods. In addition, although civil courts have been used effectively to stem IPR infringement, judges often lack technical expertise in the area of IPR which is a significant obstacle to further improvement in Kazakhstan's IPR enforcement.

Kazakhstan still lacks effective means to protect pharmaceutical test and other data against unfair commercial use, as well as disclosure. However, it has reportedly begun work on drafting regulations to do so and has stated its willingness to provide such protection as of the date of its accession to the WTO.

SERVICES BARRIERS

Telecommunications

Kazakhstani law restricts foreign ownership to 49 percent in telecommunications companies that provide long distance and international telecommunication services and that operate fixed line communication networks (cable, optical fiber, and radio relay). This restriction was addressed during bilateral negotiations with Kazakhstan within the context of its WTO accession. Kazakhstan agreed that, after a two and a half year transition period, it will remove this foreign ownership restriction for telecommunications operators, except for the country's main carrier KazakhTeleCom.

The law "On Communication" and Decree 1499 together require placing and registering Network Control Centers for very small aperture antennas within the borders of Kazakhstan. The U.S. satellite industry has expressed concerns regarding restrictions on the transport of video programming through foreign satellites and restrictions barring foreign firms from providing these services to the government. As part of its WTO accession commitments, Kazakhstan has agreed not to restrict services provided by foreign satellite operators to companies that hold a license for telecommunication services.

Other

Foreign banks and insurance companies are allowed to operate only through joint ventures with Kazakhstani companies. However, Kazakhstan has agreed to eliminate the joint venture requirement and to permit direct branching following a transition period of five years after WTO accession. Kazakhstan's law also restricts foreign ownership in mass media companies, including news agencies, to 20 percent, a limitation that will still remain in force after WTO accession.

INVESTMENT BARRIERS

Local content requirements: Approximately 70 percent of foreign direct investment in Kazakhstan is in the oil and gas sector. Expanding local content requirements have created a challenging environment for subsoil operations. Kazakhstan's 2003 Law on Investments provides the legal basis for foreign investment in Kazakhstan. Some U.S. investors have expressed concern about the law's investment contract stability provision, the lack of clear provisions for access to international arbitration, and the narrow definition of an investment dispute. In February 2012, the law was amended to extend the deadline for the drafting and approval of "project documents" for companies in extractive industries. These documents include performance indicators and assessments of the economic feasibility of the project, which must take into account potential Kazakhstani suppliers of goods and services, *i.e.*, the willingness of the investing firm to localize its procurements. The requirement to draft and approve project documents was introduced in the June 2010 Law on Subsoil and Subsoil Use ("2010 Subsoil Law") but reportedly not all extractive companies have managed to meet this requirement.

The 2010 Subsoil Law also established strict local content requirements and harsh penalties for failure to meet them, including the potential cancellation of contracts. Kazakhstani goods do not always fully comply with international standards, and Kazakhstani service suppliers are not always able to provide the technically complex services necessary to support projects in the oil and gas sector. Foreign companies have found it difficult to comply with the government's local content requirements, and they report that local administrators continue to take an increasingly inflexible approach to these regulations. In 2010, the government established the National Agency for Local Content Development to increase local content alternatives to imports, monitor subsoil procurement procedures, and assist local companies to provide competitive goods and services. Government agencies, led by the Ministry of Industry and New Technologies (MINT), are currently drafting an Action Plan on the Enhancement of Local Content in Procurements for Major Subsoil Users and Strategic Mining and Petroleum Companies and are seeking comment on the plan from the Foreign Investors' Council. The Action Plan will require local content to comprise 50 percent of front-end engineering and design (FEED) work; ban the export of geological information (core samples, rocks, and reservoir fluids); and require the nomination of MINT representatives onto the boards of directors of key subsoil use projects.

Actions to enforce such local content requirements are increasing, as well. In April 2012, the National Agency for Local Content Development (NADLoc) accused 38 mining companies of violating local content regulations and threatened to impose penalties, including unilateral termination of subsoil use contracts. Under the new regulations in force since June 2013, the Ministry of Oil and Gas (MOG) monitors and enforces compliance with local content rules, while MINT maintains the state procurement register. In February 2013, MOG reported that fines against subsoil users that did not comply with their contractually obligated local content requirements doubled in 2012 to \$2.3 million. Twenty-five companies that violated local content regulations in 2012 have already paid their fines. MOG also accused foreign firms of erecting obstacles preventing local companies from taking part in tenders, including unequal access, unjustified refusals to accept proposals, violations of time requirements, and unjustified delays in signing contracts.

The amendments to the 2010 Subsoil Law, which were scheduled for submission to the parliament by the end of 2013, will require new subsoil use contracts to quantify a firm's local labor content obligations in definitive numerical terms. The 2010 Subsoil Law previously required all new contracts to contain local content provisions, although the obligations could be unspecified. While the government has long pursued a policy of incorporating numerical local labor content obligations into subsoil contracts, this amendment will codify the practice.

For all subsoil projects, 1 percent of the project budget must be earmarked for training programs and workforce development, including overseas assignments with the lead operator. When seeking to appoint certain specialists, international oil companies must consult a list of qualified Kazakhstani specialists included in a database maintained by MINT. As a result of amendments to the Expatriate Workforce Quota and Work Permit Rules, from January 1, 2012, only 30 percent of company executives and 10 percent of engineering and technical personnel may be foreign nationals. These requirements impose significant burdens on foreign subsoil users who may need to bring in intra-corporate transferees with specialized expertise. Kazakhstan's three largest hydrocarbon projects – Tengiz, Karachaganak, and Kashagan – are exempted from these requirements until 2015. As part of its WTO accession commitments, Kazakhstan has agreed to increase these limits on foreign nationals.

In October 2012, the Procurator General's Office proposed tightening control over the employment of foreign nationals by revising the current procedures for issuing expatriate workforce quotas, granting regional labor departments control over local content requirements for the workforce, and creating a register of employers violating these requirements. In November 2013, Federation of Trade Unions publicly stated that regulations governing employment will be amended within two years to narrow a discriminatory pay gap between foreign and local employees. Although the Federation of Trade Unions' statement does not necessarily reflect the position of the Kazakh government, a few international oil companies have expressed concerns about legislation that would seek to achieve this end.

Sale of Investments: The 2010 Subsoil Law also included a preemption clause that guarantees Kazakhstan the right of first refusal when a party seeks to sell any part of its stake in a subsoil project. The Ministry of Oil and Gas exercised its preemptive right as recently as July 2013, when it decided to buy ConocoPhillips' (COP) 8.4 percent stake in the Kashagan oil field that COP sought to sell to ONGC Videsh Limited. The 2010 Subsoil Law also allows the government to amend or terminate existing subsoil contracts deemed to be of "strategic significance." In April 2012, the government issued a decree that deemed 361 hydrocarbon fields and mineral deposits as having "strategic significance."

Contract Issues: The 2010 Subsoil Law also authorizes the government to amend contracts if it determines that the actions of a subsoil user could lead to a substantial change in Kazakhstan's economic interests. The Law provides no guidance on how to determine whether there is a "substantial change in economic interests." While no contract has to date been annulled on this ground, MOG can and does annul contracts when subsoil users fail to meet their contractual obligations (*e.g.*, no well drilled during exploration stage or violation of local content requirements). The MOG annulled 28 subsoil contracts in 2010 for failure to meet contractual obligations, and in 2011 sent subsoil users a total of 169 notifications on violations of contractual obligations (which can, but do not necessarily, result in cancellation of contracts). MINT annulled 119 subsoil contracts from 2010-2012 and from January-March 2013 sent 600 subsoil users notifications on violations of contractual obligations, most of whom are so called "subsoil tourists" (*i.e.*, companies which receive subsoil rights but do not make their planned investments). As of August 2012, MOG reported that the number of subsoil contracts without specific quantitative obligations in local content had decreased from 129 in 2010 to 27 in 2012.

OTHER BARRIERS

Kazakhstan has a burdensome tax monitoring system, which companies report requires them to employ significant staff resources to comply with the cumbersome rules and frequent inspections. The actions of tax and various regulatory authorities, as well as actions to enforce environmental regulations, can be unpredictable.

Corruption at many levels of government is also seen as a barrier to trade and investment in Kazakhstan. It reportedly affects nearly all aspects of doing business in Kazakhstan, including customs clearance, registration, employment of locals and foreigners, payment of taxes, and the judicial system.

KENYA

TRADE SUMMARY

U.S. goods exports in 2013 were \$651 million, up 14.5 percent from the previous year. Corresponding U.S. imports from Kenya were \$451 million, up 15.7 percent. The U.S. goods trade surplus with Kenya was \$201 million in 2013, up \$21 million from 2012. Kenya is currently the 95th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kenya was \$259 million in 2012 (latest data available), down from \$390 million in 2011.

IMPORT POLICIES

Tariffs

Kenya maintains high *ad valorem* import tariffs, a value-added tax (VAT), and a 1.5 percent Railway Development Levy imposed on incoming shipments. The government of Kenya sometimes waives these tariffs when domestic agricultural prices exceed acceptable levels. According to the WTO, Kenya's average applied tariff rate for all products was 12.9 percent in 2012.

Kenya applies the EAC Customs Union's Common External Tariff (CET), which includes three tariff bands: zero duty for raw materials and inputs; 10 percent for processed or manufactured inputs; and 25 percent for finished products. "Sensitive" products and commodities, comprising 58 tariff lines, have applied *ad valorem* rates above 25 percent. This includes a 60 percent rate for most milk products, 50 percent for corn and corn flour, 75 percent for rice, 35 percent for wheat, and 60 percent for wheat flour. For some products and commodities, the tariffs vary across the five EAC member states.

In July 2013, the Kenya Revenue Authority (KRA) Customs Department imposed a 1.5 percent Railway Development Levy (RDL) on all imports. The government plans to use revenues from the RDL to construct a standard gauge railway line between the Port of Mombasa and Nairobi.

Nontariff Measures

All importers pay an import declaration fee set at 2.25 percent of the customs value of imports and are required to furnish several documents. Importers obtain a Certificate of Conformity (CoC) after export certification by pre-shipment inspection companies (SGS or Intertek International) that have contracts with the government. After a CoC is issued, the importer provides it to the Kenya Bureau of Standards, which issues the Import Standardization Mark, a stick-on label to be affixed to each imported item. Other required import documents include valid *pro forma* invoices, a Bill of Lading or Airway Bill, and a Packing List from the exporting firm. Kenya justifies its import controls as necessary to address health, environmental, and security concerns.

Customs Procedures

Numerous bureaucratic procedures at the Port of Mombasa increase the cost of imported goods significantly. Multiple agencies (*i.e.*, customs, police, ports authority, and standards inspection agencies) subject importers to excessive and inefficient inspection and clearance procedures, creating opportunities

for graft and unnecessary delays. To tackle the problem, Kenya has implemented a number of changes including having all agency inspections done simultaneously twice per day.

The KRA's online customs clearance system was implemented in 2005 and has contributed to improvements in overall efficiency and transparency. Due to recent procedural changes, the Kenya Port Authority reported a 13.2 percent improvement in container offtake at the Port of Mombasa.

In April 2011, the KRA introduced new rules that require additional documents be filed to clear goods at the port. The change requires cargo manifests and a bay plan from the port of origin to ensure full and accurate collection of required duties be provided to KRA. Previously, KRA received only the cargo manifests, while the bay plan was provided to port authorities. KRA officials said the change was meant to prevent customs revenue leakages and the importation of illicit goods, including narcotics and weapons. Affected parties have complained that the new rules add to inefficiency at the port and raise overall costs.

In November 2013, Kenya implemented an automated, integrated clearance single window portal, the Kenya National Electronic Single Window System (dubbed Kenya TradeNet), which aims to streamline the process of air, land, and sea cargo arrival and departure. Kenya simultaneously launched the National Gateway Payment System, an integrated, electronic platform that enables importers and exporters to apply for permits online and pay for them electronically through a payment gateway.

GOVERNMENT PROCUREMENT

U.S. firms have had little success in bidding on government projects in Kenya, despite technical proficiency and reasonably priced bids. Foreign firms, some without track records, that have won government contracts have typically partnered with well-connected Kenyan firms. Reportedly, corruption often influences the outcome of public tenders.

In 2007, the government established a Public Procurement Oversight Authority (PPOA) to ensure compliance with rules and regulations surrounding government procurement. The PPOA's nine members are selected by the finance minister, subject to Cabinet approval. The government has also outlined county government procurement regulations. The total value of public procurement within Kenya's central government is estimated at 10 percent of GDP. With the support of the World Bank and in collaboration with the Kenya Information and Communications Technology Board, the PPOA launched a web-based Market Price Index and is developing an e-Procurement system. Additional measures underway at the PPOA include implementation of an internal procurement performance monitoring tool, improvements to the process for reviewing tendering complaints, and development of general and sector-specific procurement manuals.

The government designed its Public Procurement and Disposal Act to make procurement more transparent and accountable, and establish penalties for violations of its provisions. The Act permits procurement agencies to establish a list of pre-qualified firms annually. It also allows for exclusive preferences for Kenyan citizens if the funding is 100 percent from the government or a state-related entity, and if the amounts are below KES 50 million (approximately \$575,000) for goods or services and KES 200 million (approximately \$2.3 million) for public works. It also sets margins of preference: 15 percent in evaluation of bids for goods manufactured, mined, extracted, or grown in Kenya; 10 percent in cases where locals have over 51 percent of shareholdings; 8 percent in cases where locals have shareholdings below 51 percent but above 30 percent; and 6 percent in cases where locals have below 20 percent of shareholdings.

In addition, the Act allows for restricted tendering under certain conditions, such as when the complex or specialized nature of the goods or services requires the pre-qualification of contractors. The Act may impose restrictions if the time and costs required to examine and evaluate a large number of tenders would be disproportionate to the value of the tender.

Parliament enacted the Supplies Management and Practitioners Act in 2007. This law addresses a loophole left by the Public Procurement and Disposal Act by entrusting only a procurement professional with the responsibility of procurement within any public entity. However, implementation of the Act has been inconsistent.

The Public Procurement (Preference & Reservations) Amendment Regulations of 2013 calls for at least 30 percent of government procurement contracts to go to women, youth, and persons with disabilities.

Kenya is neither a party nor observer to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The government of Kenya's lax enforcement of intellectual property rights (IPR) continues to be a serious challenge for U.S. firms. Pirated and counterfeit products in Kenya, mostly imported from Asia, present a major impediment to U.S. business interests in the country as well as potential health and safety concerns for consumers. The most commonly counterfeited items include imported pharmaceutical drugs, shoes, textiles, office supplies, tubes and tires, batteries, shoe polish, soaps, and detergents. According to a survey released by the Kenya Association of Manufacturers in April 2012, the Kenyan economy is losing at least \$433 million annually due to counterfeiting.

There appear to be a number of sources for counterfeit goods. For example, Kenya's Export Processing Zones (EPZs) have served as a conduit for counterfeit and sub-standard goods. These products enter the EPZ ostensibly as sub-assembly or raw materials, but are actually finished products. In addition, transshipments destined for neighboring countries are also a significant source of counterfeit goods as authorities suspect that some of these goods are actually consumed in Kenya.

Kenyan authorities are taking steps to improve enforcement but face resource constraints. For example, the Kenya Copyright Board continues to work jointly with U.S. rights holders in conducting raids, but remains severely understaffed. Also, the Anti-Counterfeit Act in 2008 provided for the creation of an Anti-Counterfeit Agency (ACA) and strengthened the ability of Kenya's law enforcement agencies to investigate and prosecute manufacturers and distributors of counterfeit and pirated goods, but the ACA remains poorly funded and under-resourced.

SERVICES BARRIERS

The only significant sectors in which investment (both foreign and domestic) is constrained are those where state corporations still enjoy a statutory monopoly. These monopolies are restricted almost entirely to infrastructure (*e.g.*, power, telecommunications, and ports), although there has been a partial liberalization of these sectors as well. Public ownership and control remains strongest in the power sector (including generation, transmission, and distribution).

The government divested the bulk of its ownership in the telecommunications sector (Telkom Kenya and Safaricom) from 2002 to 2007, allowing for greater competition in the sector. Telkom Kenya still operates and maintains the infrastructure over which Kenya's various internet service providers operate

and remains the sole provider of landline phone services in Kenya. Mobile communications, however, are now almost entirely under private ownership.

INVESTMENT BARRIERS

The Kenyan judicial system has made progress in increasing efficiency and limiting corruption. Nevertheless, a backlog of cases, including those that are investment-related, burdens the system. Despite efforts to increase public confidence in the judiciary, corruption – both perceived and real – reduces the system’s credibility. Companies cite these deficiencies as obstacles to investment because they discourage lending and result in higher interest rates when financing is provided.

An industrial court exists in Kenya, but it is plagued by long delays in rendering judgments. As such, foreign and local investors are subjected to lengthy and costly legal procedures.

Foreign ownership of firms listed on the Nairobi Securities Exchange is limited to 75 percent. The Capital Markets Authority allows foreign investors to increase their investment with prior written approval if the shares reserved for local investors are not fully subscribed. Kenya imposes foreign ownership limitations in the telecommunications and insurance sectors of 80 percent and 66.7 percent, respectively. The government allows telecommunications companies a three-year grace period to find local investors to achieve the local ownership requirements.

The new constitution prohibits foreigners from holding a freehold land title anywhere in the country, permitting only leasehold titles of up to 99 years. The cumbersome and opaque process required to purchase land raises concerns about security of title, particularly given past abuses relating to the distribution and redistribution of public land.

Kenya has been slow to open public infrastructure to competition because the government considers state-owned companies that control infrastructure as “strategic” enterprises. As a result, reform and partial privatization of the telecommunications, power, and rail sectors have fallen behind schedule. The Presidential Task Force on Parastatals Reforms recommends that the sectors be rationalized to remove redundancies by trimming the current number of state-owned companies from 262 to 187. The effect of certain fees and security bonds is to discourage the employment of foreign labor. New foreign investors with expatriate staff are required to submit plans for the gradual phasing out of non-Kenyan employees.

OTHER BARRIERS

Corruption remains a substantial trade barrier in Kenya. U.S. firms find it difficult to succeed against competitors who are willing to ignore or engage in corruption. The government has not implemented anticorruption laws effectively, and officials have often engaged in corrupt practices with impunity. While judicial reforms are moving forward, bribes, extortion, and political considerations continue to influence the outcomes in large numbers of civil cases. Transparency International’s Global Corruption Barometer for 2013 found Kenya’s police, judicial system, registry and permit service, and land service to be the country’s most corrupt institutions. The report found widespread corruption at all levels of the legal system. Official level corruption often comes in the form of land grabbing, conflict of interest and bid rigging in government procurement, and embezzlement.

KOREA

TRADE SUMMARY

U.S. goods exports in 2013 were \$41.6 billion, down 1.7 percent from the previous year. Corresponding U.S. imports from Korea were \$62.2 billion, up 5.7 percent. The U.S. goods trade deficit with Korea was \$20.7 billion in 2013, up \$4.1 billion from 2012. Korea is currently the 10th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Korea were \$18.1 billion in 2012 (latest data available), and U.S. imports were \$9.4 billion. Sales of services in Korea by majority U.S.-owned affiliates were \$12.1 billion in 2011 (latest data available), while sales of services in the United States by majority Korea-owned firms were \$12.7 billion.

The stock of U.S. foreign direct investment (FDI) in Korea was \$35.1 billion in 2012 (latest data available), up from \$30.2 billion in 2011. U.S. FDI in Korea is led by the manufacturing and finance/insurance sectors.

United States-Korea Free Trade Agreement

On March 15, 2012, the United States-Korea Free Trade Agreement (KORUS or the Agreement) entered into force. In the two years that this landmark agreement has been in effect, Korea has become the sixth largest trading partner of the United States, and exports of U.S. manufactured goods, services, and agricultural products have seen significant gains. The Agreement has also improved Korea's investment environment through strong provisions on intellectual property rights, services, and investment, supporting U.S. exports, while helping to strengthen and expand ties with an important strategic partner in Asia.

The Agreement provides for the elimination of tariffs on over 95 percent of U.S. exports of industrial and consumer goods within 5 years. As of January 1, 2014, 3 rounds of tariff cuts have taken place under KORUS, and overall U.S. exports of overall manufactured goods increased over 3 percent in 2013 compared to 2011 (before KORUS). For agricultural products, through a combination of tariff elimination and expansion of tariff rate quotas, nearly two-thirds of U.S. agricultural exports have been enjoying duty-free status since the Agreement entered into force. For agricultural goods that benefited from tariff elimination or reduction, there have been dramatic increases in exports in 2013 compared to 2011, including tree nuts (51 percent), wine and beef (41 percent) and soybean oil (119 percent).

The Agreement also levels the playing field and enhances market access for U.S. exporters, including those in the automotive sector which saw an 80 percent increase in exports in 2013 compared to 2011. In addition, KORUS provides meaningful market access commitments across virtually all major services sectors, including improved access for telecommunications and express delivery services, and the opening up of the Korean market for foreign legal consulting services. The Agreement increases access to the Korean financial services market and ensures greater transparency and fair treatment for U.S. suppliers of insurance and other financial services. KORUS also addresses nontariff barriers in a wide range of sectors and includes strong provisions on intellectual property rights (IPR), competition policy, labor, environment, and regulatory transparency. The Agreement also levels the playing field and enhances market access for U.S. exporters of all sizes including small and medium businesses, and including those in the automotive sector.

IMPORT POLICIES

Origin Verification

KORUS permits both Party's customs services to undertake investigations to verify the origin of goods for which preferential tariff treatment was claimed and allows for customs authorities to exercise their authority to enforce the Agreement and prevent transshipment or false claims. The United States generally approaches verifications by targeting specific shipments, selected using a risk-based approach, and conducts verifications based on documents typically kept in the course of business.

During 2013, Korean customs authorities initiated a number of origin verifications on whether U.S. goods for which preferential tariffs were claimed under KORUS met the Agreement's rules of origin. Investigations were initiated with respect to many categories of U.S. export, including frozen concentrated orange juice, chemicals, automobiles, and other agricultural and industrial products, leading to some preliminary and final negative rulings on high value U.S. products. U.S. industries have raised concerns that the Korean Customs Service (KCS) has conducted these verifications in ways that may have posed undue difficulties in proving origin and thereby compromised the product's eligibility to receive benefits under the KORUS agreement.

The United States has raised this issue with Korea frequently, including at senior levels, and will continue to work closely with the Korean government to arrive at mutual understandings of verification procedures to facilitate legitimate trade under the KORUS agreement and ensure that importers and exporters receive the benefits to which they are entitled.

Tariffs and Taxes

Under KORUS, Korean tariffs on almost two-thirds of U.S. agricultural exports have been eliminated, including elimination of tariffs on wheat, corn, soybeans for crushing, whey for feed use, hides and skins, cotton, cherries, pistachios, almonds, orange juice, grape juice, and wine. Other agricultural products are receiving immediate duty-free access under new TRQs including skim and whole milk powder, whey for food use, cheese, dextrins and modified starches, barley, popcorn, oranges, soybeans for food use, dehydrated and table potatoes, honey, and hay.

Korea applies annual "adjustment tariffs" or a variable tariff on some agricultural, fishery, and plywood products. These adjustment tariffs do not exceed KORUS or WTO bound rates. To help offset the increasing cost of food, in 2013 Korea announced voluntary duty-free MFN TRQs on a wide range of agricultural commodities including raw sugar, wheat for milling, malting barley, malt for beer brewing, rape seeds for oil crushing, soybean oil, and over 30 other products.

Under KORUS, Korea will eliminate tariffs on over 95 percent of originating industrial and consumer goods by January 1, 2016.

Beef

Following a 2008 bilateral agreement to fully re-open Korea's market to U.S. beef and beef products, Korean beef importers and U.S. exporters have operated according to a voluntary, commercial understanding that imports of U.S. beef and beef products will be from animals less than 30 months of age, as a transitional measure, until Korean consumer confidence improves. This agreement has been operating smoothly, and in 2013 the United States exported \$609 million worth of beef and beef products (including variety meats) to Korea (an increase of \$27 million over last year), making Korea the fifth

largest export market for U.S. beef. This issue is discussed in greater detail in USTR's 2014 Report on Sanitary and Phytosanitary Measures.

Rice

During the Uruguay Round of multilateral trade negotiations concluded in 1995, Korea negotiated a 10-year exception to "tariffication" (the WTO obligation to convert quantitative restrictions to tariffs) of rice imports in return for establishing a Minimum Market Access (MMA) quota that was set to expire at the end of 2004. Korea subsequently negotiated a 10-year extension of the MMA arrangement in April 2005 with Members of the WTO. The extension called for Korea to increase its total annual rice imports over the succeeding 10 years, from 225,575 metric tons in 2005 to 408,700 metric tons in 2014. The arrangement included country specific quota commitments to purchase minimum amounts of imports from China, Thailand, and Australia, and to purchase at least 50,076 metric tons annually from the United States through 2014.

This agreement has been operating smoothly and access to the Korean rice market for U.S. exports has improved significantly under this arrangement. In 2013, U.S. exports of rice totaled 174,071 metric tons, with an associated value of \$121.3 million. The MMA arrangement is scheduled to expire at the end of 2014. The United States will work closely with Korea to discuss the next steps and to ensure continued market access for U.S. suppliers.

GOVERNMENT PROCUREMENT

Korea is a signatory to the WTO Agreement on Government Procurement (GPA). Under KORUS, U.S. suppliers now have the right to bid on the procurements of more than 50 Korean central government entities, nine more than are covered under the GPA. The Agreement also expands the scope of procurements to which U.S. suppliers will have access by reducing by more than one-half the threshold for eligible procurement contracts applied under the GPA, from a minimum of \$203,000 to a minimum of \$100,000. The KORUS does not cover procurement by Korean sub-central and government enterprises; however, such procurement is covered under the GPA. Under the GPA, for procurement of construction services, Korea applies a threshold of over \$23 million, which is three times the threshold applied by the United States.

Encryption and Security Requirements for Public Procurement of Information and Communications Technology Equipment

Korea requires network equipment being procured by public sector agencies to incorporate encryption functionality certified by Korea's National Intelligence Service (NIS). NIS only certifies encryption modules based on the Korean ARIA and SEED encryption algorithms, rather than the internationally-standardized AES algorithm that is in widespread use worldwide. Some U.S. suppliers have been unable to sell virtual private network and firewall systems to Korean public sector agencies due to this restriction. The United States has urged Korea to ensure that equipment based on widely used international standards has full access to Korea's public sector market.

Korea and the United States are both members of the Common Criteria Recognition Agreement (CCRA), under which products certified at any CCRA-accredited laboratory in any member country should be accepted as meeting the certification requirements in any other member country. However, U.S. industry has raised concerns that the Korean government is requiring products that obtained CCRA certification outside Korea to undergo additional verification in Korea by Korean government authorities before they can be eligible for procurement – an additional step that is not needed for domestic products, raising

national treatment concerns. U.S. industry has also raised concerns that the scope of these requirements (including the additional verification) is being expanded to products not normally thought of as “security” products, such as routers, switches, and IP-PBXes. The U.S. Government has raised this issue with Korea in bilateral consultations and will continue to work with Korea, including within the CCRA, in 2014 to address concerns.

INDUSTRIAL SUBSIDY POLICY

Historically, the Korea Development Bank (KDB) has been one of the government’s main sources of policy-directed lending to favored industries. Under the previous administration, Korea planned to privatize a wide range of state-owned enterprises, including the KDB, but recent statements by Korean policymakers suggest KDB privatization is being reevaluated, and draft legislation introduced by the majority party late in 2013 could reverse some privatization plans, including the privatization of KDB.

During the previous administration, Korea adopted a holding company system in 2009 and divided the Korean Development Bank (KDB) into two new companies: (1) the KDB, and (2) the Korea Finance Corporation (KFC). While still government-owned, the intention is for the KDB to operate as a commercial bank, and the KFC is to operate as a policy lending bank. However, if the legislation referenced above is passed, it would change this structure.

The U.S. Government will continue to monitor the lending policies of the KDB and other government-owned or affiliated financial institutions, as well as the plans for privatization.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Korean law generally provides for strong IPR protection. In addition, under KORUS Korea and the United States agreed to provide state-of-the-art protection for all types of intellectual property, *e.g.*, through requirements to join key multilateral IPR agreements and strong enforcement provisions.

The United States recognizes the importance the Korean government places on IPR protection, a development that has accompanied Korea’s shift to becoming a significant creator of intellectual property. However, some concerns remain over new forms of online piracy, corporate end-user software piracy, unauthorized use of software in the public sector, book piracy in universities, and counterfeiting of consumer products. With respect to unauthorized use of software in the public sector, the U.S. Government worked closely with Korea and the affected stakeholder to resolve a specific case with one Korean government ministry in 2013. Nevertheless, the Korean government could take further steps to ensure, on a systematic, across-the-board basis, that all government agencies fully comply with the Korean Presidential Decree mandating that government agencies use only legitimate, fully licensed software. This includes taking action to investigate and ensure that a sufficient number of licenses have been acquired to cover all users of the software in the respective agency. The U.S. Government continues to work with Korea to seek improvements in this area.

SERVICES BARRIERS

Screen and Broadcast Quotas

Korea maintains a screen quota for films requiring that any movie screen show domestic films at least 73 days per year. Overall, foreign programs may not exceed 20 percent of terrestrial television or radio broadcast time or 50 percent of cable or satellite broadcast time determined on a semi-annual basis. Within those overall quotas, Korea maintains annual quotas that further limit broadcast time for foreign

films to 75 percent of all films for terrestrial broadcasts and to 80 percent for cable and satellite broadcasts; foreign animation to 55 percent of all animation content for terrestrial broadcast and 70 percent of all animation content for cable and satellite broadcasts; and popular music to 40 percent of all music content. Another quota, applied on a quarterly basis, limits content from any one country to 80 percent of the quota available to foreign films, animation, or music. KORUS protects against increases in the amount of domestic content required and ensures that new platforms, such as online video, are not subject to these legacy restrictions.

Restrictions on Voiceovers and Local Advertisements

The Korean Broadcasting Commission's guidelines for implementation of the Broadcasting Act contain restrictions on voiceovers (dubbing) and local advertising for foreign retransmission channels. These prohibitions continue to be of concern to U.S. industry, as they limit the accessibility of such channels in the Korean market.

Duplicative Censorship Screenings

The Korea Media Ratings Board requires separate censorship screenings and rating procedures for 2D and 3D versions of the same film, adding additional and unnecessary time, costs, and uncertainty into the audiovisual market.

Legal Services

Under KORUS, Korea is in the process of opening its legal services market. The first step, implemented in 2012, created a legal status for foreign legal consultants and allowed foreign law firms to open offices in Korea. The law allows foreign attorneys with a minimum of three years of work experience to provide consulting services on the law of the jurisdiction in which they are licensed. The second stage, implemented as of March 15, 2014, allows cooperative agreements between foreign and domestic firms. The third stage, to be implemented by March 15, 2017, will allow foreign-licensed lawyers and firms to establish joint ventures and hire Korean-licensed lawyers.

Insurance and Banking

The KORUS contains provisions to level the regulatory playing field for private insurers by requiring that certain activities of government-sanctioned insurance cooperatives be subject to the same regulatory regime as private insurers. Korea Post, the National Agricultural Cooperative Federation (NACF), and the National Federation of Fisheries Cooperatives are not yet regulated by the Korean Financial Services Commission (FSC) and therefore still operate under different rules that may advantage these entities, although the Korean government announced it would apply the same rules and regulations to these firms. However, under KORUS, Korea has committed to subject solvency matters related to the sale of insurance by these cooperatives to FSC regulation by March 15, 2015.

The U.S. Government will closely monitor the implementation of relevant laws and regulations to ensure that Korea complies with the KORUS financial services provisions. Under KORUS, implementation of improvements in notice and comment periods and with respect to the issuance of "administrative guidance" is enabling financial services suppliers to play a greater role in the regulatory process and is addressing the historic lack of transparency in the adoption of financial regulations.

Until relevant KORUS provisions entered into force on March 15, 2014, Korea's strict data privacy rules had required financial institutions to locate their servers physically in Korea and limit the transfer of data

outside Korea, thus hampering foreign suppliers' ability to take advantage of economies of scale in the region to perform data processing in their daily business activity. Korea undertook commitments under both KORUS and the Korea-European Union Free Trade Agreement to substantially reduce these restrictions and to revise its system to allow financial institutions located in Korea to transfer data to affiliates outside Korea and to allow certain data processing and other functions to be performed in affiliates outside Korea. Korea revised regulations in June 2013 and issued administrative guidelines in December 2013 pursuant to these commitments to provide the legal framework for permitting such offshoring of information technology facilities and data processing. The United States will monitor closely Korea's implementation of the new system and engage actively with Korea to ensure that these commitments are fully implemented in practice, consistent with KORUS.

Credit and Debit Card Payment Services

Some U.S. industry stakeholders have raised concerns that Korea's financial services regulators, the Financial Services Commission (FSC) and the Financial Supervisory Service (FSS), may be exerting pressure on financial institutions to steer customers toward domestic brand cards rather than international brands, as well as pursuing other policies that may discriminate against international brand credit and debit card services. The United States Government will closely monitor developments in the credit and debit card services area and work with the Korean government to ensure there is no discrimination against U.S. service providers.

Telecommunications

Korea currently 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 the current investment restrictions in place and the fact that establishing a local presence may not be economically justified, this prohibition significantly restricts the ability of foreign satellite service suppliers to compete in the Korean market.

Under KORUS, as of March 15, 2014, Korea no longer limits facilities-based telecommunications suppliers operating within Korea to foreign-equity of no more than 49 percent, and such suppliers may now be wholly owned by foreign shareholders.

Internet Services

Prohibitions against storing high resolution imagery and related mapping data outside Korea – which Korea justifies on security grounds – have led to a competitive disadvantage for international online map services, since their locally-based competitors are able to provide several services (such as turn-by-turn driving/walking instructions, live traffic updates, interior building maps) that international service providers cannot. Since map data supplied by such competitors is visible outside of Korea, it is unclear how a prohibition on foreign storage furthers security goals. The United States is highly sensitive to Korea's national security concerns and is working with Korea to explore possible ways to update its mapping data-related system in a manner that reflects the globalized nature of the Internet.

Cloud Computing Services

The United States and U.S. industry have also raised concerns with proposed legislation submitted to the National Assembly by the Ministry of Science, Information and Communications Technology, and Future Planning (MSIP), which would provide a jurisdictional basis for regulating cloud computing services. Following engagement by the United States and extensive comments from U.S. and other foreign industry

groups, MSIP made some changes to its original draft to reflect many industry concerns before submitting the bill to the National Assembly. However, the U.S. Government and industry remain concerned about this draft legislation, which could impose additional Korea-specific regulations on what is a dynamic, global technology. The United States will continue to monitor this issue closely.

Express Delivery Services

According to KORUS, “under normal circumstances” formal entry documents are not required for express shipments valued at \$200 or less. However, U.S. express shippers have raised concerns that the Korean Customs Service (KCS) has unduly limited the availability of *de minimis* treatment for certain express shipments, such as some online purchases. The United States has raised this issue with Korea in the KORUS Committee on Trade in Goods and will continue to urge Korea to adopt more trade facilitative practices in this area.

Retail Services

U.S. industry has raised concerns in 2013 about the activities of the National Commission on Corporate Partnership (NCCP), which have imposed restrictions on the expansion of some U.S.-owned restaurant chains. The NCCP is a partially government-funded organization, created by Korea’s National Assembly in 2010, with a mandate to mediate complaints of unfair or unequal competition between large and small businesses. NCCP’s mission, according to its government-appointed chairman, is to level the playing field between large businesses and small and medium enterprises (SMEs) in two ways. First, it annually issues a “win-win scorecard” on how large businesses co-exist with SMEs. Second, and of most concern for U.S. businesses, NCCP can “designate suitable industries for SMEs.”

In 2013, NCCP designated the family restaurant sector as reserved for SMEs, imposing restrictions that affected U.S. companies in the sector by forcing them to choose between significant geographic restrictions on where they could open new stores or a limit of only five new stores a year nationwide for the next three years, a major reduction in the expansion plans of at least one U.S. firm. Although NCCP claims to be an entirely independent body, its government funding and the fact that criminal and civil penalties can be assessed on firms and individual executives who fail to comply with its guidelines suggest that NCCP has a strong connection to the government. The United States has raised concerns about this organization’s activities, urging Korea to consider carefully the effect that NCCP has on Korea’s business climate and on foreign investors. The United States will continue to monitor its activities closely in 2014.

ELECTRONIC COMMERCE

Restrictions on storing customer information outside of Korea have posed barriers to the provision of some Internet-based services, in particular online vending and payment processing. Under the Regulation on Supervision of Credit-Specialized Financial Business, electronic commerce firms selling goods in Korean won are prohibited from storing Korean customers’ credit card numbers in company information systems (U.S. electronic commerce firms continue to sell legally into the Korean market from abroad, setting prices in dollars, but are being prevented from accepting Korean branded credit cards). As a result, U.S. electronic commerce firms that are unwilling to develop Korea-specific payment systems have been prevented from entering the Korean market. The United States has raised the issue with Korea on multiple occasions, urging it to lift what appear to be unreasonable and unnecessary restrictions. On November 27, 2013, the Korean Financial Services Commission amended regulations to partially address this issue, enabling online digital content stores operating in more than five countries and headquartered abroad to receive “payment gateway” registrations, locate information technology (IT) facilities offshore,

store customer credit card numbers, and allow one-click purchases from mobile devices. This amendment is a positive step that gradually moves Korean regulation in this area in line with global norms. The United States will continue to raise restrictions on foreign electronic commerce firms with Korea in 2014.

INVESTMENT BARRIERS

Capital market reforms have eliminated or raised ceilings on aggregate foreign equity ownership, individual foreign ownership, and foreign investment in the government, corporate, and special bond markets. These reforms have also liberalized foreign purchases of short-term financial instruments issued by corporate and financial institutions. Some U.S. investors have raised concerns, however, about a lack of transparency in investment-related regulatory decisions, including by tax authorities, highlighting concerns about possible discrimination.

Korea maintained a 49 percent limit on foreign shareholdings of facilities-based telecommunications operators. This restriction was lifted in March 2014 when, under KORUS and Korea now permits U.S. companies to own up to 100 percent of a telecommunications operator in Korea. Foreign investment is not permitted in terrestrial broadcast television operations. Korea also restricts foreign ownership of cable television-related system operators, network operators, and program providers to 49 percent, but this restriction will be lifted under KORUS as of March 15, 2015. In 2011, foreign equity restrictions on previously closed areas were relaxed to 20 percent for program providers of channels that carry a range of programs and 10 percent for specialized news channels. For satellite broadcasts, foreign participation is limited to 49 percent. Foreign satellite retransmission channels are limited to 20 percent of the total number of operating channels. For multi-genre or news-focused Internet multimedia content operators and signal transmission network business operators, foreign investment is limited to 20 percent.

In addition to the investment restrictions in telecommunications and key services sectors described above, Korea maintains other important restrictions on foreign investment. Specifically, Korea prohibits foreign investment in rice and barley farming and imposes a 50 percent foreign equity limitation on meat wholesaling. Moreover, Korea limits foreign investment in electric power generation, distribution, and sales to 50 percent. It also restricts foreign investment in the areas of news agency services and publishing and printing where it has foreign equity limitations of 30 percent for enterprises publishing newspapers and 50 percent for enterprises publishing other types of periodicals.

The Korean government also operates several Free Economic Zones (FEZs) and has provided a range of investment incentives including tax breaks, tariff-free importation, relaxed labor rules (primarily exemptions from workforce quotas for disabled and older workers, and mandatory paid leave), and improved living conditions for expatriates in areas such as housing, education, and medical services. The Korean government has promoted these zones as an important step in making Korea's business environment more open, liberal, and responsive to economic needs.

ANTICOMPETITIVE PRACTICES

The Korea Fair Trade Commission (KFTC) has played an increasingly active role in enforcing Korea's competition law and in advocating for regulatory reform and corporate restructuring. The KFTC has a broad mandate that includes promoting competition, strengthening consumers' rights, creating a competitive environment for small and medium-sized enterprises, and restraining the concentration of economic power. In addition to its authority to conduct investigations and to impose penalties, including broad authority over corporate and financial restructuring and patent right abuses, the KFTC can levy heavy administrative fines for violations or for failure to cooperate with investigators. In April 2012, the KFTC began monitoring and publicizing the prices of select imports from the United States to ensure

pricing structures reflected the tariff reductions under KORUS. The United States has raised concerns over this practice noting that market mechanisms will lead to reductions in consumer prices in the wake of tariff reductions under the FTA but that individual pricing practices are subject to numerous factors.

OTHER BARRIERS

Regulatory Reform and Transparency

Reflecting the strong concerns of U.S. stakeholders, KORUS includes a wide range of provisions across all chapters to improve regulatory transparency in Korea. Korea's Administrative Procedures Act (APA) was revised in October 2012 to increase the public comment period for draft regulations subject to the APA from a minimum of 20 days to a minimum of 40 days. In addition, Korea enacted other legal reforms pursuant to KORUS increasing notice and comment periods related to pharmaceuticals, medical devices, as well as measures in other sectors. The United States will monitor compliance with transparency-related KORUS commitments, including the obligation to address significant, substantive comments received and to explain substantive revisions made in any final regulation.

Motor Vehicles

Increased access to Korea's automotive market for U.S. automakers remains a key priority for the U.S. Government. Upon entry into force of KORUS on March 15, 2012, Korea immediately reduced the tariff on passenger vehicles from 8 percent to 4 percent and eliminated the 10 percent tariff on trucks. In addition, KORUS contains provisions designed to address nontariff barriers, including Korean acceptance of U.S. automotive safety standards for motor vehicles built in the United States and regulatory transparency provisions, which are contributing to leveling the playing field for U.S. automobiles in the Korean market. U.S. exports of passenger cars and trucks to Korea have increased by 80 percent since 2011, the year before KORUS went into effect.

Pursuant to a law passed by the National Assembly in March 2013, throughout the year, the Ministry of Environment continued to develop regulations to implement an incentive/penalty ("bonus/malus") system based on automotive greenhouse gas emissions under which a buyer of a new vehicle would receive either a rebate or an additional charge depending on that car's emission profile. U.S. automakers have raised concerns with the proposed system. Under the authorizing law, this "bonus/malus" system should go into effect in January 2015. The United States has urged the Korean government to consult fully with U.S. stakeholders and with the U.S. Government on its plans in this area, particularly with respect to different types of vehicles will be classified under the system and what levels of penalties they may be subject to, as well as how, and by whom, the incentive or penalty is administered (*i.e.* by the government itself or by the automotive dealers). The United States will continue to engage with Korea to ensure that its automotive emissions policies are implemented in a fair, transparent, predictable manner, consistent with the KORUS.

A separate report issued in conjunction with the National Trade Estimate Report, the Report on Technical Barriers to Trade, contains further information on Korean measures affecting U.S. automotive exports.

Motorcycles

Although progress has been made over the past several years to resolve U.S. concerns over Korea's noise standard on motorcycles, a highway ban on motorcycles continues, which constrains potential market access. A 2011 study on the safety of motorcycles on highways commissioned by the Korean National Police highlighted inadequacies in Korea's regulatory and safety practices surrounding the licensing of

motorcycle drivers and the proliferation of young, untrained motorcycle riders driving dangerously on city streets. The United States maintains that heavy motorcycles riding on highways do not pose the same safety concerns as smaller, lighter motorcycles and continues to urge Korea to allow large motorcycles on highways.

Pharmaceuticals and Medical Devices

Under KORUS, any new Korean regulations affecting general pricing and reimbursement of pharmaceuticals and medical devices must be published in advance for notice and comment, and the Korean government is required to respond to public comments in writing and explain any substantive revisions made to proposed regulations. The KORUS also contains provisions designed to appropriately recognize the value of patented pharmaceuticals and medical devices. The United States continues to urge Korea to refrain from implementing reimbursement policies that not only discourage companies from introducing advanced medical products to the Korean market but that also serve as a disincentive to innovation and investment in research and development.

Korea's Ministry of Health and Welfare (MOHW) continues to announce and implement policies aimed at reducing reimbursement prices of drugs with disproportionately larger impact on innovative, patented drugs. In September 2013, MOHW announced a new set of drug reimbursement pricing policies, including an expanded price-volume agreement which would reduce reimbursement prices of the most successful and high-volume drugs, putting further downward pressure on drug prices. The United States has urged Korea to seriously consider stakeholders' concerns and ensure that pharmaceutical reimbursement pricing is conducted in a fair, transparent, and non-discriminatory manner that recognizes the value of innovation, as set forth in KORUS. The United States will continue to monitor the situation closely in 2014.

U.S. companies have also continued to express concern that a legacy of insufficient transparency in the regulation of pricing and reimbursements has impeded efficient introduction of medical devices to the Korean market. In October 2013, MOHW began phasing in a reimbursement pricing plan for medical devices based on import price or manufacturing cost that would further lower the prices of U.S. medical device exports in Korea. U.S. industry maintains that an import price is not an accurate reflection of the value of a product, and that prices should reflect safety and efficacy as well as innovation. The United States has expressed its concern that the reimbursement pricing of medical devices should be determined in a fair, non-discriminatory, and transparent manner and urged MOHW to engage directly with stakeholders to address their concerns.

KUWAIT

TRADE SUMMARY

U.S. goods exports in 2013 were \$2.6 billion, down 3.3 percent from the previous year. Corresponding U.S. imports from Kuwait were \$12.6 billion, down 2.9 percent. The U.S. goods trade deficit with Kuwait was \$10.0 billion in 2013, down \$295 million from 2012. Kuwait is currently the 54th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kuwait was \$331 million in 2012 (latest data available), up from \$158 million in 2011.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Kuwait applies the GCC common external tariff of 5 percent, with a limited number of GCC-approved country-specific exceptions. Kuwait's exceptions include 417 food and agriculture items that are exempt from customs duties. Tobacco products are subject to a 100 percent tariff rate.

Import Prohibitions and Licenses

Kuwait prohibits the importation of alcohol and pork products and requires a special import license for firearms. Used medical equipment and automobiles over five years old cannot be imported. The importation of books, periodicals, or movies that insult religion and public morals, and all materials that promote political ideology, is prohibited. 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.

Kuwait also maintains import bans on certain agricultural products due to health safety concerns.

GOVERNMENT PROCUREMENT

The Public Tenders Law (No. 37 of 1964, modified by Laws No. 13 and 31 of 1970 and 1977, respectively) regulates government procurement in Kuwait and requires that any procurement with a value greater than KD 5,000 (approximately \$17,727) be conducted through the Central Tenders Committee. Kuwait's government procurement policies require the purchase of local products, where available, and provide a 10 percent price preference for local firms.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Kuwait remained on the Watch List in the 2013 Special 301 Report, largely as a result of its failure to draft and pass amendments to its 1999 copyright law that would help provide adequate and effective protection of copyrights. This is in spite of repeated urging over time by the U.S. Government that the law be improved. Kuwait's current copyright law does not provide for sufficient deterrent criminal penalties, and there are insufficient resources allocated to IPR enforcement at the border. Although the U.S. Government has provided technical assistance on several iterations of draft legislation since 1999 to

address these issues, the U.S. Government remains concerned that the proposed legislation does not yet meet international standards.

As the six Member States of the GCC explore further harmonization of their IPR regimes, the United States will continue to engage with GCC institutions and the Member States and provide technical cooperation on intellectual property policy and practice.

SERVICES BARRIERS

Banking

Kuwait continues to limit investment in the banking sector under the 2001 Direct Foreign Capital Investment Law. Foreign non-GCC banks operating in Kuwait may only open one branch, may only offer investment banking services, and are prohibited from competing in the retail banking sector. As of October 2013, GCC banks operating in Kuwait may now open two branches and may compete in the retail banking sector. Although no GCC bank has yet to open a second branch, local Kuwaiti banks are reportedly unhappy with this new foreign competition. Foreign banks are still subject to a maximum credit concentration equivalent to less than half the limit of the largest local bank and are expressly prohibited from directing clients to borrow from external branches of their bank or taking any other measures to facilitate such borrowing.

Telecommunications

The Ministry of Communications is responsible for overseeing the telecommunications sector, but it also continues to own and operate the incumbent provider of wireline services, which also provides broadband services. Although the National Assembly passed a law to establish an independent commission to oversee mobile, landline, and broadband services, Kuwaiti officials have not taken the necessary steps to implement the law. The wireless sector is competitive, with three mobile providers.

INVESTMENT BARRIERS

Major barriers to foreign investment in Kuwait include: regulations prohibiting foreigners from investing in natural resources exploration and production, real estate, and publishing, continued long delays associated with starting new enterprises, difficulty in finding a required local sponsor and agent in certain circumstances, and obstacles created by a business culture heavily influenced by clan and family relationships. Foreign investment is not allowed in projects involving oil and gas exploration and production. Kuwait does permit foreign firms to participate in some midstream and downstream activities in the oil and gas sector, but foreign investors in this sector have faced numerous challenges.

In June 2013, Kuwait issued a new Foreign Direct Investment Law (Law No. 116 of 2013 Regarding the Promotion of Direct Investment in the State of Kuwait), which updates the 2001 Direct Foreign Capital Investment Law in an effort to encourage more foreign direct investment (FDI) in Kuwait by making it easier for investors to obtain an “Investment License.” Under the new law, the Kuwaiti government will create a new public authority led by a board of directors composed of public and private sector representatives and chaired by the Minister of Commerce and Industry and will establish a one-stop shop composed of all necessary government entities to streamline the approval and licensing process for investors. The processing time for the issuance of the “Investment License” will be capped at a maximum of 30 days from the date the public authority receives a completed application. The new law also mandates the issuance of a “Negative List” by the Council of Ministers that will clearly indicate the sectors in which foreign investment is prohibited under Kuwaiti law. Significantly, the new law provides

that foreign firms will be permitted to wholly-own companies in all sectors not specifically listed on the “Negative List.” Once the new public authority issues the necessary bylaws and regulations, the Kuwait Foreign Investment Bureau, established in accordance with the previous FDI law of 2001, will transfer all its funds, assets, obligations, and liabilities to the public authority.

Offset Requirements

Kuwait’s National Offset Company (NOC) administers requirements that foreign companies awarded military contracts valued at or above KD 3 million (\$11 million), civil/government contracts valued at or above KD 10 million (\$36.5 million), and all downstream oil/gas contracts, dedicate 35 percent of the contract value to target investment into specific sectors of Kuwait’s economy that either create jobs for Kuwaitis, train Kuwaitis, or transfer technology to Kuwaiti companies. Financial incentive offset multipliers reduce the total amount of the offset obligation and are available to foreign companies that invest in projects that achieve NOC objectives. A bank guarantee of 6 percent of the contract value is expected to be provided to the NOC until the offset obligation is fulfilled. The NOC’s most recent offset program guidelines are available online at <http://www.kuwaitnoc.com>. Foreign companies are also now able to take advantage of Kuwait’s new Foreign Direct Investment Law when establishing new companies to satisfy their offset obligations, including the establishment of 100 percent foreign-owned companies, tax and customs exemptions, and the employment of foreign labor.

LAOS

TRADE SUMMARY

U.S. goods exports in 2013 were \$25 million, down 26.2 percent from the previous year. Corresponding U.S. imports from Laos were \$31 million, up 21.9 percent. The U.S. goods trade deficit with Laos was \$6 million in 2013, shifting from a surplus of \$8 million in 2012. Laos is currently the 183rd largest export market for U.S. goods.

Laos ratified its accession to the WTO on December 6, 2012, after being accepted for membership by the WTO General Council in October. Laos became a full member of the WTO on February 2, 2013.

IMPORT POLICIES

Tariffs

Laos' membership in the WTO, and its preparations for the entry into force of obligations for the Association of Southeast Asian Nations (ASEAN) Economic Community in 2015, have spurred trade liberalization, improvements to the business environment, and trade facilitation.

The average applied tariff rate, according to the Ministry of Industry and Commerce (MOIC), is 10 percent for industrial goods and 18.4 percent for agricultural goods. Laos' average bound tariff rate in the WTO is 18.7 percent for industrial goods and 19.3 percent for agricultural products.

Nontariff Barriers

All importers must register with MOIC, Department of Import/Export. Certain products, including motor vehicles, petroleum and gas, timber products, cement, and steel, are subject to import licensing.

Customs Procedures

In 2013, Laos expanded the use of automated customs declaration processing systems, referred to as "ASYCUDA," at all of the country's main customs entry points.

The customs clearance processing for the importation of goods declined from nine steps in 2009 to five steps in 2012, while export processing declined from seven steps to four steps. The Lao Customs Department also has implemented transaction value processes, although reference prices on vehicles and fuel, which supply two-thirds of customs revenue, are still in the process of being phased out in accordance with Laos' WTO accession commitments. U.S. businesses complain of irregularities and corruption in the customs clearance process.

Taxation

Laos is transitioning to a value-added tax (VAT) system. The standard VAT rate of 10 percent applies to most domestic and imported goods and services, with some limited exemptions. Foreign businesses complain that they are often unable to effectively comply with VAT administration because Lao customers and suppliers are unable or unwilling to process VAT receipts. In addition, U.S. companies have expressed concern with a draft vehicle tax measure that as proposed appears to arbitrarily subject

U.S.-branded vehicles to higher taxes and charges than other vehicles. The U.S. Government will continue to engage with Laos regarding these concerns.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The lack of government capacity, coordination, and legal infrastructure all adversely affect the protection and enforcement of intellectual property rights (IPR) in Laos. Laos took steps in 2013 to consolidate its intellectual property office and to create specialized IPR units in its Customs Department, Public Prosecutor Office, and in its law enforcement bodies. However, Laos has not yet established an effective system for civil litigation and criminal enforcement of IPR. Although there is increasing public awareness and media coverage of the harm caused by counterfeit goods and the impact of copyright piracy on local content providers, pirated entertainment content and counterfeit goods continue to be easily obtainable in the Lao marketplace.

The U.S. Government will continue to urge Laos to take steps to improve IPR protection and enforcement, including amending the law to authorize *ex officio* authority for customs officials, developing judicial capacity to adjudicate IPR cases, and increasing public awareness of the importance of IPR.

INVESTMENT BARRIERS

Laos has a challenging investment climate due to issues of corruption, an underdeveloped judicial system, overlapping and contradictory regulations, and limited access to financial services. The Lao government requires an annually renewable business license, receipt of which is contingent on a certification that all taxes have been paid. However, taxes are often assessed in a nontransparent, arbitrary, and inconsistent manner. The U.S. Government will continue to urge the Lao government to address these issues.

SERVICES BARRIERS

Several service sectors remain closed to foreign competition, including medical, veterinary, real estate, some leasing services, postal services, media, financial services, tourism, and transportation services.

ELECTRONIC COMMERCE

Despite growing Internet usage, electronic commerce is just emerging in Laos. Online transactions are limited and do not normally encompass commercial activity. The Lao National Assembly passed a law authorizing both electronic commercial and government transactions in 2013.

OTHER BARRIERS

Corruption remains a major barrier to trade for U.S. businesses seeking to operate in, or trade with, Laos. Informal payments to low level officials in order to expedite administrative procedures are common. In a 2012 survey, one quarter of firms reported paying bribes, with the median amount of the bribe rising by a factor of ten since 2009.

Laos is seeking to improve the transparency of its domestic lawmaking process. In accordance with the 2012 Law on Making Legislation, the Ministry of Justice opened the online Official Gazette in October 2013 (<http://laofficialgazette.gov.la/index.php?r=site/index>), on which it intends to publish all proposed Lao legislation and, eventually, all Lao laws.

MALAYSIA

TRADE SUMMARY

U.S. goods exports in 2013 were \$13.0 billion, up 1.3 percent from the previous year. Corresponding U.S. imports from Malaysia were \$27.3 billion, up 5.2 percent. The U.S. goods trade deficit with Malaysia was \$14.3 billion in 2013, up \$1.2 billion from 2012. Malaysia is currently the 25th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Malaysia were \$2.5 billion in 2012 (latest data available), and U.S. imports were \$1.4 billion. Sales of services in Malaysia by majority U.S.-owned affiliates were \$7.3 billion in 2011 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were \$243 million.

The stock of U.S. foreign direct investment (FDI) in Malaysia was \$15.0 billion in 2012 (latest data available), up from \$12.4 billion in 2011. U.S. FDI in Malaysia is led by the manufacturing and mining sectors.

Trade Agreements

Malaysia is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 11 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States and Malaysia, the TPP negotiating partners currently include Australia, Brunei, Canada, Chile, Japan, Mexico, New Zealand, Peru, Singapore and Vietnam.

IMPORT POLICIES

Tariffs and Import Licensing Requirements

Almost all of Malaysia's tariffs are imposed on an *ad valorem* basis, with a simple average applied tariff rate of 6.5 percent. Duties for tariff lines where there is significant local production are often higher. In general, the level of tariffs is lower on raw materials than for value-added goods.

On roughly 80 products – most of which are agricultural goods – Malaysia charges specific duties that represent extremely high effective tariff rates. The simple average *ad valorem* equivalent across all products with a specific tariff is 392 percent. Beverages, alcohol, and wine are subject to an effective tariff of up to 500 percent when import duties and excise taxes are combined.

A large number of Malaysian tariff lines related to import-sensitive or strategic industries (principally in the construction equipment, agricultural, mineral, and motor vehicle sectors) are subject to import licensing requirements.

Tariff-Rate Quotas on Selected Agricultural Products

The Malaysian government maintains tariff-rate quota systems for 17 tariff lines, including live poultry, poultry meat, milk and cream, pork, and round cabbage. These products incur in-quota duties between 10 percent and 25 percent and out-of-quota duties as high as between 40 percent and 168 percent.

Import Restrictions on Motor Vehicles

Malaysian automotive policy makes a fundamental distinction between “national” cars, (*e.g.*, domestic producers Proton and Perodua) and “non-national” cars, which include other vehicles assembled in Malaysia. Malaysia applies high tariffs in the automobile sector, and its National Automotive Policy (NAP) includes nontariff measures that significantly raise the cost of imported vehicles. In 2011, the Malaysian government began another review of the NAP and results of this review were announced by the government in January 2014. The new NAP seeks to transform the country into a hub for energy efficient vehicles, but maintains Malaysia’s non-transparent import permit and gazette pricing system, excise duties that disproportionately affect imported vehicles, and special tax reductions for vehicles with Malaysian-manufactured components. In addition, Malaysia also has traffic restrictions and noise standards that affect the usage of large motorcycles.

The NAP includes a system of “approved permits” (APs), which confer the right to import and distribute cars and motorcycles. The AP system was initially designed to provide *bumiputera* (ethnic Malay) companies with easier entry into the automobile and motorcycle distribution and service sectors. However, the AP system is administered in a nontransparent manner and effectively operates as a cap by restricting the total number of imported vehicles in a given year. Currently, the cap on imported vehicles is set at 10 percent of the domestic market. Although the previous NAP had included a commitment to phase out the AP system by 2020, the revised NAP replaced this commitment with a proposed six month in depth study to assess the impact of terminating the program on its *bumiputera* beneficiaries.

Other policies further limit the competitiveness of U.S. automotive imports. The value of imported automobiles is established by the Malaysian government by an official gazette price. The officially set price serves as the basis for the assessment of import duties and excise taxes imposed by Malaysia. Meanwhile, through the use of the Industrial Adjustment Fund, the Malaysian government provides credits for the domestic content in locally assembled vehicles, which substantially lowers the tax burden on domestic products. The combined effect of these policies is to ensure that the number of imported vehicles is small and that the price of imported vehicles is substantially higher than that of domestically produced automobiles.

Pork Import Licensing

Pork may be imported into Malaysia only if Malaysia's Department of Veterinary Services (DVS) issues a permit authorizing its importation. The permits are granted on a case-by-case basis and are sometimes refused without explanation. In any event, the export of pork products from U.S. slaughter establishments is prohibited until such time as Malaysia conducts a systems audit of the U.S. sanitary system for pork. DVS has agreed to undertake such an audit in the first half of 2014 with the goal of moving towards reopening Malaysia’s market to U.S. pork products.

EXPORT TAXES

Malaysia taxes exports of palm oil, rubber, and timber products in order to encourage domestic processing. Malaysia is the world’s second largest producer and exporter of palm oil and products made

from palm oil. Malaysia lowered its export tax rates on crude palm oil on January 1, 2013 from 23 percent to between 4.5 percent and 8.5 percent. The tax that Malaysia imposes on exports of crude palm oil depends on fluctuations in the market price. Refined palm oil and refined palm oil products are not subject to export taxes. On January 1, 2013, the Malaysian government eliminated a duty-free quota for exports of crude palm oil.

GOVERNMENT PROCUREMENT

Malaysia has traditionally used government procurement to support national public policy objectives, including encouraging greater participation of bumiputera 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. It generally invites international tenders only when domestic goods and services are not available. In domestic tenders, preferences are provided for bumiputera suppliers and other domestic suppliers. In most procurement, foreign companies find they need to take on a local partner before their tenders will be considered. Procurement also often goes through middlemen rather than directly, or is negotiated rather than tendered. Many State-owned enterprises in Malaysia also apply procurement policies that favor bumiputera suppliers. The U.S. Government continues to raise concerns about the nontransparent nature of the procurement process in Malaysia.

Malaysia is not a signatory to the WTO Agreement on Government Procurement, but became an observer on July 18, 2012.

EXPORT SUBSIDIES

Malaysia maintains several programs that appear to provide subsidies for exports. The NAP increased the income tax exemption for high value added exports of motor vehicles and parts. The income tax exemption is based on the percentage increase in value added of exports. The United States has raised questions on these policies, some of which appeared to be export subsidies prohibited under WTO rules. These include: Single or Double Deduction for the Promotion of Exports, Tax Exemption on the Value of Increased Exports (provided minimal levels of domestic value-added are met); Market Development Grants; Tax Exemption for Malaysia International Trading Company; Free Industrial Zones, Free Commercial Zones, Licensed Manufacturing Warehouses and Export Processing Zones. Moreover, under the Central Bank's export credit refinancing scheme, commercial banks and other lenders provide financing to all exporters at a preferential rate for both pre-shipment and post-shipment.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Malaysia was removed from the Special 301 Watch List in 2012 and remained off the Watch List in 2013 following improvements in recent years in protecting intellectual property rights (IPR). In December 2011, the Malaysian Parliament passed amendments to the copyright law designed to, inter alia, bring the country into compliance with the WIPO Copyright Treaty and the WIPO Performance and Phonogram Treaty, define Internet Service Provider (ISP) liabilities, and prohibit unauthorized cam cording of motion pictures in theaters. Malaysia subsequently acceded to the WIPO Copyright Treaty and the WIPO Performance and Phonogram Treaty in September 2012. In addition, the Ministry of Domestic Trade, Cooperatives, and Consumerism (MDTCC) took steps to enhance Malaysia's enforcement regime, including active cooperation with rights holders on matters pertaining to IPR enforcement, ongoing training of prosecutors for specialized IPR courts, and the reestablishment of a Special Anti-Piracy Taskforce. In recent years, the MDTCC has also instructed its enforcement division to begin to take *ex officio* action, resulting in significant seizures of pirated products. In addition, there have been new law

revisions on industrial designs and trademarks which are near completion, and it is reported that the government aims to join the Hague Design System and the Madrid Protocol in 2014. These positive efforts to protect intellectual property should be furthered with the completion of specialized IP courts in all 13 Malaysian states.

Despite Malaysia's success in improving its effective protection of IPR, key issues remain, including relatively widespread availability of pirated and counterfeit products in Malaysia, high rates of piracy over the Internet, and continued problems with book piracy. In addition, the United States urges Malaysia to continue its efforts to improve the protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

SERVICES BARRIERS

The services sector constitutes 48 percent of the Malaysian economy and has been a key driver of economic and job growth in recent years. Since 2009, Malaysia has liberalized 43 services sub-sectors. One hundred percent foreign equity participation is now allowed in private hospital services, medical specialist clinics, department and specialty stores, incineration services, accounting and taxation services, courier services, private universities, vocational schools, dental specialist services, skills training centers, international schools, and vocational schools for special needs and quantity surveyors services. Malaysia has also announced plans, requiring new legislation, to liberalize architectural services, quantity surveying services and engineering services.

Telecommunications

Malaysia began allowing 100 percent foreign equity participation in Applications Service Providers in April 2012. However, liberalization of telecommunications services for Network Facilities Providers and Network Service Provider licenses has yet to be implemented and currently only 70-percent foreign participation is permitted. In certain instances, Malaysia has allowed greater equity participation, but the manner in which such exceptions are administered is not transparent and is perceived by foreign suppliers as arbitrary. Malaysia made limited GATS commitments on most basic telecommunications services and partially adopted the WTO reference paper on regulatory commitments.

Distribution Services, including Direct Selling

Malaysia began allowing 100 percent foreign ownership of department and specialty stores in 2012. However, foreign owned larger retailers ("hypermarkets") and locally incorporated direct selling companies must still have 30 percent bumiputera equity. The guidelines also include requirements that department stores, supermarkets, and hypermarkets must reserve at least 30 percent of shelf space in their premises for goods and products manufactured by bumiputera-owned small and medium size industries. Malaysia is currently reviewing these guidelines. The Malaysian government also issues "recommendations" for local content targets, which are, in effect, mandatory.

Legal Services

Malaysia amended its Legal Professions Act in July 2012. The amendments, which have yet to be implemented, would in principle allow foreign law firms to practice in Malaysia through an international partnership or qualified foreign law firm license and empower local firms to employ foreign lawyers subject to certain conditions. However, practicing litigation will still be prohibited except on an *ad hoc* basis, as will work in real property law. While foreign lawyers will be allowed to structure transactions,

only Malaysian lawyers will be able to make actual filings. Foreign law firms may not operate in Malaysia except as minority partners with local law firms and their stake in any partnership is limited to 30 percent.

In September 2013, Malaysia further amended the Legal Professions Act in two separate bills. The first bill removed the application of the Legal Professions Act's restrictions on the practice of law related to international arbitration proceedings. The second bill formalized additional restrictions on "fly in and fly out" activity by attorneys practicing either Malaysian or foreign law in the country.

Architectural Services

Architectural Services are among the 17 services sub-sectors the Malaysian government pledged to liberalize in 2012. However, the legislation that would allow 100-percent foreign equity in architectural firms has yet to be tabled in Parliament. At present, a foreign architectural firm may operate in Malaysia only as a joint venture participant in a specific project with the approval of the Board of Architects. Malaysian architectural firms may not have foreign architectural firms as registered partners. Foreign architects may not be licensed in Malaysia, but are allowed to be managers, shareholders, or employees of Malaysian firms.

Engineering Services

The engineering sector was scheduled to be liberalized in 2012, but the pending amendments to the relevant acts were not completed before Parliament was dissolved and new legislation has yet to be introduced. Until then, foreign engineers may be licensed by the Board of Engineers only for specific projects and must be sponsored by the Malaysian company carrying out the project. Foreign engineers are not allowed to operate independently of Malaysian partners or serve as directors or shareholders of an engineering consulting company. A foreign engineering firm may establish a non-temporary commercial presence if all directors and shareholders are Malaysian.

Accounting and Taxation Services

Since January 2012, foreign accountants and auditors have been allowed to wholly own a practice in Malaysia. All accountants seeking to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants (MIA) before they may apply for a license from the Ministry of Finance. Citizenship or permanent residency is required for registration with the MIA.

Financial Services

Malaysia adopted a new Financial Services Act in late 2012 that largely reflected its latest 10-year Financial Sector Blueprint and envisages further opening of the financial sector to foreign banks, but does not contain specific market-opening commitments or timelines. The new Act, which follows the previous 10 year Financial Services Master Plan, does not significantly break with the existing case-by-case approach of the central bank, Bank Negara Malaysia, towards granting foreign banks access to Malaysia. Under the Act, issuance of new licenses will be guided by prudential criteria and a vague and nontransparent "best interests of Malaysia." In determining the "best interests of Malaysia," Bank Negara will consider the contribution of the investment to promoting new high value-added economic activities, addressing demand for financial services where there are gaps, enhancing trade and investment linkages, and providing high-skilled employment opportunities. Bank Negara has also stated that it wants to ensure that local banks have at least 50 percent of total banking assets in Malaysia, although their share at present is significantly beyond that.

Bank Negara also sets controls on both foreign and local financial products. For example, interest rates on consumer savings accounts and fixed deposits are mandated and significantly higher than in other Asian countries. Fees on transactions are determined by the Association of Banks, but banks are not permitted to change these fees without Bank Negara approval. Credit card interest rates are capped at 18 percent per annum. Partnerships between foreign insurers and foreign banks are not permitted, regardless of whether they are locally incorporated. Foreign banks are also not allowed to open Ringgit Correspondent Bank Accounts with local banks as Bank Negara considers this practice to make local banks conduits for “branching” by foreign banks. Correspondingly, local banks are hesitant to partner with foreign banks to provide joint and seamless resources to U.S. multinationals.

As part of the 2009 liberalization package for financial services, foreign equity limits were increased from 49 percent to 70 percent for domestic investment banks, insurance companies, Islamic banks, and Islamic insurance operators. Foreign equity above 70 percent is permitted on a case-by-case basis for insurance companies if the investment is determined to facilitate the consolidation and rationalization of the insurance industry. Currently, mutual fund providers are restricted from being able to enter Malaysia and market or sell their products. Reinsurance companies are required to conduct more than 50 percent of their reinsurance business in Malaysia and must have 5 percent cession and local retention. Takaful (Islamic insurance products) require a separate license for foreign companies that would like to offer them. Bank Negara currently allows foreign banks to open four branches throughout Malaysia, subject to restrictions, which include designating how the branches can be set up. The policies do not allow foreign banks to set up new branches within 1.5 km of an existing local bank. Bank Negara has considered ATMs as equivalent to separate branches. It has conditioned foreign banks’ ability to offer some services on commitments to undertake certain back office activities in Malaysia.

Advertising

Foreign content in broadcast commercials in Malaysia is limited to 20 percent. The Malaysian government in 2007 relaxed enforcement of regulations governing the appearance of foreign actors in commercials shown in Malaysia.

Audio-Visual and Broadcasting

The Malaysian government maintains broadcast content quotas on both radio and television programming. Eighty percent of television programming must originate from local production companies owned by ethnic Malays and 60 percent of radio programming must be of local origin. Foreign investment in terrestrial broadcast networks is prohibited and is limited to a 20 percent equity share in cable and satellite operations. As a condition for obtaining a license to operate, video rental establishments are required to have 30 percent local content in their inventories.

Consumer Data Protection

Malaysia overhauled its consumer data protection laws with passage of the Personal Data Protection Act in 2010. The law imposes significant new requirements for registration and reporting by companies handling consumer data that ultimately touches most aspects of the economy. The law came into force November 15, 2013, with three months allowed for initial registration and reporting.

INVESTMENT BARRIERS

Foreign investment in sectors such as retail, telecommunications, financial services, professional services, oil and gas, and mining is subject to extensive restrictions, including limitations or, in some cases, prohibition, on foreign equity, and requirements that foreign firms enter into joint ventures with local partners. Pursuant to the National Land Code, foreigners must obtain prior approval from the relevant state authorities for any acquisition of land for agricultural, residential, or commercial purposes. These State authorities may impose conditions on ownership, including maximum thresholds on foreign equity in companies seeking to acquire land. Malaysia also maintains performance requirements that must be met to receive a customs waiver for manufacturing operations in Foreign Trade Zones.

OTHER BARRIERS

Transparency

U.S. companies continue to raise serious concerns about the lack of transparency in government decision-making and procedures in Malaysia. Following an announcement by Prime Minister Najib in February 2012, the Chief Secretary to the Cabinet in April 2012 issued a circular instructing all Ministries to publicly post all draft laws and regulations on the Internet for a 30-day public comment period. However, implementation of this new requirement remains uneven, and many Ministries continue to consult selected stakeholders in an opaque, invitation-only manner.

MEXICO

TRADE SUMMARY

U.S. goods exports in 2013 were \$226.2 billion, up 4.7 percent from the previous year. Corresponding U.S. imports from Mexico were \$280.5 billion, up 1.0 percent. The U.S. goods trade deficit with Mexico was \$54.3 billion in 2013, down \$7.3 billion from 2012. Mexico is currently the 2nd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Mexico were \$27.4 billion in 2012 (latest data available), and U.S. imports were \$15.1 billion. Sales of services in Mexico by majority U.S.-owned affiliates were \$37.6 billion in 2011 (latest data available), while sales of services in the United States by majority Mexico-owned firms were \$4.9 billion.

The stock of U.S. foreign direct investment (FDI) in Mexico was \$101.0 billion in 2012 (latest data available), up from \$90.8 billion in 2011. U.S. FDI in Mexico is primarily concentrated in the manufacturing, nonbank holding companies, and finance/insurance sectors.

Trade Agreements

The North American Free Trade Agreement (NAFTA), signed by the United States, Canada, and Mexico (“the Parties”), entered into force on January 1, 1994. Under the NAFTA, the Parties progressively eliminated tariffs and nontariff barriers to trade in goods among them, provided improved access for services, established strong rules on investment, and strengthened protection of intellectual property rights. After signing the NAFTA, the Parties concluded supplemental agreements on labor and the environment, under which the Parties are obligated to effectively enforce their environmental and labor laws, among other things. The agreements also provide frameworks for cooperation on a wide variety of labor and environmental issues.

In 2012, Canada and Mexico became participants in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 11 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns that our businesses and workers face in the 21st century. In addition to the United States, Canada and Mexico, the TPP negotiating partners currently include Australia, Brunei, Chile, Japan, Malaysia, New Zealand, Peru, Singapore, and Vietnam.

IMPORT POLICIES

Tariffs and Market Access

Pursuant to the terms of the NAFTA, on January 1, 2003, Mexico eliminated tariffs on all remaining industrial products and most agricultural products imported from the United States. On January 1, 2008, Mexico eliminated its remaining tariffs and tariff-rate quotas on all U.S. agricultural exports (*see the section on agriculture below for additional details on specific farm products*).

Mexico imposes a value-added tax (VAT) on sales of goods and services. Certain food products are exempt from the VAT. U.S. producers have complained that, while Mexico imposes the VAT on imports of U.S. nutritional supplements at the time of entry, it does not collect the VAT on sales of similar domestic products at the point of sale.

The Mexican government passed fiscal reform in October 2013, which included harmonization of the VAT along the northern border to 16 percent, imposition of the VAT on temporary imports, a new sugary beverage tax, and taxes on “junk” food, pet food, and chewing gum. The “junk food tax” is an additional 8 percent tax applied to nine food categories, and is based on the caloric density of those foods, which includes cereals, snack foods, confectionary, and flavored beverages.

Agricultural Products

The United States exported \$18.9 billion in agricultural, fishery, and forestry products to Mexico in calendar year 2013, compared to \$19.7 billion in 2012. Mexico is the United States’ third largest agricultural export market.

Chicken

On February 8, 2011, the Mexican Secretariat of Economy (SECON) announced an antidumping investigation on U.S. fresh, chilled, and frozen chicken leg quarters (CLQ). SECON issued the final determination in the investigation on August 6, 2012. Final dumping margins ranging from 25.7 percent to 127.5 percent were identified, but corresponding antidumping duties were not imposed. Rather, the Mexican Foreign Trade Commission (COCEX) determined that additional duties might increase prices at a time when Mexico’s chicken industry was suffering an outbreak of highly pathogenic avian influenza. On September 3, 2012, interested U.S. parties filed an appeal of the final antidumping determination with the NAFTA Secretariat. The NAFTA panel is currently being composed. On October 9, 2012, members of the Mexican poultry industry filed a notification with SECON asking it to rescind its decision not to apply antidumping duties and to deem illegal its decision to identify, in its final determination, lower dumping margins than it identified in its preliminary determination. The U.S. Government continues to monitor the situation while all duties are in abeyance and the respective administrative processes are stalled.

Import Licensing

On December 5, 2013, Mexico published, in the Mexican government gazette, new licensing procedures for the importation of certain steel products. These procedures were made effective on January 27, 2014. Two of the stated goals of the procedures are to combat fraud and improve statistical monitoring. Although the new import licensing system is supposed to issue licenses automatically, industry representatives have reported long delays in the review and issuance of licenses. These administrative delays have led to disruptions back through the supply chain, as shipments must remain at the border, thereby incurring additional costs. The U.S. Government is collecting additional information on the problem and will work with industry stakeholders and the Mexican government to address the issue.

Administrative Procedures and Customs Practices

Despite improvement in some areas, U.S. exporters continue to express concerns about Mexican customs administrative procedures, including: insufficient prior notification of procedural changes; inconsistent

interpretation of regulatory requirements at different border posts; and uneven enforcement of Mexican standards and labeling rules. Numerous U.S. companies reported in 2012 that the Servicio de Administración Tributaria (SAT), Mexico's tax authority, is verifying NAFTA origin for the entry of products dating back to 2007. While verifications are permitted under NAFTA, the breadth of these verifications and the extent of the information being requested were reportedly overly burdensome and required the submission of confidential business information with no assurance that it would be protected from disclosure. In some cases, SAT reportedly denied an exporter's claim for NAFTA preference, even after the submission of documentation demonstrating that the products meet NAFTA's rules of origin requirement. The fines and penalties in such cases can be very high (in excess of \$10 million), and there are substantial costs associated with complying with the verification and even greater legal costs for appealing the rulings. Following discussions with various stakeholders, SAT committed to adopt new procedures to address industry complaints, including a "selective sampling" procedure implemented on a case-by-case basis. The U.S. Government will continue to monitor the situation and urge SAT to resolve all pending audit cases in a timely manner.

Customs procedures for express packages continue to be burdensome, although Mexico has raised the *de minimis* level (below which shipments are exempt from customs duties) from \$1 to \$50. Mexican regulations still hold the courier 100 percent liable for the contents of shipments. U.S. exporters have highlighted the benefits of harmonizing the hours of customs operation on the U.S. and Mexican sides of the border, but exporters cite delays stemming from the lack of pre-clearance procedures, which the Mexican government claims are not permitted under current law. The U.S. and Mexican Governments are actively working to find a solution that would allow pre-clearance pilot programs.

On June 1, 2012, the Mexican government implemented the Ventanilla Unica de Comercio Exterior Mexicana (VUCEM), or Single Window for Trade. The VUCEM allows users to transmit trade information required by Mexican authorities electronically. Mexican importers and U.S. exporters have experienced some delays and difficulties with the process, but the Mexican government has been working to address these concerns.

GOVERNMENT PROCUREMENT

The Mexican government uses several "electronic government" Internet sites to increase the transparency of government procurement processes and to provide guidelines for the conduct of government officials. One such site, CompraNet, provides an online interface for conducting government procurement at the federal level. CompraNet was developed by Mexico's Ministry of Public Administration to modernize and increase transparency in the procurement of goods, services, leases and public works for the federal public administration and the governments of Mexican states that use the online service. Under Mexican legislation, all federal agencies must post on CompraNet the calls for bids, terms, notes, results and contracts related to their procurement. In addition, all state, national, and international bids funded with federal monies are announced through CompraNet.

The 2012 law on Public-Private Partnership (PPP) allows the Mexican government to enter into infrastructure and service provision contracts with private companies for up to 40 years. The PPP Law also provides more legal certainty to private investors through the equal distribution of risks, facilitating access to bank loans, and harmonizing existing public-partnership models into one federal law. All investors are allowed to participate in bidding processes, except for some restricted sectors in accordance with the existing Foreign Direct Investment Law.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Mexico was listed on the Watch List in the 2013 Special 301 report. The report noted inadequate intellectual property rights (IPR) enforcement and the wide availability of pirated and counterfeit goods mostly via physical and online notorious markets. Criminal enforcement of IPR suffers from weak coordination among federal, state, and municipal officials, limited resources for prosecutions, lack of long-term sustained investigations to target high-level suppliers of counterfeit and pirated goods, and the need for deterrent level penalties. The United States continued to encourage Mexico to provide its customs officials with *ex-officio* authority; to provide Mexican Customs and the Mexican Industrial Property Institute (IMPI) with the authority to act administratively against the transshipment of alleged counterfeit and pirated goods; to give the Attorney General's Office the authority to prosecute transshipments of alleged counterfeit and pirated goods; and to enact legislation to strengthen its copyright regime, including by implementing the World Intellectual Property Organization (WIPO) Internet treaties and by providing stronger protection against the unauthorized camcording of motion pictures in theaters. Mexico took some positive steps in 2013, such as formally joining the Madrid Protocol, which provides a simple streamlined process for rights holders to apply for trademark protection in Mexico and other member countries. The United States continues to work with Mexico to resolve IPR concerns through bilateral, regional, and other means of engagement.

SERVICES BARRIERS

Telecommunications

OECD surveys have recommended that Mexico improve mandatory access to the local loop; formally regulate fixed-to-mobile termination charges; and introduce mandatory roaming to enable smaller mobile companies to use the network of Telcel, (Mexico's largest mobile phone company). The OECD also suggested that the industry regulator, Cofotel (the Federal Telecommunications Commission), needs greater independence both from leading companies in the sector and from its parent ministry, the Ministry of Communications and Transportation (SCT).

In June 2013, the Mexican Congress passed (and then the Mexican states ratified) a sweeping constitutional reform that aims to open up the telecommunications sector to more competition and improve services for Mexican consumers, addressing the majority of concerns outlined in the OECD survey of Mexico's telecommunications sector. The reform will directly affect telecommunication giant America Movil, which serves 70 percent of mobile subscribers, and television heavyweights Televisa and TV Azteca, which together hold 90 percent of their respective market of free-to-air TV. The reform creates a new telecommunication regulator, the Federal Telecommunications Institute (IFT), and gives both IFT and the Comision Federal de Competencia Economica (CFCE) constitutional autonomy and more regulatory authority, including market regulation and tools for combating monopolies and monopolistic practices.

Furthermore, the reform amends the constitution to address the telecommunication industry's abuse of legal injunctions (amparos). Under the amendment, IFT's regulations would not be subject to delays upon the institution of an amparo and would remain in effect while a case is being reviewed. The fixed and satellite telecommunications market has been opened up to 100 percent foreign direct investment and the government plans to develop a shared public telecommunications network geared toward the latest 4G/4G LTE technology to take advantage of reclaimed spectrum in the 700MHz band.

Although the recently enacted reform may address a number of the services barriers that have deterred investment and stunted the growth and development of Mexico's telecommunications industry, the

Mexican legislature needs to pass implementing legislation that outlines how regulators will determine and treat dominant players in the market and established the “rules of the road” for new market entrants. The lack of such legislation has created uncertainty in the market for both existing participants and possible new entrants. Legislators have stated publicly that they will review the legislation in the first quarter of 2014.

Broadcasting

In Mexico, pay television, which is the primary outlet for foreign programmers, is subject to significantly more stringent advertising restrictions than free-to-air broadcast television, which is the primary outlet for domestic operators. The two national broadcasters, Televisa and TV Azteca, control about 90 percent of the national broadcast television market. In June 2012, the Dirección General de Radio, Televisión y Cinematografía (RTC) notified affected cable channels that the programmers were now limited to six minutes per hour of advertising. This announcement followed a decade in which pay TV programmers were allocated an average of 12 minutes per hour for advertising (without exceeding 144 minutes per day). There was no official change in law or regulation, and, prior to announcing the change, the RTC had confirmed in a 2011 letter to the cable channel industry association that the longstanding practice was lawful. Free-to-air broadcasters may allot their permitted 259 minutes per day of advertising with no hourly limits. Mexican authorities have indicated that they continue to work on establishing “a clear legal framework” for pay TV advertising that will occur soon.

INVESTMENT BARRIERS

Mexico’s oil and gas sector remains largely closed to private investment, with the exception of the liquefied natural gas sector, natural gas distribution, and the marketing of petroleum products. Only Mexican nationals may own gas stations.

In December 2013, Mexico’s Congress passed energy reform legislation that opens Mexico’s state-run oil industry to private sector participation and allows greater private investment in power generation. The legislation was ratified by Mexican states that same month. The energy reform amends the Mexican constitution to allow the private sector to enter into competitive contracts that include profit-sharing, production-sharing, and license contracts with the government or state-owned petroleum company Pemex for the exploration and extraction of hydrocarbons. The reform also allows private sector companies to participate in downstream operations, such as refining, petrochemicals, transport, retail, and supply. The Mexican constitution still mandates state ownership of hydrocarbons. Legislation to implement the reform is expected to be submitted to the Mexican Congress in early 2014.

Other laws limit participation in certain sectors or activities (*e.g.*, forestry) to Mexican nationals. Investment restrictions prohibit foreign ownership of residential real estate within 50 kilometers of Mexico’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). There is legislation currently pending in Mexican congress that would revise this restriction. An interagency National Foreign Investment Commission reviews foreign investment in Mexico’s restricted sectors, as well as investments in unrestricted sectors in which foreign equity exceeds 49 percent and which have a value greater than \$165 million (adjusted annually).

MOROCCO

TRADE SUMMARY

U.S. goods exports in 2013 were \$2.3 billion, up 6.0 percent from the previous year. Corresponding U.S. imports from Morocco were \$977 million, up 4.8 percent. The U.S. goods trade surplus with Morocco was \$1.3 billion in 2013, an increase of \$85 million from 2012. Morocco is currently the 57th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Morocco was \$613 million in 2012 (latest data available), up from \$550 million in 2011.

The United States–Morocco Free Trade Agreement

The United States-Morocco Free Trade Agreement (FTA) entered into force on January 1, 2006. Duties on 95 percent of bilateral trade in industrial and consumer goods were eliminated upon entry into force of the FTA, with duties on other such goods phased out in stages over the subsequent 10 years, *i.e.*, by January 1, 2015. Some sensitive agricultural products have longer periods for duty elimination or are subject to other provisions, such as tariff-rate quotas (TRQs). In addition to provisions which grant key U.S. export sectors immediate duty-free access to the Moroccan market, the FTA includes commitments for increased regulatory transparency and the protection of intellectual property rights. Through assistance programs, the United States continues to provide Morocco targeted technical assistance supporting FTA compliance and Moroccan regulatory reform.

IMPORT POLICIES

Morocco has undertaken liberalizing reforms as a WTO Member and as a party to several bilateral free trade agreements. Under the United States-Morocco FTA, goods of key U.S. sectors, such as information technology, machinery, construction equipment, chemicals, wheat, and textiles, enjoy either duty-free or preferential duty treatment when entering Morocco.

In order to further assist the flow of trade, the United States and Morocco signed a trade facilitation agreement in November 2013. The agreement includes new commitments reflecting practices developed since the FTA was signed in 2004 that will facilitate the movement of goods. They include provisions on internet publication, transit, transparency with respect to penalties, and other topics that will improve Morocco's environment for trade in goods.

Agriculture

The FTA allows preferential access to Morocco for U.S. durum and common wheat exports through two TRQs. The Moroccan government's administration of these wheat TRQs, however, has led to difficulties for U.S. producers attempting to benefit from the preferential access provided under the FTA. In fact, in 2012 and 2013, no wheat was shipped under the TRQs. The U.S. Government is continuing its efforts to improve access for U.S. wheat producers.

GOVERNMENT PROCUREMENT

The FTA requires the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for covered procurement. Under the FTA, U.S.

suppliers are permitted to bid on procurements for most Moroccan central government entities, as well as procurements for the vast majority of Moroccan regional and municipal governments, on the same basis as Moroccan suppliers. However, the 45-day and 90-day timeframes given to foreign companies to respond to government tenders are often too short, guidance for bidders issued by procuring entities is often vague, and channels for distributing information are limited to local newspapers and circulars sent to foreign embassies.

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

SERVICES BARRIERS

Although U.S. companies in principle enjoy the same treatment in Morocco's insurance market as their Moroccan counterparts, the policies and practices of Morocco's insurance regulatory body have effectively prevented U.S. insurance companies from introducing competing products. In practice, the regulatory body is only likely to approve applications that bring new products or "added value" to the sector. Applications must first be reviewed by a Consultative Committee composed principally of other companies active in the sector. While this committee's recommendations are not binding, the Ministry of Economy and Finance generally has followed its advice when considering applications.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Morocco has legislation for the protection and enforcement of trademarks, copyrights, and patents. This legislation includes provisions concerning disputes regarding Internet domain names, anti-circumvention provisions to prohibit tampering with technologies designed to protect copyrighted content, and specific protections for temporary copies, which are critical in the digital environment. The Moroccan Copyright Office has stated that Morocco's capacity to detect and address Internet-based intellectual property rights (IPR) violations is insufficient. Reports indicate that software piracy is a problem in the personal, commercial, and public markets.

OTHER BARRIERS

The greatest obstacles to trade in Morocco are irregularities in government procedures, lack of transparency in the operation of governmental and judicial bureaucracies, inefficient transport systems, and corruption among junior-level officials. Morocco's cumbersome tax and employment regimes, property registration, and investor protections also impede business. Although the government is working to liberalize the business environment and improve the efficiency of government operations related to business, foreign corporations still complain that these negative factors can limit their access to the Moroccan market.

U.S. companies report that the absence of a viable credit reporting agency in Morocco presents a serious hurdle in vetting potential partners and thus constitutes a significant barrier to trade.

NEW ZEALAND

TRADE SUMMARY

U.S. goods exports in 2013 were \$3.2 billion, down 0.1 percent from the previous year. Corresponding U.S. imports from New Zealand were \$3.5 billion, up 1.4 percent. The U.S. goods trade deficit with New Zealand was \$260 million in 2013, up \$52 million from 2012. New Zealand is currently the 52nd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to New Zealand were \$2.0 billion in 2012 (latest data available), and U.S. imports were \$1.9 billion. Sales of services in New Zealand by majority U.S.-owned affiliates were \$3.9 billion in 2011, while sales of services in the United States by majority New Zealand-owned firms were \$345 million.

The stock of U.S. foreign direct investment (FDI) in New Zealand was \$9.5 billion in 2012 (latest data available), up from \$7.9 billion in 2011. U.S. FDI in New Zealand is mostly in the finance/insurance, and manufacturing sectors.

TRADE AGREEMENTS

New Zealand is a participant in the Trans-Pacific Partnership (TPP) Agreement negotiations, through which the United States and 11 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. Once concluded this agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The United States is proposing to include in the TPP agreement ambitious commitments on goods, services, and other traditional trade and investment matters and a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States and New Zealand, the TPP negotiating partners currently include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore and Vietnam.

IMPORT POLICIES

Tariff rates in New Zealand are generally low as a result of several rounds of unilateral tariff cuts that began in the mid-1980s. At 2 percent, New Zealand has one of the lowest average most favored nation (MFN) applied tariff rates among industrialized countries. In 2012, the average applied MFN tariff rate was 1.4 percent for agricultural products and 2.2 percent for industrial goods. New Zealand has bound 47.5 percent of its tariff lines at zero duty in the WTO and applies zero duty on 64.7 percent of its tariff lines. In October 2013, the New Zealand government decided that tariffs will remain unchanged until at least June 2017, except where they are being reduced through trade agreements. The next New Zealand government review of tariff levels will take place in 2016 to consider whether to change overall tariff levels after 2017.

GOVERNMENT PROCUREMENT

In August 2012, New Zealand announced its intention to join the WTO Government Procurement Agreement, with the accession process expected to be completed within two years. New Zealand is

currently an observer to the WTO Committee on Government Procurement. As of March 2014, New Zealand was working to conclude its accession procedures.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

New Zealand generally provides strong intellectual property rights protection and enforcement. In September 2013, it passed the Patents Act 2013, which replaces the Patents Act 1953. New Zealand has begun implementing the new law, establishing the Intellectual Property Office of New Zealand to communicate with the public on matters arising under the Act, but most of the provisions will not go into force until September 2014. The U.S. Government will monitor implementation of the law, including with respect to software patentability.

In April 2011, the Copyright (Infringing File Sharing) Amendment Act became law. Although many rights holders were initially optimistic about the legislation, they have since expressed concerns regarding implementing regulations issued by the Ministry of Economic Development, which permit Internet service providers to charge up to NZ\$25 (approximately \$21) per issuance of an infringement notice. The cost has deterred some rights holders from using the system and the New Zealand government is currently reviewing submissions by stakeholders on this issue.

The United States continues to encourage the New Zealand government to accede to and implement the World Intellectual Property Organization (WIPO) Performance and Phonograms Treaty and the WIPO Copyright Treaty. The United States welcomed the entry into force of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (the Madrid Protocol), with respect to New Zealand, on December 10, 2012.

SERVICES BARRIERS

Telecommunications

Mobile termination rates (MTRs), a charge mobile network suppliers levy on other operators for completing calls to the mobile network's subscribers, have until recently been unregulated in New Zealand. New Zealand's dominant telecommunications companies, Vodafone and Telecom, had historically maintained termination rates among the highest of all industrialized countries. The incumbents appear to have used these rates to put new, smaller mobile entrants at a competitive disadvantage. On a national basis, Vodafone and Telecom control 51 percent and 46 percent of the market, respectively.

In May 2011, the New Zealand Commerce Commission issued a decision requiring cost-based rates for MTRs, thereby increasing competition and reducing wholesale termination rates for mobile calls and text messages. Pursuant to the decision, termination rates for text messages were immediately reduced, and mobile call termination rates were reduced in April 2012, with additional annual reductions until April 2014, resulting in rates that are now competitive by global standards.

INVESTMENT BARRIERS

Investment Screening

New Zealand screens any foreign investment that would result in the acquisition of 25 percent or more of ownership in, or of a controlling interest in, "significant business assets" (defined as assets valued at more than NZ\$100 million (approximately \$84 million)). In addition, it screens foreign investors or entities

that acquire 25 percent or more of a fishing quota, either directly or through the acquisition of a company that already possesses a quota, as well as acquisitions of land defined as “sensitive” by the Overseas Investment Act (OIA) 2005.

In September 2010, New Zealand announced new implementing rules under the OIA, which provide New Zealand ministers increased power to consider a wider range of issues when evaluating overseas investment applications involving sensitive land (such as farmland greater than five hectares, land adjoining the foreshore, or conservation land). Under the rules, two additional factors are evaluated under a benefit test: an “economic interests” factor that allows ministers to consider whether New Zealand’s economic interests are “safeguarded,” and a “mitigating” factor that enables ministers to consider whether an overseas investment provides adequate opportunities for New Zealand oversight or involvement.

OTHER BARRIERS

Pharmaceuticals

The Pharmaceutical Management Agency (PHARMAC), created in 1993, determines which medicines to fund for use in community and public hospitals, negotiates prices with pharmaceutical companies, and sets subsidy levels and reimbursement criteria. U.S. stakeholders have expressed strong concerns about PHARMAC’s regulatory process, including the lack of transparency, timeliness, and predictability in the funding process and unreasonable delays in reimbursing new products. These longstanding concerns have been exacerbated as PHARMAC expands into areas that were previously unregulated, including medical devices. PHARMAC reportedly is working to improve transparency and increase stakeholder involvement in its processes.

NICARAGUA

TRADE SUMMARY

U.S. goods exports in 2013 were \$1.1 billion, down 6.3 percent from the previous year. Corresponding U.S. imports from Nicaragua were \$2.8 billion, up 2.0 percent. The U.S. goods trade deficit with Nicaragua was \$1.7 billion in 2013, up \$128 million from 2012. Nicaragua is currently the 76th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nicaragua was \$219 million in 2012 (latest data available), down from \$357 million in 2011.

FREE TRADE AGREEMENT

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

IMPORT POLICIES

Tariffs

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

Approximately 95 percent of tariff lines are harmonized at this rate or lower. In response to rising prices, in 2007, Nicaragua issued a series of decrees to unilaterally eliminate or reduce to 5 percent tariffs on many basic foodstuffs and consumer goods. These decrees have been extended every six months and are currently in effect through June 30, 2014.

Under the CAFTA-DR, 100 percent of U.S. consumer and industrial goods will enter Nicaragua duty free by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Nicaragua duty free and quota free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Nicaragua duty free. Nicaragua will eliminate its remaining tariffs on virtually all U.S. agricultural goods by 2020 (2023 for rice and chicken leg quarters and 2025 for dairy products). For certain products, tariff-rate quotas (TRQs) will permit some immediate duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period. Nicaragua will liberalize trade in white corn through continual expansion of a TRQ rather than the reduction of the out-of-quota tariff.

Nontariff Measures

Under the CAFTA-DR, all of the Parties, including Nicaragua, committed to improve transparency and efficiency in administering customs procedures. The Nicaraguan government levies a 15 percent or less “selective consumption tax” on some luxury items, with a few exceptions. The tax is not applied exclusively to imports; domestic goods are taxed on the manufacturer’s price, while imports are taxed on a “cost, insurance, and freight” (CIF) value. Alcoholic beverages and tobacco products are taxed on the price billed to the retailer.

U.S. companies report that difficulties with the Nicaraguan Customs Administration are a significant impediment to trade. Complaints concern bureaucratic delays, arbitrary valuation of goods, technical difficulties, corruption, and politicization. U.S. exporters and importers of U.S. goods also complain that customs authorities deliberately misclassify goods to boost tariff revenue and detain goods and donations in customs without legal justification.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Nicaraguan government entities, including key ministries and state-owned enterprises, on the same basis as Nicaraguan suppliers. The anticorruption provisions in the Agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

In 2010, the Nicaraguan National Assembly amended the 1999 Government Procurement Law, also known as Law 323, in order to close certain loopholes. The amendment eliminated exclusions to the established bidding process that had allowed favoritism and unfair competition. However, there are still many allegations of irregularities in the procurement process, in particular involving procuring entities splitting procurements into smaller lots, an action which allows them to use a less competitive bidding process.

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

EXPORT SUBSIDIES

ALBANISA, the state-owned company that imports and distributes Venezuelan petroleum, provides preferential financing to parties that agree to export their products to Venezuela.

All exporters receive tax benefit certificates equivalent to 1.5 percent of the free-on-board value of the exported goods. Under the CAFTA-DR, Nicaragua may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, Nicaragua may maintain such duty waiver measures for such time as it is an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures. The U.S. Government continues to work with the Nicaraguan government ensure compliance with Nicaragua’s CAFTA-DR obligations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To implement its CAFTA-DR intellectual property rights (IPR) obligations, Nicaragua undertook legislative reforms providing for stronger IPR protection and enforcement. Despite Nicaragua's efforts, the United States continues to be concerned about the piracy of optical media and trademark violations in Nicaragua. The United States has expressed concern to the Nicaraguan government about inadequate IPR enforcement, as well as a lack of transparency about its legislative and regulatory processes. Nicaragua amended its laws governing protections for geographical indications (GIs) in anticipation of action on applications received from the European Union in 2013 to register a range of GIs in Nicaragua. During that ongoing engagement, the United States has stressed the need for use of CAFTA-DR consistent protections and processes, including providing public notice and an opportunity for opposition and cancellation, and transparency and impartiality in decision making. The United States will continue to monitor Nicaragua's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Telecommunications

Under the CAFTA-DR, Nicaragua committed to opening its telecommunications sector to U.S. investors and services suppliers. The Nicaraguan executive branch has proposed legislation that would strengthen the enforcement capacity of the telecommunications regulator (TELCOR). The United States is monitoring this process.

INVESTMENT BARRIERS

During the 1980s, the Nicaraguan government confiscated some 28,000 properties in Nicaragua. Since 1990, thousands of individuals have filed claims for the return of their property or to receive compensation. Where granted, compensation is most commonly provided via low interest bonds issued by the government. Since taking office in January 2007, the administration of President Ortega has resolved over 350 U.S. citizen claims; as of November 2013 a total of 196 U.S. claims registered with the U.S. Embassy remain outstanding. The United States continues to press the Nicaraguan government to resolve these outstanding claims.

OTHER BARRIERS

Some U.S. firms and citizens report corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in Nicaragua. Administrative and judicial decision-making at times appear to be inconsistent, nontransparent, and very time-consuming. Courts have frequently granted orders (called "amparos") that enjoin official investigatory and enforcement actions indefinitely. Such delays appear to protect individuals suspected of white collar crime.

With monetary support from Venezuela, the government has increased its role in the economy, and private companies face increasing competition from state-run corporations. Moreover, despite the legal framework CAFTA-DR provides, property rights and intellectual property rights are especially difficult to defend, and there appears to be no reliable means of resolving disputes. The legal system is regarded as weak, cumbersome, corrupt, and subject to political pressure.

Investors regularly complain that regulatory authorities are negligent and slow to apply existing laws (or are likely to continue to apply laws that should have been superseded by CAFTA-DR provisions), act arbitrarily, and often favor one competitor over another. Investors cite arbitrariness in taxation and

customs procedures, as well as a failure to delegate decision-making authority to an appropriate level. There is concern that the frequency and duration of tax audits of foreign investors could interfere with normal business operations.

Law 364

U.S. companies and the U.S. Chamber of Commerce have concerns that Nicaraguan Law 364 and its application under Nicaragua's judicial system lack due process, transparency, and fundamental fairness. In particular, Law 364 allows for retroactive application of no-fault liability, waiver of the statute of limitations, irrefutable presumption of causality, truncated judicial proceedings, and the imposition of extremely large nonrefundable bonds and escrow requirements for liability awards as a condition to mount a defense in court. In 2009 and 2010, courts in California dismissed with prejudice three Nicaraguan cases, citing plaintiff fraud. In another case, a federal district court in Florida denied recognition of a \$97 million Nicaraguan judgment under Law 364, because the court found that the "case did not arise out of proceedings that comported with the international concept of due process." The court also found "the presumption of causation in Special Law 364 contradicts known scientific fact." The district court judgment was affirmed by the 11th Circuit Court of Appeals in March 2011. In September 2012, a U.S. company announced the signing of a definitive settlement agreement, which brought to an end all 38 related lawsuits represented by a particular law firm, including two judgments pending in the Nicaragua courts brought against the company. The U.S. Government will continue to work with other affected U.S. companies and the Nicaraguan government to facilitate resolution of this issue.

NIGERIA

TRADE SUMMARY

U.S. goods exports in 2013 were \$6.5 billion, up 28.8 percent from the previous year. Corresponding U.S. imports from Nigeria were \$11.7 billion, down 38.3 percent. The U.S. goods trade deficit with Nigeria was \$5.2 billion in 2013, down \$8.7 billion from 2012. Nigeria is currently the 40th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nigeria was \$8.2 billion in 2012 (latest data available), up from \$5.3 billion in 2011. U.S. FDI in Nigeria is concentrated in the mining sector.

IMPORT POLICIES

Tariffs

Nigeria's most recent tariff review occurred in September 2008, when the Nigerian government issued the 2008-2012 Common External Tariff (CET) Book, which harmonizes its tariffs regime with the proposed ECOWAS Common External Tariff under the ECOWAS Trade Liberalization Scheme (ETLS). The 2008-2012 CET has five tariff bands: zero duty on capital goods, machinery, and essential drugs not produced locally; 5 percent duty on imported raw materials; 10 percent duty on intermediate goods; 20 percent duty on finished goods; and 35 percent duty on goods in certain sectors that the Nigerian government seeks to protect.

The Nigerian government included harmonizing Nigeria's tariff policy with ETLS as part of its economic reform agenda, aimed at improving Nigeria's trade and investment environment and harmonizing economic policies within ECOWAS. The Ministry of Finance has confirmed that the CET would be extended for 2013, pending ongoing ECOWAS negotiations towards a region-wide CET. According to the WTO, Nigeria's average MFN applied tariff rate was 11.7 percent in 2011. The average applied tariff is 15.5 percent for agricultural goods and 11.2 percent for non-agricultural products.

In 2012, Nigeria added a number of supplemental levies and duties on selected agricultural imports that significantly raise effective tariff rates. These levies and duties increase the effective duty on wheat grain imports from 5 percent to 20 percent, on wheat flour imports from 35 percent to 100 percent, on brown rice imports from 5 percent to 35 percent, and on milled rice imports from 30 percent to 80 percent. In addition, the government announced effective tariffs, as of January 1, 2013, of 60 percent on raw sugar imports and 80 percent on refined sugar.

In October 2013, the Nigerian government announced an Automotive Industry Development Plan, which seeks to expand domestic vehicle manufacturing. Under the plan, effective October 2013, a 70 percent tariff rate is applied to imports of fully built vehicles while zero percent and 5 percent tariffs are applied to imports of completely knocked down and semi-knocked down vehicles, respectively.

Companies report that high tariffs, nontransparent valuation procedures, frequent policy changes, and unclear interpretations by the Nigerian Customs Service (NCS) make importation difficult and expensive, and often create bottlenecks for commercial activities. These problems are particularly acute for Nigeria because of its dependence on imported raw materials and finished goods. Reportedly, many importers resort to undervaluing and smuggling to avoid paying full tariffs.

Nontariff Measures

Nigeria uses nontariff measures in an effort to achieve “self-sufficiency” in certain commodities. In line with an Agricultural Transformation Action Plan that seeks to increase domestic food production and employment, the government has announced it will supplement its 2012 increase in wheat import tariffs with a policy requiring flour millers to substitute up to 40 percent of wheat flour produced in the country with cassava flour by 2015.

The government continues to ban certain imports, citing the need to protect local industries. The list of prohibited imports currently includes: bird’s eggs; cocoa butter, powder, and cakes; pork; beef; live birds; frozen poultry; refined vegetable oil and fats; cassava; bottled water; spaghetti; noodles; fruit juice in retail packs; nonalcoholic beverages (excluding energy drinks); and bagged cement. Nigeria also imposes a ban on imports of poultry, including live poultry and fresh, frozen, and cooked poultry meat (with the exception of day-old chicks) due to concerns about the government’s ability to enforce less onerous SPS measures on imports and thus ensure their safety for consumption.

The government has announced plans to boost the development of domestic sugar cane production to meet the raw sugar needs of existing and new domestic sugar refining companies. In January 2013, to supplement the planned increase in effective tariffs on the import of raw sugar, the government banned imports of refined packaged sugar and offered a variety of tariff breaks on imports of sugar processing equipment and tax holidays for investors in the sugar value chain. The government also announced that it intends to ban all rice imports by 2015.

Customs Procedures

Nigerian port practices continue to present major obstacles to trade. Importers report erratic application of customs regulations, lengthy clearance procedures, high berthing and unloading costs, and corruption.

These factors can sometimes contribute to product deterioration and result in significant losses for importers of perishable goods. Disputes between Nigerian government agencies over the interpretation of regulations often cause delays, and frequent changes in customs guidelines slow the movement of goods through Nigerian ports. Nigeria uses a destination inspection policy for imports. Under this policy, all imports are inspected on arrival into Nigeria. Such actions delay the clearing process and increase costs.

Although the Nigerian government recognizes that port delays significantly increase the cost of doing business in Nigeria, a 48-hour cargo clearance policy at ports announced in 2010 has yet to be fully implemented. Plans to automate all customs payments and modernize NCS operations similarly have yet to be implemented. In October 2011, Minister of Finance Okonjo-Iweala announced additional plans to facilitate goods clearance through Nigerian ports by reducing the number of government agencies in the ports from 14 to 7 (NCS, Nigerian Ports Authority, Nigerian Immigration Service, the Nigerian Police Force, the Nigerian Maritime Security and Safety Agency, the National Drug Law Enforcement Agency, and the Ports Health Agency). However, implementation of this new policy has reportedly been uneven, and there have been no reports of significant reductions in the time required to clear goods through the ports. Roads entering and leaving ports are decaying and ports lack rail systems to transport freight into and out of ports. The resulting congestion leads to ships queuing up to berth at cargo terminals and containers waiting to be transported out of the ports.

In March 2013, the NCS also launched a single window trade portal that allows traders to access customs regulations online, submit customs documents electronically, track transaction status online, submit electronic payments, and provides links to other regulatory agencies.

GOVERNMENT PROCUREMENT

The Nigerian government has made modest progress on its pledge to conduct an open and competitive bidding process for government procurement. The Public Procurement Act of 2007 established the Bureau of Public Procurement (BPP). Public procurement reforms seek to ensure that the procurement process for public projects adheres to international standards for competitive bidding. The BPP acts as a clearinghouse for government contracts and monitors the implementation of projects to ensure compliance with contract terms and budgetary restrictions. All procurement above NGN 100 million (approximately \$320,000) remains subject to review by the BPP. The 36 state governments also agreed to enact the Public Procurement Act in their respective states and 22 states have passed procurement legislation.

Foreign companies incorporated in Nigeria receive national treatment in government procurement, government tenders are published in local newspapers, and a "tenders" journal is sold at local newspaper outlets. U.S. companies have won government contracts in several sectors. Unfortunately, some of these companies have had trouble getting paid, often as a result of delays in the national budgetary process.

The National Petroleum Investment and Management Services (NAPIMS) agency must approve all procurement in the oil and gas sector with a value above \$500,000. Slow approval processes can significantly increase the time and resources required for a given project.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Legislation intended to implement Nigeria's WTO obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights has been pending in the Nigerian National Assembly for several years.

The Nigerian government's lack of institutional capacity to address intellectual property rights (IPR) issues presents challenges to enforcement. Relevant Nigerian government institutions lack sufficient resources to enforce IPR and legislation to update intellectual property laws has yet to be passed by the National Assembly. Piracy remains a problem despite Nigeria's active participation in the World Intellectual Property Organization and other international fora and the growing interest among Nigerians to protect their IPR. Counterfeit automotive parts, pharmaceuticals, business and entertainment software, music and video recordings, and other consumer goods are sold openly. Piracy of software, books and optical disc products continues to be an ongoing concern. Also, judicial procedures are slow and reportedly compromised by corruption. However, the government has taken steps to improve enforcement. Efforts to combat the sale of counterfeit pharmaceuticals, for example, have yielded some results.

The lack of trained staff and adequate funding causes significant delays registering and obtaining a patent or trademark. The United States has provided training to government IP officials through various programs offered by the United States Patent and Trademark Office's Global Intellectual Property Academy and the U.S. Department of Commerce Commercial Law Development Program under the Trade and Investment Framework Agreement between the United States and Nigeria.

Nigeria's broadcast regulations do not permit rebroadcast or excerpting of foreign programs unless the station has an affiliate relationship with a foreign broadcaster. This regulation is generally complied with,

but some cable providers transmit foreign programs illegally. The National Broadcasting Commission monitors the industry and is responsible for punishing infractions. Nigeria has strong film and music industries, and the Nigerian Copyright Commission (NCC) works to strengthen copyright protection. However, the NCC is not sufficiently funded. Furthermore, widespread pirating of foreign and domestic content discourages the entry of licensed distributors.

INVESTMENT BARRIERS

A variety of barriers restrict potential U.S. investment in Nigeria. Investors must contend with complex tax procedures, confusing land ownership laws, arbitrary application of regulations, corruption, and crime. International monitoring groups routinely rank Nigeria among the most corrupt countries in the world. 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. Such infrastructure deficits hinder Nigeria's ability to compete in regional and international markets.

A Petroleum Industry Bill (PIB), currently under review by the National Assembly, would further and significantly change the way Nigeria's oil and gas sector is structured and regulated. Years of delays in the passage of the PIB has created uncertainty in the investment community, and delayed significant investment in infrastructure needed to sustain and grow Nigeria's oil and gas production.

OTHER BARRIERS

In 2010, Nigeria enacted a trade restrictive law in the oil and gas sector called the Oil and Gas Content Development Act (the Act). The Act puts in place legally mandated local content requirements for projects in Nigeria's oil and gas sector. The Act gives preferential treatment to Nigerian goods and services and requires that positions in the oil and gas sector are first filled by Nigerian nationals. The Act's coverage is broad; it includes any activity or transaction carried out in, or connected with, the oil and gas industry, a sector that accounts for roughly 30 percent of Nigeria's GDP. The Act's local sourcing mandate, which applies to an extensive list of goods and services supplied to the oil and gas industry, has been a particular concern of U.S. oil and gas service suppliers.

Companies are also required to create and seek approval for a "Nigerian Content Plan" to demonstrate how companies will increase local content in oil and gas operations. Companies that do not follow a Nigerian Content Plan can face fines of 4 percent of the contract value or cancellation of the contract. Also, international companies must put 10 percent of their annual profit in a Nigerian bank.

Restrictions also apply with respect to the movement of personnel. Nigeria imposes quotas on foreign personnel based on the total budget of the project or budget along with approval from the Nigerian Content Management Development Board. Such quotas remain especially strict in the oil and gas sector and may apply to both production and services companies. Oil and gas companies must hire Nigerian workers, unless they can demonstrate that particular positions require expertise not found in the local workforce. Positions in finance and human resources are almost exclusively reserved for Nigerians.

Certain geosciences and management positions may be filled by foreign workers with the approval of the NAPIMS agency. Each oil company must negotiate its foreign worker allotment with NAPIMS. Significant delays in this process, and in the approval of visas for foreign personnel, present serious challenges to the oil and gas industry in acquiring the necessary personnel for their operations. According to industry representatives, the Act is adversely affecting a diverse range of companies, including operators, contractors, subcontractors, and service providers.

FOREIGN TRADE BARRIERS

NORWAY

TRADE SUMMARY

U.S. goods exports in 2013 were \$4.5 billion, up 28.2 percent from the previous year. Corresponding U.S. imports from Norway were \$5.5 billion, down 16.4 percent. The U.S. goods trade deficit with Norway was \$1.0 billion in 2013, down \$2.1 billion from 2012. Norway is currently the 46th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Norway were \$3.3 billion in 2012 (latest data available), and U.S. imports were \$2.1 billion. Sales of services in Norway by majority U.S.-owned affiliates were \$6.2 billion in 2011 (latest data available), while sales of services in the United States by majority Norway-owned firms were \$1.3 billion.

The stock of U.S. foreign direct investment (FDI) in Norway was \$38.8 billion in 2012 (latest data available), up from \$33.3 billion in 2011. U.S. FDI in Norway is primarily concentrated in the mining and manufacturing sectors.

IMPORT POLICIES

Norway, along with Switzerland, Iceland, and Liechtenstein, is a member of the European Free Trade Association (EFTA). EFTA members, with the exception of Switzerland, participate in the European Union (EU) single market through the European Economic Area (EEA) accord. Norway grants preferential tariff rates to EEA members. As an EEA 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. Except for agricultural products and processed foods, Norway's market is generally open. Norway has continued to dismantle tariffs on industrial products on a unilateral basis. The average most favored nation (MFN) tariff on nonagricultural products has fallen from 2.3 percent in 2000 to 0.5 percent in 2013. More than 95 percent of industrial tariff lines are currently duty free.

Although Norway maintains a liberal trade and investment regime with respect to industrial products, its agricultural sector remains highly protected.

Tariffs

Norway bound its tariffs for agricultural commodities in 1995 as part of its WTO commitments. Tariffication of agricultural nontariff barriers as a result of the Uruguay Round led to the replacement of several quotas with high *ad valorem* or specific tariffs on agricultural products. According to the WTO, Norway's simple average applied tariff in 2013 was 53.2 percent for agricultural goods and 0.5 percent for non-agricultural goods. These averages often change annually as Norway's applied rates vary greatly from bound rates.

Although Norway is only 50 percent self-sufficient in agricultural production, it maintains tariff rates on agricultural products as high as several hundred percent to ensure that domestic farmers as well as producers in the food processing industry have little competition until all domestic production has been consumed. 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 days to five days before implementation, favor nearby European suppliers and make products from the United States, especially of fruits, vegetables, and other perishable horticultural products, very difficult to import. For a number of processed food products, tariffs are applied based on a product formula, requiring the Norwegian importer to provide a detailed disclosure of product contents. Many exporters to the Norwegian market refuse to give all requested details and, as a result, their products are subject to maximum tariffs.

Agricultural Products

Although agriculture accounts only for 0.3 percent of gross domestic product (GDP) (based on 2011 data), support provided by Norway to its agricultural producers as a percentage of total farm receipts is, at 63 percent in 2012, the highest in the world according to the OECD. Norway emphasizes the importance of “non-trade concerns,” which include food security, environmental protection, rural employment, and the maintenance of human settlement in sparsely populated areas, as justification for high domestic support levels. One of Norway’s concerns in the WTO Doha Development Round has been the preservation of its highly subsidized agricultural sector.

Norway also imposes problematic sanitary barriers on agricultural products, including prohibiting the import of beef from animals treated with hormones despite decades of scientific evidence demonstrating that this practice poses no risks to health. In addition, Norway applies extremely restrictive policies to genetically engineered crops. Norwegian legislation – which is not fully aligned with the relevant European Union legislation under the EEA – requires that genetically engineered varieties meet criteria that are not related to the protection of health, food safety, or the environment. These restrictive policies cost U.S. industry an estimated \$100 million in lost soybean sales annually.

Tariff-Rate Quotas

Although Norway has 232 tariff-rate quota (TRQ) commitments in its WTO tariff schedule (or 16 percent of total WTO Member TRQs), most of these are not active as current applied rates are either equal to or lower than the in-quota bound rate. Norway has TRQs for 64 agricultural and horticultural products, and the Norwegian Agricultural Authority holds online auctions for the allocation of quotas for 54 of these products. Norwegian importers are primarily interested in TRQs for grains or niche products. However, participating in the auctions is inexpensive, and importers that secure a quota allocation are not actually required to import any products. The Agricultural Authority does not have a system to reallocate any unused quota.

Raw Material Price Compensation

Although the EEA 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 with the EU within the EEA framework that results in the application of a preferential duty on EU processed food products. The agreement covers a wide range of products, including bread and baked goods, breakfast cereals, chocolate and sweets, ice cream, pasta, pizza, soups, and sauces. This preferential access for EU suppliers disadvantages U.S. exporters of these processed foods.

Norway also maintains a price reduction regime that includes subsidies for using certain domestically-produced raw materials in processed foods. Products for which such subsidies are paid include chocolate, sweets and ice cream (for milk and glucose), and pizza (for cheese and meat). The purpose of the system

is to help compensate the domestic food processing industry for the high costs of domestically produced raw materials.

Wines and Spirits

The wine and spirits retail market in Norway is controlled by the government monopoly Vinmonopolet. Sales of wine and spirits are not allowed in ordinary retail stores. Obtaining approvals to include wines and other alcoholic beverages on Vinmonopolet's retail list is cumbersome leading to complaints from U.S. wine exporters about the limited variety of U.S. wines available to Norwegian consumers. Vinmonopolet's six-month marketing and product plans for selecting and purchasing wines are so detailed and narrow as to significantly constrain competitive supply. Products chosen for sale through Vinmonopolet must meet annual minimum sales quotas or they are dropped from the basic list inventory. Existing wine suppliers benefit from exposure in Vinmonopolet stores, a situation exacerbated by the strict ban on advertising alcoholic beverages.

Following constructive discussions between the United States and Norway on ways to raise awareness and sales of quality U.S. wines in Norway, sales of U.S. red wines through Vinmonopolet grew 150 percent over the 2008-2012 period. In the same period, the U.S. share of the overall market for red wines more than doubled from 2.27 percent to 5.41 percent. U.S. white wine sales have dropped slightly to a 1 percent market share. U.S. rosé sales passed U.S. white wine sales in 2012, up 40 percent from 2011, amounting to a 14 percent market share. Challenges with Vinmonopolet's subjective tender system, a relative lack of opportunities for new market entrants, and, as a result, a relatively low awareness of U.S. wines, remain.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Norway was removed from the Special 301 Watch List in 2013. Norway had been on the list since 2008 principally because of concerns regarding the lack of product patent protection for certain pharmaceuticals. While the effects of Norway's patent policies have diminished over time, there remains a continued need for Norway to engage with all stakeholders with respect to its medicines policies.

Norway's efforts to combat online piracy were also cited in previous Special 301 reports. Norway's copyright laws were amended in 2013. The amended Copyright Act was presented to Parliament on February 8 and entered into force on July 1. The amended act includes clarifications of the legal basis for the collection of information on illegal file-sharing activity.

U.S. and Norwegian authorities held constructive discussions in 2013 regarding several intellectual property rights (IPR) matters, including: pharmaceuticals product patent protection; the need to educate the public about IPR and to promote public awareness of IPR-infringing activity that occurs over the Internet; the role of Internet service providers in combating piracy; and the need to dedicate the necessary public resources to combat counterfeiting and piracy and to prosecute offenders.

SERVICES BARRIERS

Financial Services

For certain types of financial institutions, Norway requires that at least half the members of the board and half the members of the corporate assembly be nationals and permanent residents of Norway or another EEA country.

INVESTMENT BARRIERS

Norway generally welcomes foreign investment and grants national treatment to foreign investors, with exceptions in the mining, fisheries, hydropower, maritime, and air transport sectors. Foreign companies wishing to own or use various kinds of real property must seek prior approval from the government. In the petroleum sector, Norway's concession process continues to be operated on a discretionary basis with the government awarding licenses based on subjective factors other than competitive bidding. Direct foreign ownership of hydropower resources is prohibited, except in rare instances when the government may grant foreign investment limited to 20 percent equity.

OMAN

TRADE SUMMARY

U.S. goods exports in 2013 were \$1.5 billion, down 13.9 percent from the previous year. Corresponding U.S. imports from Oman were \$1.0 billion, down 24.5 percent. The U.S. goods trade surplus with Oman was \$482 million in 2013, up \$89 million from 2012. Oman is currently the 70th largest export market for U.S. goods.

The United States-Oman Free Trade Agreement

Upon entry into force of the United States-Oman Free Trade Agreement (FTA) in January 2009, Oman provided immediate duty-free access on virtually all industrial and consumer products. It will phase out tariffs on the remaining handful of products by 2019. On entry into force, Oman also provided immediate duty-free access for U.S. agricultural products on 87 percent of its agricultural tariff lines. Oman will phase out tariffs on the remaining agricultural products by 2019.

IMPORT POLICIES

Import Licenses

Companies that import goods into Oman register with the Ministry of Commerce and Industry. Importation of certain classes of goods, such as alcohol, livestock, poultry and their respective products, as well as firearms, narcotics, and explosives, requires a special license. Media imports are subject to review for potentially offensive content and may be subject to censorship.

Customs

A number of significant U.S. firms continue to report difficulties in receiving duty-free treatment under the FTA for goods that enter Oman overland via the United Arab Emirates. Firms importing U.S. goods also complain that the Royal Oman Police Customs Directorate (ROP Customs) often requires engraved origin markings, segregation, and other documentation despite the lack of any published official guidance on requirements for determination of eligibility for preference. The U.S. Government has requested that ROP Customs issue official documentation that clearly outlines the procedures and information necessary for customs entry and to ensure that they are consistent with the FTA.

GOVERNMENT PROCUREMENT

Procuring entities in Oman are required to conduct procurement covered by the FTA in a fair, transparent, and nondiscriminatory manner.

Oman provides a 10 percent price preference to tenders that contain a high content of local goods or services, including direct employment of Omani nationals. However, Oman may not apply such price preferences to tenders offering goods and services from the United States in procurement covered by the FTA. For most major tenders, Oman invites bids from international firms or firms pre-selected by project consultants. Suppliers are requested to be present at the opening of tenders, and interested persons may view the process on the Tender Board's website. Some U.S. companies report that tenders' costs can increase dramatically when award decisions are delayed, sometimes for years, or the tendering is reopened with modified specifications and, typically, short deadlines.

In 2011, the Omani government took steps to improve the tender process by changing the leadership at the Tender Board, launching investigations of previous questionable tenders, and enacting a new decree barring relatives “to the second degree of kinship” from participating in procurements. In 2012, 30 cases involving financial irregularities and misuse of influence in the awarding of government contracts were referred to the Public Prosecutor by the State Financial and Administrative Audit Institution (SFAAI). The SFAAI Chairman announced in May 2013 that the number of entities under its auditing authority had reached 160 government units, with 25 percent audited in 2011 and plans to reach 80 percent by 2015.

Oman is an observer to the WTO Committee on Government Procurement. In accordance with the commitment in its WTO accession, Oman began negotiations to accede to the WTO Agreement on Government Procurement in 2001, but it has not completed the accession process.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Oman committed to provide strong intellectual property rights (IPR) protection and enforcement in the United States-Oman FTA. Oman revised its IPR laws and regulations to implement its FTA commitments, and it acceded to several international IPR treaties. While IPR laws in Oman are generally enforced, cases of online piracy remain common. In 2013, cases of counterfeit automotive parts and other consumer products affecting health and safety were vigorously prosecuted, but U.S. companies experienced difficulty getting responsible agencies, including the Public Authority for Consumer Protection, the Public Prosecution, the Ministry of Commerce, and the Royal Oman Police, to take enforcement action on piracy cases. In February 2014, a U.S.-organized conference that included private sector rights-holders and Omani government officials identified existing obstacles to effective IPR enforcement and constructively brought together stakeholders to develop recommendations for concrete solutions.

As the six Member States of the Gulf Cooperation Council (GCC) explore further harmonization of their IPR regimes, the United States will continue to engage with GCC institutions and the Member States and provide technical cooperation on intellectual property policy and practice.

SERVICES

Banking

Oman does not permit representative offices or offshore banking.

Legal Services

By a decree from the Ministry of Justice in October 2009, non-Omani attorneys, including U.S. attorneys practicing in Oman, are prohibited from appearing in courts of first instance.

INVESTMENT BARRIERS

Ministerial Decision 5/2010 and ROP Customs announcements limit customs brokerage activities to Omani nationals. The U.S. Government has raised concerns with Omani officials about the consistency of these limits with national treatment obligations under the FTA.

U.S. companies remain concerned about rules governing the acquisition of property in Oman. Although U.S. investors are permitted to purchase freehold property in designated residential developments,

businesses must adhere to more restrictive guidelines when acquiring real estate for commercial purposes. With the exception of certain tourism-related property agreements, only companies or enterprises with at least 51 percent Omani shareholding are permitted to own real estate for the purpose of establishing an administrative office, staff accommodation, warehouse or showroom, or other building with a similar purpose. Other enterprises, including foreign majority-owned businesses, must seek “usufruct” rights that enable them to exploit, develop, and use land granted by a third party.

PAKISTAN

TRADE SUMMARY

U.S. goods exports in 2013 were \$1.6 billion, up 7.7 percent from the previous year. Corresponding U.S. imports from Pakistan were \$3.7 billion, up 1.6 percent. The U.S. goods trade deficit with Pakistan was \$2.0 billion in 2013, down \$58 million from 2012. Pakistan is currently the 69th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Pakistan was \$218 million in 2012 (latest data available) down from \$254 million in 2011.

IMPORT POLICIES

Pakistan's overall average applied tariff in 2013 was 14.4 percent, but it has 15 different *ad valorem* tariff levels ranging from zero to 150 percent. Specific duty rates are applied on 47 products. The tariffs on approximately 94 percent of the tariff lines fall in the range of zero percent to 30 percent. The highest duties are applied to vehicles.

Pakistan imposes higher tariff rates (50 percent) on imports of automobile parts that compete with domestically manufactured products than the tariff rates (35 percent) it imposes on imports of automotive parts where there is no domestic production. Pakistan grants sector- or product-specific duty exemptions, concessions, and other protections through promulgation of Statutory Regulatory Orders (SROs), although it has pledged to eliminate the use of SROs by June 2014 under the terms of its International Monetary Fund program approved in September 2013. A list of SROs and other trade policy and regulatory documents can be found on the Federal Board of Revenue's website: <http://www.cbr.gov.pk>.

In January 2000, Pakistan modified its system for valuation of goods. Since then, a number of traders in the food and consumer products sectors have expressed concerns regarding a lack of uniformity in customs valuation. Similarly, in the machinery and materials sector there are reports that customs officials have erroneously assessed goods based on a set of minimum values rather than the declared transaction value.

On October 5, 2009, Pakistan began to enforce a 2005 regulation requiring that commercial invoices and packing lists be included inside each shipping container. This requirement presents challenges to industry because invoices and packing lists do not always originate in the same location as the shipment and may be generated after the shipment departs. The penalty for non-compliance is \$526 per container.

GOVERNMENT PROCUREMENT

The Public Procurement Regulatory Authority, established in 2002, is an autonomous body responsible for prescribing and monitoring public sector procurement regulations and procedures. According to a 2004 public procurement framework, international tender notices must be publicly advertised and sole source contracting tailored to company-specific qualifications is prohibited. There are no official "buy national" policies.

Political influence on procurement awards, charges of official corruption, lack of transparency, judicial intervention, and long delays in bureaucratic decision making are common in government procurement.

Suppliers have reported instances in which the government used the lowest bid as a basis for further negotiations, rather than accepting the lowest bid as required by regulation.

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

EXPORT POLICIES

Pakistan promotes the export of Pakistani products (such as textiles, surgical products, leather, and sporting goods) through measures such as tariff concessions on imported inputs, along with income and sales tax concessions. Three SROs (SRO 565, 567, and 575) provide exemptions and concessions on imports of certain machinery and imports of a large number of raw materials used by domestic industries.

The government established the Export Processing Zone (EPZ) Authority in 1980 to establish and administer EPZs. In 1989, Pakistan established its first EPZ in Karachi. Export oriented industries, defined as those that export 80 percent to 100 percent of their production, receive various incentives for operating in the EPZ. These incentives include access to developed land at competitive rates for 30 years, non-applicability of exchange control regulations, exemption from taxes and duties on equipment, machinery, and materials (including components, spare parts, and packing material), exemption of sales tax on other inputs, including gas and electricity, and indefinite loss carry-forward. Final taxes are presumptively 1 percent of the total profits. The EPZ Authority also collects a “development surcharge” of 0.5 percent of the total profits. Exports from EPZ companies are otherwise exempt from all other federal, provincial, and municipal taxes.

Aside from the first EPZ in Karachi, Pakistan has authorized nine additional EPZs. These EPZs are located in Risalpur in Khyber Pakhtunkhwa Province; Gujranwala and Sialkot in Punjab; Saindak, Gwadar, Reko Dek, Duddar, and Khalifa Coastal Oil Refinery in Balochistan; and the Tuwairqi Export Processing Zone in Karachi. Of these, only Risalpur, Sialkot, Saindak, and Duddar are operational. Foreign investors are eligible to establish businesses in the EPZ and are guaranteed full repatriation of capital and profits. There are no minimum or maximum limits for investment. Up to 3 percent of defective goods/waste from the EPZs can be sold in the domestic market after payment of applicable duties. Despite the various incentives offered, most EPZs have failed to attract significant investment.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Pakistan remained on the Priority Watch List in the 2013 Special 301 report. The report cites weak protection and enforcement of intellectual property rights (IPR) and widespread counterfeiting and piracy, particularly book and optical disc piracy.

The Intellectual Property Organization law was enacted in December 2012 and provides for specialized IPR tribunals to adjudicate cases and a policy board with private sector representation to assess policy decisions. However, in 2013 Pakistan made little progress implementing the provisions of the law. Although the Intellectual Property Organization forwarded a proposal to form the policy board to the Cabinet, the Cabinet has not yet approved it and IPR tribunals have not yet been established.

In 2013, Pakistan did not make progress in providing effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. While the government and international and local pharmaceutical companies have been negotiating a draft data protection law for the past five years, it has not yet been enacted. With respect to patents, Pakistan lacks an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. Furthermore, the processing of pending patent applications has

been hampered due to a 2009 ordinance that removed an 18 month deadline for the processing of patent applications. With respect to copyrights, Pakistan did not take any significant steps in 2013 to improve copyright enforcement, especially with respect to addressing optical disc piracy. Only a very small proportion of arrests resulted in prosecutions, and the few verdicts that were issued resulted in minor prison sentences. Pakistan is reportedly used as a conduit for infringing products from Russia, Malaysia, Singapore, China, Bangladesh, and Sri Lanka for onward distribution to third countries. Book piracy also continues to undermine legitimate trade and investment. With respect to trademarks, counterfeit products, both imported and domestically produced, are increasingly entering the market with few efforts at enforcement. The only entity with legal standing to take a case against an alleged counterfeiter is the company whose product was copied.

SERVICES BARRIERS

Pakistan generally permits foreign investment in services. Except in certain sectors such as aviation, banking, agriculture, and media, there is no upper limit on the share of equity that foreign investors can hold. Foreign investors in Pakistan are limited in the remittance of royalty payments to a maximum of \$100,000 for the first payment. Royalty payments are then capped at 5 percent of net sales for the subsequent five years.

Pakistan prohibits the importation, sale, distribution, and transmission of films the government deems inconsistent with local religious and cultural standards, and also bans websites deemed to be blasphemous or immoral. A ban on the popular video-sharing website YouTube has been in effect in Pakistan since September 2012.

In October 2012, the Ministry of Information Technology and Telecommunication ordered establishment of an International Clearing House (ICH) that quadrupled charges and curtailed competition for international calls to Pakistan. The United States, the Competition Commission of Pakistan (CCP), and cellular operators expressed serious concern with this change.

After several court cases about the legality of the ICH, Pakistan's Supreme Court directed the matter back to the jurisdiction of the CCP. In April 2013, the CCP issued a ruling against international call termination rate increases. Despite the ruling, the increased rate of \$0.088 per minute remains in effect, even though the Pakistan Telecommunications Authority no longer officially mandates it.

The Pakistani rate increase caused a reaction in the United States. On March 5, 2013 the U.S. Federal Communications Commission (FCC) issued a Memorandum Opinion and Order that found:

[R]ecent and ongoing actions by certain Pakistani long distance international carriers (Pakistani LDI carriers) to set rate floors over previously negotiated rates with U.S. carriers for termination of international telephone calls to Pakistan are anticompetitive and require action to protect U.S. consumers in accordance with FCC policy and precedent. Their continuation would result in a substantial increase in the cost of and repress demand for calling Pakistan.

The FCC ordered all U.S. carriers not to pay termination rates to Pakistani carriers in excess of "the rates that were in effect immediately prior to the rate increase on or around October 1, 2012."

Foreign banks that do not have a global Tier-1 paid up capital (*e.g.*, equity and retained earnings of \$5 billion or more) or are not from countries that are part of regional groups and associations of which Pakistan is a member (*e.g.*, the Economic Cooperation Organization and the South Asian Association for

Regional Cooperation) and that wish to conduct banking business in Pakistan must incorporate a local company. A foreign bank may hold a maximum of 49 percent of the shares of a bank in Pakistan. The National Insurance Company, a majority state-owned enterprise, has the exclusive authority to underwrite and insure public sector firms, assets, and properties. The government has discretion to grant exemptions to this requirement pursuant to Section 166 of the Insurance Ordinance 2000. Private sector firms may seek foreign reinsurance facilities to meet up to 65 percent of their re-insurance needs. The government has allowed 100 percent of foreign equity in an insurance business. The Investment Policy 2013, approved on March 13, 2013, eliminated the minimum capital requirements for the insurance sector. Nonetheless, the Investment Policy retained the 49 percent equity cap for foreign investors in the banking sector and 60 percent equity cap in the non-corporate agriculture sector.

OTHER BARRIERS

Foreign businesses in Pakistan have been vocal in expressing concern over corruption and a weak judicial system, which act as substantial disincentives to investment. In 2002, Pakistan's Cabinet approved the National Anti-Corruption Strategy (NACS) that identified areas of pervasive corruption and recommended the implementation of reforms to combat corruption. The NACS recognized the National Accountability Bureau (NAB) as the sole federal anticorruption agency. In mid-2009, the Supreme Court directed that legislation replace the executive ordinance establishing the NAB, but as of the date of publication of this report, the National Assembly has yet to pass such legislation.

Contract enforcement can be difficult for U.S. and other foreign investors in Pakistan. Parties pursuing legal remedies in the Pakistani judicial system may face years of delays and unpredictable outcomes in the country's overloaded courts. A law ratifying the New York Convention was enacted by the Parliament in 2011.

PANAMA

TRADE SUMMARY

U.S. goods exports in 2013 were \$10.8 billion, up 9.6 percent from the previous year. Corresponding U.S. imports from Panama were \$449 million, down 16.9 percent. The U.S. goods trade surplus with Panama was \$10.3 billion in 2013, an increase of \$1.0 billion 2012. Panama is currently the 29th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Panama was \$5.1 billion in 2012 (latest data available), down from \$5.4 billion in 2011. Reported U.S. FDI in Panama is led by the nonbank holding and manufacturing sectors.

TRADE PROMOTION AGREEMENT

The U.S. Congress enacted legislation approving and implementing the United States-Panama Trade Promotion Agreement (TPA) on October 12, 2011, and President Obama signed that legislation on October 21, 2011. After Panama completed its necessary actions, the TPA entered into force on October 31, 2012. The TPA includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, and labor and environmental protection.

IMPORT POLICIES

Tariffs

Panama's average applied tariff on non-U.S. industrial and consumer goods is approximately 6.1 percent, although tariffs on some products are as high as 81 percent. Panama's average applied tariff on non-U.S. agricultural goods is 12.4 percent, but some agricultural imports face tariffs as high as 260 percent.

Over 87 percent of U.S. exports of consumer and industrial products to Panama became duty free immediately upon entry into force of the TPA. For those products for which tariffs will be phased out over time, the first round of tariff reductions took place upon entry into force of the TPA on October 31, 2012, the second round of tariff reductions took effect on January 1, 2013, and a third round of tariff reductions took effect on January 1, 2014. Most remaining tariffs on consumer and industrial products will be phased out over the course of 10 years. Almost all products within each of the following key industrial sectors gained immediate duty-free access to the Panamanian market: information communications and telecommunications equipment; agricultural and construction equipment; aircraft and parts; medical and scientific equipment; environmental products; pharmaceuticals; fertilizers; and agro-chemicals. In 2012, Panama notified its Information Technology Agreement (ITA) tariff schedule to the WTO and thus achieved membership in the ITA. As such, Panama has committed to provide duty-free treatment on an MFN basis to imports of products covered by the ITA.

The TPA provided for immediate duty-free treatment for over half of U.S. agricultural exports to Panama (by value), including high-quality beef, certain pork and poultry products, cotton, wheat, soybeans and soybean meal, most fresh fruits and tree nuts, distilled spirits and wine, and a wide assortment of processed products. Duties on most other agricultural goods will be phased out over a period of 5 years to 12 years, depending on the product. Tariffs on the most sensitive products for Panama, such as pork and pork products, chicken leg quarters, dairy products, corn, and rice, will be phased out over 15 years to 20

years. In some cases, Panama's current applied tariff for agricultural goods is lower than the bound tariff required under the TPA.

The TPA also provided for immediate expanded market access opportunities through tariff-rate quotas (TRQs) for some sensitive agricultural products. These TRQs permitted immediate duty-free access for specific quantities of certain agricultural products. This access will increase as quotas are increased and over-quota duties are phased out over the course of the implementation period.

The TRQs are administered using four different mechanisms, which vary by product:

- an auction system for nonfat dry milk, whole milk powder, corn, rough rice and milled rice;
- a first-come, first-served system for pork meat, certain processed pork products, pig fat, fluid milk, yogurt, butter, ice cream, other dairy products, fresh or chilled potatoes, fresh or chilled onions, dried kidney beans, refined corn oil, and processed tomatoes;
- a licensing system for historical importers or new importers for cheddar cheese, other cheeses and frozen French fries; and
- an Export Trade Certificate of Review, issued through the Board of the Panama Poultry Export Quota, Inc., after an open auction for chicken leg quarters.

The government of Panama issued the implementing regulations for TRQ administration under the TPA in Executive Decree No. 154 of October 10, 2012. Customs Resolution No. 246 of October 22, 2012, governs the implementation of the first-come, first-served TRQ.

Nontariff Measures

In addition to tariffs, all goods and most services sold in Panama, except for foods and feeds, are subject to a 7 percent ITBMS (value-added tax). In the case of imported goods, the ITBMS is levied both on the cost, insurance, and freight value, as well as on import duties and other handling charges. The value-added tax is higher for cigarettes and alcohol. Pharmaceuticals, foods, school supplies, goods that will be re-exported, and all products related to transactions occurring in any free zone when using endorsable documents are exempt from the VAT. In 2012, the government introduced an excise tax on vehicle sales, which varies from 5 to 25 percent, based on the value of the vehicle.

Importing entities are required to hold a license to operate in Panama in order to import manufactured goods into the country. The license may be obtained through Panama's online business registration service, Panama Emprende (<https://www.panamaemprende.gob.pa/>). Importing entities holding such a license are not required to have a separate import license for individual shipments, except for imports of certain controlled products such as weapons, medicine, pharmaceutical products, and certain chemicals.

Law 42 of April 2011, which entered into force in 2013, promotes the production and use of domestically-produced biofuels through the provision of various incentives. For example, Law 42 imposes a tax on the use of anhydrous bioethanol and biodiesel blended with gasoline and diesel, respectively, while at the same time establishing an offsetting tax credit that can be earned through the purchase of bioethanol and biodiesel produced from domestic sources. The United States has expressed concerns with Law 42 in light of Panama's WTO commitments. Panama has thus far been nonresponsive to U.S. concerns, and the United States will continue to engage Panama to address this issue in 2014.

GOVERNMENT PROCUREMENT

Panamanian Law 22 of 2006, as amended by Law 48 of 2011 and Law 62 of 2012, among others, regulates government procurement and other related issues. Law 22 requires publication of all proposed government purchases, and established an Internet-based procurement system called Panama Compra, (<http://www.panamacompra.gob.pa/portal/PortalPanama.aspx>). Panama has an administrative court to handle all public contracting disputes. The rulings of this administrative court are subject to review by Panama's Supreme Court.

Despite the oversight of the administrative court, political interests often appear to influence procurement decisions. Panamanian business leaders have requested that sole-source contracting be used only on an exceptional basis, and U.S. firms have expressed concern about how the government of Panama establishes and evaluates the criteria used to select a procurement winner.

The TPA requires procuring entities to use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurement covered by the Agreement. The TPA contains nondiscrimination provisions that require Panamanian entities covered by the Agreement to allow U.S. suppliers to participate in their procurement on the same basis as Panamanian suppliers in procurements covered by the TPA.

Concerns have been expressed that some tenders have been offered in a manner that limits competition and companies' ability to submit bids. For example, in April 2013, an extremely complex tender for a 550 MW Liquid Natural Gas terminal was open for a period of only 45 days, only five days more than the minimum required by the TPA, despite the requirement in the TPA that the procuring entity take into account the nature and complexity of the procurement and provide suppliers sufficient time to prepare and submit responsive tenders. Though over 20 companies initially expressed interest in the contract, only one firm actually bid, and that company was awarded the contract.

EXPORT SUBSIDIES

A number of export industries, such as tourism, and special economic areas, such as free trade zones, are also exempt from paying certain types of taxes and import duties. The government of Panama established this policy to attract foreign investment, especially in economically depressed regions, such as the city of Colon. Companies that benefit from these exemptions are not eligible to benefit from the Program to Promote the Competitiveness of Agricultural Exports ("CEFA" in Spanish) for their exports. The 99 companies operating in Panama's 15 free zones may import inputs duty free if products assembled in the zones are to be exported.

Under the TPA, Panama may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods or the use of domestic content in the production of goods).

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The TPA requires Parties to provide enhanced protection and enforcement of a broad range of intellectual property, including patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and penalties that strengthen deterrence of piracy and counterfeiting. Panama executed a number of improvements to its IPR regime as a result of its TPA implementation, including substantial overhauls of its copyright (Law 64 of October 4, 2012) and industrial property (Law 62 of October 5, 2012) laws. A Committee for Intellectual Property (CIPI),

comprising representatives from five government agencies (Colón Free Zone, Offices of Intellectual Property Registry and Copyright under the Ministry of Commerce and Industry, Customs, and the Attorney General), under the leadership of the Ministry of Commerce and Industry, is responsible for development of intellectual property policy in Panama.

The Panamanian government reports that it investigated 715 intellectual property violations during calendar year 2013, of which 292 were crimes against copyrights and related rights, and 340 were crimes against industrial property. There were 184 convictions and 11 acquittals for IPR-related violations in 2013. These numbers are down from 239 convictions and 11 acquittals in 2012, and a significant drop from the 339 convictions in 2011. According to the Panamanian government, conviction numbers are down because many cases are settled before the conviction phase, and because a significant number of cases are in the appeals process.

In 2013, Panama began implementing a system identifying geographical indications (GIs) in response to European Union (EU) applications to register a range of GIs in Panama. The United States engaged extensively with Panama stressing the need for transparency and clarity with regard to the determinations, particularly with regard to the scope of coverage of protection. Affected industries report that the lack of clarity in the GI determinations issued to date has created concerns about whether the market will still be open to certain dairy products.

The Colón Free Zone (CFZ) has had a special office for IPR enforcement since 1998; this office performed 24 inspections in 2011 and had performed 22 inspections as of October 2012. In May 2013, however, the CFZ Administration terminated all the employees in the Office of Money Laundering Prevention and Intellectual Property Rights claiming inappropriate behavior by the employees. The office has not yet returned to normal operations. Given Panama's importance as a hub for regional and global trade, industry believes enforcement against trans-shipment of pirated and counterfeit goods is and will continue to be crucial, so effective enforcement of IPR in Panama is critically important. The U.S. Government plans to sponsor training for Panamanian IPR judges in 2014.

SERVICES BARRIERS

Under the TPA, U.S. firms are granted better access to Panama's services sector than Panama provides to other WTO Members under the General Agreement on Trade in Services. All services sectors, including financial services, are covered under the TPA, except where Panama has made specific exceptions. Panama agreed to provide improved access in sectors like express delivery, and to grant new access in certain professional services that previously had been reserved exclusively to Panamanian nationals. Panama also agreed that portfolio managers in the United States would be able to provide portfolio management services to both mutual funds and pension funds in Panama. Under the TPA, U.S. insurance suppliers are permitted to operate as a branch or a subsidiary.

INVESTMENT BARRIERS

While Panama maintains an open investment regime and is generally receptive to foreign investment, the U.S. Government continues to receive complaints from U.S. investors related to property disputes. Many of these complaints appear to stem from the general lack of titled land in Panama and inadequate government administration of the property system. Panama enacted a law in 2009 (Law 80) that attempts to address the lack of titled land in certain parts of the country, but decisions taken by the National Land Authority established by the law, have reinforced investors' concerns regarding government administration generally, corruption, and the ability of the judicial system to resolve property-related issues.

In June 2013, Panama enacted Law 41, which stipulates that Panamanian nationals must own at least 75 percent of companies or vessels engaged in auxiliary maritime services, effectively capping foreign investment in any such company at 25 percent. This law is of significant concern, given Panama's commitment to provide national treatment to foreign investors and their investments in the investment chapter of the TPA. The United States has raised serious concerns about this law with the government of Panama, particularly in the context of Panama's commitments under the TPA. Other trading partners have also raised similar concerns about Law 41, for example, the European Union, under the auspices of the EU-Central America Association Agreement. Despite these engagements Panama has thus far declined to change the law. The United States continues to press Panama on the issue.

OTHER BARRIERS

The Panamanian judicial system continues to pose a problem for investors due to poorly trained personnel, case backlogs, and a perceived lack of independence from political influence. In 2009, the Martinelli administration campaigned on a promise to "eradicate corruption," and it continues to assert its commitment to combating corruption as part of its overall agenda of institutional reform. However, as the administration nears the end of its term, these efforts have not yet yielded concrete results, and there continues to be reports of corruption and favoritism.

Domestic anticorruption mechanisms exist, such as asset forfeiture, protection for witnesses and whistleblowers (that is, people who report corruption), and conflict of interest rules. In addition, Panama ratified the United Nations Convention against Corruption in 2005 and the Organization of American States Inter-American Convention Against Corruption in 1998. The anticorruption provisions in the TPA require Panama to ensure that under its domestic law that bribery in matters affecting trade, investment, including government procurement is treated as a criminal offense or is subject to comparable penalties under its law. However, the general perception is that anticorruption laws are not rigorously applied, and that courts and government enforcement bodies have lacked effectiveness in pursuing and prosecuting those accused of corruption, particularly in high profile cases. There is also a perception that Panama could do more to implement the conventions and respond to official recommendations. The United States continues to stress the need to increase transparency and accountability, particularly in government procurement, as noted above, and the judicial processes.

PARAGUAY

TRADE SUMMARY

U.S. goods exports in 2013 were \$1.9 billion, up 10.2 percent from the previous year. Corresponding U.S. imports from Paraguay were \$277 million, up 40.6 percent. The U.S. goods trade surplus with Paraguay was \$1.6 billion in 2013, an increase of \$97 million from 2012. Paraguay is currently the 64th largest export market for U.S. goods.

IMPORT POLICIES

Tariffs

Paraguay is a founding member of the MERCOSUR common market, formed in 1991. MERCOSUR's full members are Argentina, Brazil, Paraguay, Uruguay, and Venezuela. MERCOSUR suspended Paraguay from participating in MERCOSUR meetings following the June 22, 2012, impeachment of Paraguayan President Fernando Lugo. While Paraguay was suspended, MERCOSUR admitted Venezuela as a full member in July 2012. Paraguay had opposed Venezuela's entry into MERCOSUR. The Paraguayan Senate approved Venezuela's entry into MERCOSUR on December 10, 2013, likely paving the way for Paraguay's full return to MERCOSUR in 2014.

MERCOSUR's Common External Tariff (CET) averages 11.5 percent and ranges from 0 percent to 35 percent *ad valorem*, with a limited number of country-specific exceptions. Paraguay's average bound tariff rate in the WTO is significantly higher at 33.5 percent. According to current MERCOSUR procedure, any good imported into any member country must pay the CET to that country's customs authorities. If the product is re-exported to any other MERCOSUR country, the CET must be paid again to the second country upon importation there. Thus, for any U.S. good imported into landlocked Paraguay via any other MERCOSUR country, all of which have ocean ports, the CET is effectively doubled.

Paraguay's import tariffs tend to be much lower than the CET, ranging from zero percent to 30 percent, with an average applied tariff rate of 10.1 percent. Paraguay is permitted to maintain a list of 649 exceptions to the CET until December 31, 2019. At the MERCOSUR Common Market Council (CMC) ministerial meeting in December 2011, MERCOSUR members agreed to allow member countries to increase import duty rates temporarily to a maximum rate of 35 percent on 100 items per member country. In June 2012, the MERCOSUR CMC authorized each member country to increase tariffs on an additional 100 products. To date, Paraguay has not raised tariffs pursuant to these ministerial decisions.

In August 2010, the MERCOSUR CMC moved toward the establishment of a Customs Union with its approval of a Common Customs Code (CCC) and decision 5610 (December 2010) to implement a plan to eliminate the double application of the CET within MERCOSUR. The plan was to take effect in three stages with the first phase to have been implemented no later than January 1, 2012, but the deadline was not met. In November 2012, Argentina became the first MERCOSUR member to ratify the CCC. The CCC still must be ratified by the other MERCOSUR member countries.

Nontariff Barriers

Paraguay requires non-automatic import licenses on personal hygiene products, cosmetics, perfumes and toiletries, textiles and clothing, insecticides, agrochemicals, and poultry. Obtaining a license 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 process usually takes 10 days but can take up to 30 days for goods that require a health certification. Once issued, the health certifications are valid for 30 days.

Paraguay prohibits the importation of used cars over 10 years old and used clothing.

Customs Procedures

Paraguay requires specific documentation for imports, such as the commercial receipt, certificate of origin, and cargo manifest, to be certified by either the Paraguayan consulate in the country of origin or at the Ministry of Foreign Affairs in Paraguay; the latter requires an additional fee.

Paraguay requires all companies operating in the country to contract the services of a customs broker. The customs broker fees are standardized by Paraguayan law.

GOVERNMENT PROCUREMENT

Paraguay's Public Contracting Law stipulates that all public contracting at the national and local levels with a value in excess of approximately \$6,000 must be done via the National Bureau of Public Contracting (DNCP). Foreign firms can bid on tenders deemed "international" and on "national" tenders through the foreign firms' local legal agents or representatives. Paraguayan law gives preference to locally produced goods in public procurements open to foreign suppliers, even if the domestic good is up to 20 percent more expensive than the imported good. It is reported that Paraguay's public procurements involve widespread corruption.

On October 28, 2013 the Paraguayan Congress passed a law to promote Public-Private Partnerships (PPPs) in public infrastructure and allow for private sector entities to participate in the provision of basic services such as water and sanitation. Implementing regulations for the PPP law were signed on March 12, 2014. As a result, the Executive Branch can now enter into agreements directly with the private sector without the need for Congressional approval.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Paraguay was listed on the Special 301 Watch List in 2013, and the United States continues to monitor Paraguay under Section 306. In 1998, the United States initiated a Section 301 investigation of Paraguay and determined that Paraguay's acts, policies, and practices with respect to the protection and enforcement of intellectual property rights (IPR) were unreasonable and discriminatory and constituted a burden or restriction on U.S. commerce. The United States subsequently suspended the Section 301 investigation and negotiated a Memorandum of Understanding (MOU), which was intended to resolve the underlying IPR issues. The MOU was originally concluded in November 1998 and was extended several times thereafter. The MOU was renegotiated in 2008 and then extended in December 2009 and again in December 2011. The MOU expired on April 30, 2012, and the United States and Paraguay have not been able to agree on the terms for a new MOU. The United States is encouraged by Paraguay's creation of the National Directorate of Intellectual Property in 2013 and by Paraguayan officials' recent interest in concluding a new MOU.

While Paraguayan authorities have engaged in some raids and seizures of pirated and counterfeit goods, significant concerns remain because of weak border enforcement which allows for transshipment for counterfeit and pirated goods. Ineffective prosecution of IPR violators and court sentences are insufficient to deter infringement. For example, Ciudad del Este has been included in the 2013 Out-of-Cycle Review of Notorious Markets due to the prevalence and sale of counterfeit and pirated goods, including circumvention devices and modified game systems. Infringing goods sold at this and other similar markets in Paraguay are often found in neighboring countries Argentina and Brazil.

Serious concerns also remain about inadequate protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for agrochemical or pharmaceutical products and the shortcomings in Paraguay's patent regime. Under Paraguayan laws enacted in 2007 and 2008 (Law 3283 and Law 3519, respectively), Paraguay must be the first country in which marketing approval for agrochemical or pharmaceutical products is sought in order for data protection to be available.

INVESTMENT BARRIERS

Under Paraguayan Law 194 from 1993, foreign companies must demonstrate "just cause" to terminate, modify, or decide not to renew contracts with Paraguayan distributors. Severe penalties and high fines may result if a court determines that the foreign company ended the relationship with its distributor without first having established that just cause exists. This requirement often leads to expensive out-of-court settlements. In a few cases, the courts have upheld the rights of foreign companies to terminate representation agreements after finding the requisite showing of just cause. However, the effect of the law is to discourage foreign investment, given concerns about potential lawsuits and contractual interference.

Some investors have raised concerns with possible corruption in Paraguayan government agencies. The judiciary has often been unreliable in enforcing the laws that protect foreign investment. In addition, executive branch ministries, regulatory agencies, and the tax agency often lack the resources, expertise, or impartiality necessary to properly carry out their respective mandates, creating uncertainty for investors.

Two laws, Article 195 of the Civil Procedural Code and Law 1376/1988, read in tandem, raise a particular concern for potential investors. A plaintiff pursuing a lawsuit may seek reimbursement from the defendant of legal costs, calculated as a percentage (not to exceed 10 percent) of claimed damages. In larger suits, the amount of reimbursed legal costs often far exceeds the actual legal costs incurred. Such measures may serve as a disincentive to foreign investment in Paraguay.

PERU

TRADE SUMMARY

U.S. goods exports in 2013 were \$10.1 billion, up 7.6 percent from the previous year. Corresponding U.S. imports from Peru were \$8.1 billion, up 26.6 percent. The U.S. goods trade surplus with Peru was \$1.9 billion in 2013, a decrease of \$994 million from 2012. Peru is currently the 32nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Peru was \$10.9 billion in 2012 (latest data available), up from \$9.0 billion in 2011. U.S. FDI in Peru is led by the mining sector.

Trade Agreements

The United States-Peru Trade Promotion Agreement (PTPA) entered into force on February 1, 2009. The PTPA is a comprehensive free trade agreement that resulted in significant liberalization of trade in goods and services between the United States and Peru. Under the PTPA, Peru immediately eliminated most of its tariffs on U.S. exports, with all remaining tariffs phased out over defined time periods. The PTPA also includes important disciplines with respect to customs administration and trade facilitation, technical barriers to trade, government procurement, services, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection. The agreement is hailed by both sides as a success, and since 2009 two-way trade between the U.S. and Peru has increased by 98.8 percent, reaching nearly \$18.18 billion in 2013.

Peru is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 11 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. These negotiations seek to advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment subject matter. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States and Peru, the TPP negotiating partners currently include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Singapore, and Vietnam.

IMPORT POLICIES

Tariffs

Under the PTPA, more than 80 percent of U.S. exports of consumer and industrial products now enter Peru duty free. All remaining tariffs on these goods will be phased out by 2018. More than two-thirds of current U.S. agricultural exports enter Peru duty free, and remaining tariffs on U.S. agricultural exports to Peru will be completely phased out by 2025. In accordance with its PTPA commitments, Peru has eliminated its price band system on trade with the United States.

Imported spirits are assessed an effective tax rate that is higher than the tax assessed on domestically-produced Pisco products, thus putting distilled spirits produced in the United States at a competitive disadvantage.

Nontariff Measures

The government of Peru already has eliminated many nontariff barriers, and, under the PTPA, is subjecting remaining measures, including subsidies, to additional disciplines.

Peru currently restricts imports of certain used goods, including used clothing and shoes (except as charitable donations), used tires, cars over five years old, and heavy trucks (weighing three tons or more) more than eight years old. A 45 percent excise tax applies to used cars and trucks (compared to 20 percent for a new car). However, if these used cars and trucks undergo refurbishment in an industrial center in the south of the country (located in Ilo, Matarani, or Tacna) after importation, no excise tax applies.

Peru currently requires that biopharmaceutical companies submit a “Batch Release Certificate” issued by the competent authority of the country of origin. The United States Food and Drug Administration (FDA) does not issue such certificates for all types of biological pharmaceuticals. As a result, this requirement adversely affects market access for some biologics produced in the United States. Other administrative processing requirements and duplicative product testing have a negative impact on access to the Peruvian market. For instance, the Peruvian Ministry of Health allows the registration of biosimilars of biologic drugs without clinical testing. The registration need only include an affidavit that successful clinical trials have taken place and that the drug is safe for use. As a result, local companies can register biosimilar products that infringe on patented biologic drugs.

GOVERNMENT PROCUREMENT

The PTPA requires that procuring entities use fair, nondiscriminatory, and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurements covered by the Agreement. Under the PTPA, U.S. suppliers also can bid on procurements of most Peruvian central government entities on the same basis as Peruvian suppliers. This includes procurements by state-owned enterprises, such as Peru’s oil company and Peru’s public health insurance agency.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Peru was listed on the Watch List in the 2013 Special 301 Report. Pirated and counterfeit goods remain widely available in Peru. Inadequate resources for law enforcement, lack of coordination among enforcement agencies, and the need for improvements at Peru’s border and in its judicial system remain. Piracy over the Internet continues to be a growing problem, especially with respect to music, software, and video content (movies and television programs). There has been improvement in removing pirated and unlicensed software from government computers, but in accordance with provisions of the PTPA, Peru needs to take further steps. There is a lack of clarity regarding Peru’s protections for biotechnologically-derived pharmaceutical products. The United States looks forward to continuing to work with Peru to address these and other issues, including through the TPP negotiations, as well as facilitating training for Peruvian prosecutors on IPR issues, and organizing programs highlighting the benefits of IPR to Peru and its citizens.

SERVICES BARRIERS

Telecommunications and E-Commerce

In 2012, Peru promulgated a privacy law that affects companies dependent on cross-border data flows. While no specific problems have been identified, the United States will continue to monitor the development of implementing regulations for this new regime.

INVESTMENT BARRIERS

Peruvian law prohibits majority foreign ownership in the broadcast media sector. Peruvian law also restricts foreigners from owning land or investing in natural resources located within 50 kilometers of its border, although the Peruvian government may grant special authorization to operate within those areas. Under current law, foreign employees may generally not comprise more than 20 percent of the total number of employees of a local company (whether owned by foreign or Peruvian persons) or more than 30 percent of the total company payroll.

Both U.S. and Peruvian firms remain concerned that executive branch ministries, regulatory agencies, the tax agency, and the judiciary often lack the resources, expertise, or impartiality necessary to carry out their respective mandates. U.S. and Peruvian investors have also complained about the reinterpretation of rules and the imposition of disproportionate fines by SUNAT, Peru's tax agency.

THE PHILIPPINES

TRADE SUMMARY

U.S. goods exports in 2013 were \$8.4 billion, up 4.2 percent from the previous year. Corresponding U.S. imports from Philippines were \$9.3 billion, down 3.3 percent. The U.S. goods trade deficit with Philippines was \$862 million in 2013, down \$658 million from 2012. Philippines is currently the 34th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Philippines were \$2.5 billion in 2012 (latest data available), and U.S. imports were \$3.7 billion. Sales of services in Philippines by majority U.S.-owned affiliates were \$3.6 billion in 2011 (latest data available), while sales of services in the United States by majority Philippines-owned firms were \$35 million.

The stock of U.S. foreign direct investment (FDI) in Philippines was \$4.6 billion in 2012 (latest data available), down from \$4.8 billion in 2011. U.S. FDI in the Philippines is mostly in the manufacturing sector.

IMPORT POLICIES

Tariffs

The Philippines' simple average most favored nation (MFN) tariff is 6.1 percent. Five percent of applied tariffs are 20 percent or higher. All agricultural tariffs and about 60 percent of non-agricultural tariff lines are bound in the WTO, *i.e.*, the Philippines cannot raise tariff rates above this level without offering tariff compensation. The simple average bound tariff in the Philippines is 25.7 percent. Products with unbound tariffs include certain automobiles, chemicals, plastics, vegetable textile fibers, footwear, headgear, fish, and paper products. Applied tariffs on fresh fruit including grapes, apples, oranges, lemons, grapefruits, and strawberries are between 7 percent and 15 percent, whereas bound rates are much higher at 40 percent and 45 percent.

High in-quota tariffs for agricultural products under the Philippines' tariff-rate quota program, known locally as the Minimum Access Volume (MAV) system, significantly inhibit U.S. exports to the Philippines. Under the MAV system, the Philippines imposes a tariff rate quota on numerous agricultural products, including corn, coffee/coffee extracts, potatoes, pork, and poultry products. In-quota tariffs range from 30 percent to 50 percent. Sugar has the highest in-quota tariff at 50 percent, followed by rice, poultry, and potatoes at 40 percent. The in-quota tariff for corn is 35 percent, while pork and raw coffee have in-quota tariffs of 30 percent. Since 2005, the Philippines has maintained MAV levels at its Uruguay Round commitments despite increasing demand in the Philippine market for MAV products.

Quantitative Restrictions

The National Food Authority (NFA) controls rice imports through quantitative restrictions and provides price support to growers of rice. NFA's stated objectives are to achieve self-sufficiency and to ensure sufficiently high and stable food prices to enhance farm incomes and alleviate rural poverty. According to the WTO, NFA's policies have contributed to the sector's non-competitiveness by reducing incentives for farmers to minimize production costs and improve efficiency.

The special treatment for rice accorded to the Philippines in Annex 5 of the WTO Agreement on Agriculture, under which the Philippines maintains a rice quota of 350,000 metric tons, expired on June 30, 2012. The Philippines is negotiating with other WTO Members, including the United States, to extend its exemption from WTO tariffication obligations through 2017.

Automobile Sector

The Philippines continues to apply high tariffs on finished automobiles and motorcycles, including a 30 percent tariff on passenger cars; tariffs of 20 percent to 30 percent on vehicles for the transport of goods; and tariffs of 15 percent to 20 percent on vehicles for the transport of persons, depending on vehicle weight. ASEAN countries and Japan enjoy preferential import tariffs on new vehicle imports under the ASEAN Free Trade Agreement and the Japan-Philippines Economic Partnership Agreement, respectively. The Philippines continues to extend zero duty treatment on imports of capital equipment, spare parts, and accessories by motor vehicle manufacturers and other enterprises registered with the Board of Investments (BOI).

Motor vehicle production is covered under the Philippine Motor Vehicle Development Program (MVDP). This program, implemented by BOI, is designed to spur exports and encourage local assembly through low tariffs on components. A 1 percent tariff applies to completely knocked-down kits (CKDs) imported by MVDP-registered participants. CKDs of alternative fuel vehicles enter duty free. The policy also prohibits the importation of used motor vehicles.

Manufacture and assembly of motor vehicles, parts, and components is a preferred activity under the 2013 Philippine Investment Priorities Plan (*see Subsidies section below*).

Safeguards

Since 2002, the Department of Agriculture has maintained a price-based special safeguard on imports of chicken, approximately doubling the effective rate of protection for out-of-quota imports. The imposition of the special safeguard reportedly stems from domestic industry pressure for import protection.

Excise Tax on Distilled Spirits

For many years, the Philippines applied excise taxes to distilled spirits that differed depending on the product from which the spirit is distilled. Spirits made from the sap of nipa, coconut, cassava, camote, or buri palm, or from the juice, syrup, or sugar of the cane, which are typically produced domestically, were taxed at a low rate. Under this system, all other spirits including imported spirits were taxed at a higher rate.

In 2010, the United States and European Union brought disputes at the WTO challenging the Philippines tax system on distilled spirits. In 2011, a WTO panel found that the Philippine excise taxes on imported distilled spirits were discriminatory and inconsistent with the Philippines' WTO obligations under Article III:2 of the GATT 1994. The WTO Appellate Body affirmed these findings in December 2011.

On December 20, 2012, President Aquino signed into law a new excise tax system for distilled spirits. It provides for a 20 peso tax, based on a standard size bottle, and an additional *ad valorem* tax of 15 percent by value in the first two years, increasing to 20 percent by value on January 1, 2015. The specific tax of 20 pesos will increase 4 percent per year every year starting January 1, 2016. The United States will carefully monitor implementation of the system to ensure that it does not discriminate against imported products.

Customs Barriers

Reports of corruption and irregularities in customs processing persist, including undue and costly delays (*e.g.*, irregularities in the valuation process, 100 percent inspection and testing of some products, and customs officials seeking the payment of unrecorded facilitation fees). Some exporters report, for instance, that the Philippine Bureau of Customs does not recognize their established prices and instead applies a higher dutiable value based on information from unspecified sources.

GOVERNMENT PROCUREMENT

Government procurement laws and regulations favor Philippine-controlled companies and locally-produced materials and supplies. The Government Procurement Reform Act of 2003 sought to consolidate procurement laws, simplify prequalification procedures, introduce objective and nondiscretionary criteria in the selection process, and establish an electronic single portal for government procurement activities. However, implementation remains inconsistent. U.S. companies have expressed concern about delayed procurement decisions, delayed payment, and different interpretations of the procurement law among Philippine government agencies.

Since 1993, the Philippine government has maintained a countertrade requirement of 50 percent of the price of imports for procurement by government agencies and government-controlled corporations with penalties for nonperformance of countertrade obligations.

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

SUBSIDIES

The Philippines offers a wide array of fiscal incentives for export-oriented investment, particularly investment related to manufacturing. These incentives are available to firms located in export processing zones, free port zones, and other special industrial estates registered with the Philippine Economic Zone Authority. The available incentives include: income tax holidays or exemption from corporate income tax for four years, renewable for a maximum of eight years; after the income-tax-holiday period, payment of a special 5 percent tax on gross income, in lieu of all national and local taxes; exemption from duties and taxes on imported capital equipment, spare parts and supplies, and raw materials; domestic sales allowance of up to 30 percent of total sales; exemption from wharfage dues, imposts, and fees; zero VAT rate on local purchases, including telecommunications, electricity, and water; and exemption from payment of local government fees (*e.g.*, mayor's permit, business permit, health certificate fee, sanitary inspection fee, and garbage fee). Furthermore, under the Omnibus Investment Code, which is administered by the BOI, tax incentives are available to producers of non-traditional exports, including electronics, garments, textiles, and furniture, and for activities that support exporters, such as logistics services and product testing.

The Philippine government offers incentives to Philippine companies for investment in less developed economic areas and in preferred sectors, as outlined in Board of Investment's Investment Priority Plan (IPP). The incentives include: income tax holidays; tax deductions for wages and certain infrastructure investments; tax and duty exemptions for imported breeding stock and genetic materials; and tax credits on local purchases of breeding stock and materials. An enterprise with less than 60 percent Philippine equity may enjoy incentives if its projects are classified as "pioneer" under the IPP. Pioneer status can be granted to Board of Investment-registered enterprises engaged in the production of new products or using new methods, producing goods deemed highly essential to the country's agricultural self-sufficiency

program, or producing or utilizing non-conventional fuel sources. Export-oriented firms, defined as exporting at least 70 percent of production, may also qualify for incentives under the IPP.

The Philippines has not filed a subsidy notification under the WTO Agreement on Subsidies and Countervailing Measures since September 1997.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The Philippines remained on the Special 301 Watch List in 2013. U.S. rights holders report concerns about increasing Internet-based piracy, cable signal piracy, and provisions in the patent law that may preclude the issuance of patents on certain chemical forms unless the applicant demonstrates increased efficacy. The availability of pirated and counterfeit goods in the Philippines and a judiciary lacking adequate experience in enforcing intellectual property rights (IPR) are additional concerns.

Building on previous efforts, the Philippines in 2013 worked to address these issues through amendments to its IP code, including measures on secondary liability and statutory damages, as well as legislation addressing cable signal piracy and IP infringement relating to money laundering. The new measures also granted new administrative IP enforcement powers. Rights holders report improved coordination and effectiveness of its enforcement efforts and that incidents of unauthorized camcording remain relatively few in number.

SERVICES BARRIERS

Telecommunications

Philippine regulators have defined telecommunications services as a public utility, which under the Philippine Constitution limits foreign equity ownership in telecommunications companies to 40 percent. Foreigners may not serve as executives or managers of telecommunications companies, and the number of foreign directors allowed is tied to the proportion of foreign investment in the company. The United States has urged the Philippines to reclassify telecommunications outside of the utility definition, as it has done for electricity generation. Efforts to liberalize the foreign investment regime in the telecommunications sector suffered a further setback in 2013 when the Philippines Security and Exchange Commission, based on a 2011 Philippines Supreme Court ruling, upheld an expansive interpretation of what constituted a utility. This action effectively limited foreign ownership to levels set out in the Philippines GATS schedule.

The Philippines also applies the public utility designation to value-added services, which is particularly burdensome to service suppliers and inconsistent with international practice. Finally, foreign equity in private radio communications is limited to 20 percent, and foreign ownership of cable television and all other forms of broadcasting and media is prohibited.

Insurance

The Philippines permits up to 100 percent foreign ownership in the insurance sector; however, its GATS commitment caps foreign ownership at 51 percent. Minimum capital requirements increase with the degree of foreign equity.

Generally, only the state-owned Government Service Insurance System (GSIS) may provide insurance for government-funded projects. A 1994 order requires sponsors of build-operate-transfer projects and privatized government corporations to secure their insurance and bonding from the GSIS at least to the

extent of the government's interest. All reinsurance companies operating in the Philippines must cede to the industry-controlled National Reinsurance Corporation of the Philippines at least 10 percent of outward reinsurance placements.

Banking

The Philippines applies restrictions on foreign participation in the banking sector in two tiers. Those foreign banks that meet specific requirements, such as diversified ownership, public listing in the country of origin, and global or national rankings, are limited to owning 60 percent of the equity in a locally incorporated banking subsidiary. Those banks that do not meet the criteria, as well as non-bank investors, are subject to a 40 percent ownership ceiling.

Under a 1994 law and its implementing regulations, majority Philippine-owned domestic banks must control at least 70 percent of the resources or total assets in the banking system. This requirement acts as a secondary limit on foreign participation in the banking system.

Since 1999, foreign investments are limited to existing banks due to a central bank moratorium on the issuance of new bank licenses. Furthermore, foreign banks allowed in the Philippines market under the 1994 Foreign Bank Liberalization Act cannot open more than six branches. The four foreign banks that operated in the Philippines prior to 1948 may operate up to six additional branches each.

In June 2011, the Philippine Central Bank announced a phased lifting of branching restrictions for locally incorporated commercial and thrift banks in eight key Metro Manila cities. Before branching restrictions in the key cities are fully lifted in July 2014, priority will be given to banks with fewer than 200 branches in the previously-restricted areas. This process will benefit foreign banks with commercial and thrift banking subsidiaries in the Philippines.

Financial institutions must set aside loans for certain preferred sectors. The Agri-Agra Law requires banks to earmark at least 25 percent of their loan portfolios for agricultural credit, with at least 10 percent dedicated to agrarian reform program beneficiaries. Although amendments to the Agri-Agra Law in 2010 widened the scope of eligible credits and investments, the new law also scrapped previously allowed, alternative modes of compliance (*i.e.*, financing of educational institutions, hospitals and other medical services, low cost housing, and cooperatives). In addition, the Magna Carta for Micro, Small, and Medium Enterprises requires banks to set aside at least 10 percent of their loan portfolios for these borrowers. These mandatory lending provisions are more burdensome on foreign banks for a number of reasons, including constrained branch networks and foreign land ownership restrictions that impede their ability to enforce rights over land accepted as collateral.

Other Financial Services

For mutual funds, all members of the board of directors must be Philippine citizens, although no foreign ownership restrictions apply. Current laws limit foreign ownership of financing and of securities underwriting companies to 60 percent of voting stock.

The 2007 Lending Company Regulation Act requires majority Philippine ownership for credit enterprises not clearly under the scope of other laws.

Advertising

The Philippine Constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers must be Philippine citizens.

Public Utilities

The Philippine Constitution limits foreign investment in the operation and management of public utilities to 40 percent. Philippine law defines public utility to include a range of sectors including water and sewage treatment, electricity transmission and distribution (although not electricity generation), telecommunications, and transport. All executive and managing officers of public utility companies must be Philippine citizens, and foreign investors may serve on governing bodies only in proportion to their equity.

Professional Services

The Philippine Constitution limits licensing for the practice of professions to Philippine citizens. Under Philippine law, the practice of professions is defined to include law, medicine, nursing, accountancy, engineering, architecture, and customs brokerage.

Express Delivery Services

Foreign equity participation in the domestic express delivery services sector is limited to 40 percent.

Retail Trade

Philippine law restricts foreign investment in small retail ventures to Philippine nationals. Foreigners may own larger retail ventures subject to several requirements, including paid-up capital of \$2.5 million or more, an \$830,000 minimum investment per store, and parent company net worth of over \$200 million. In addition, the retailer must either own at least five retail stores elsewhere or have at least one outlet with capitalization of \$25 million or more. For retailers of high-end or luxury products, the minimum investment in each retail store is \$250,000 and the net worth of the parent company must exceed \$50 million.

Foreign retailers are prohibited from engaging in trade outside their accredited stores, such as through the use of carts, sales representatives, or door-to-door selling. Retail enterprises with foreign ownership exceeding 80 percent of equity must offer at least 30 percent of their shares to local investors within eight years of the start of operations through public offering of stock.

Civil Aviation

The Philippine government applies the Common Carrier Tax and Gross Philippine Billing Tax on cargo traffic carried by non-Filipino airlines. In March 2013 the government amended its internal revenue code to exempt airlines from these taxes for passenger traffic.

INVESTMENT BARRIERS

Significant restrictions apply to foreign investment in the Philippines. The Foreign Investment Negative List (FINL) enumerates foreign investment restrictions in two parts; List A details restrictions mandated by the Constitution or in specific laws, while List B lists restrictions mandated for reasons of national

security, defense, public health and morals, and protection of small and medium sized enterprises (SMEs). Foreign investment in sectors enumerated in the FINL may be prohibited outright (*e.g.*, mass media, practice of professions, small-scale mining) or subject to limitation (*e.g.*, natural resource extraction, investment in SMEs). The list is updated every two years, most recently in October 2012. In May 2013, the SEC issued guidelines to monitor corporations for compliance with the foreign equity restrictions mandated by the FINL.

The Philippine Constitution prohibits foreigners from owning land in the country but allows for 50 year leases (with one 25 year renewal). An ambiguous deed and property system can make it difficult to establish clear ownership of leased land, however, and an inefficient judiciary results in land disputes that can extend indefinitely. U.S. investors report that these disputes can be a particularly significant barrier to investment in the mineral exploration and processing sectors.

Trade Related Investment Measures

The Board of Investment imposes a higher export performance requirement on foreign-owned enterprises (70 percent of production) than on Philippine-owned companies (50 percent of production). U.S. stakeholders have also reported that the Philippine government imposes unwritten “trade balancing” requirements on firms applying for approval of ventures under the ASEAN Industrial Cooperation scheme.

OTHER BARRIERS

Corruption remains a pervasive and longstanding problem in the Philippines. Both foreign and domestic investors have expressed concern about the propensity of Philippine courts and regulators to stray beyond matters of legal interpretation into policymaking and about the lack of transparency in judicial and regulatory processes. Concerns also have been raised about courts being influenced by bribery and improperly issuing temporary restraining orders to impede legitimate commerce.

QATAR

TRADE SUMMARY

U.S. goods exports in 2013 were \$5.0 billion, up 38.6 percent from the previous year. Corresponding U.S. imports from Qatar were \$1.4 billion, up 33.0 percent. The U.S. goods trade surplus with Qatar was \$3.6 billion in 2013, an increase of \$1.0 billion 2012. Qatar is currently the 45th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Qatar was \$10.6 billion in 2012 (latest data available), up from \$7.9 billion in 2011.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Qatar applies the GCC common external tariff of 5 percent with a limited number of GCC-approved country-specific exceptions. Qatar's exceptions include alcohol (100 percent) and tobacco (150 percent), as well as wheat, flour, rice, feed grains, and powdered milk. In addition, Qatar applies a 20 percent tariff on the import of iron bars and rods, steel and cement, a 30 percent tariff on urea and ammonia, and a 15 percent tariff on imports of musical records and instruments.

Import Licensing

Qatar requires that importers have a license for most products and only issues import licenses to Qatari nationals. The government has on occasion established special import procedures via government-owned companies to help ease demand pressure.

Only authorized local agents are allowed to import goods produced by the foreign firms they represent in the local market. However, this requirement may be waived if the local agent fails to provide the necessary spare parts and customer services for the product.

Imports of pork and pork products were prohibited until 2012, when the Qatar Distribution Company (QDC), a subsidiary of the national air carrier Qatar Airways, was granted sole authority to import these products. QDC is also the sole authority authorized to import alcohol.

Documentation Requirements

To clear goods from customs zones in Qatar, importers must submit documents including a bill of lading, certificate of origin, invoice, and, where applicable, import license. Imported beef and poultry products also require a health certificate and a halal slaughter certificate issued by an approved Islamic authority. Commercial consignments may be imported without a certificate of origin, provided the certificate of origin is submitted within 90 days of entry. The Qatari Embassy, Consulate, or Chamber of Commerce in the United States must authenticate the import documents for imports from the United States.

Effective July 2013, Qatar Customs began to enforce a regulation that was initially issued in 2011 requiring that all importations include invoices, certificate of origin, and packing lists. Shipments without proper documentation may be rejected and returned to the country of export.

GOVERNMENT PROCUREMENT

Qatar provides a 10 percent price preference for goods with Qatari content and a 5 percent price preference for goods containing other GCC content. Tenders with a value less than QR 1,000,000 (\$275,000) are limited to local contractors, suppliers and merchants registered with the Qatar Chamber of Commerce.

In October 2013, the government implemented a set-aside that requires foreign companies participating in “mega” infrastructure projects to procure 30 percent of goods and services locally. However, detailed regulations have yet to be announced.

In November 2013, the Qatari Ministry of Finance issued a circular requiring that all ministries and government agencies, public corporations and other institutions that receive government support give a preference to local Qatari products when procuring goods to meet day-to-day operational requirements.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

As the six member states of the GCC explore further harmonization of their intellectual property rights regimes, the United States will continue to engage with GCC institutions and its member states to provide technical cooperation on intellectual property policy and practice.

SERVICES

Agent and Distributor Rules

Only Qatari entities are allowed to serve as local agents or sponsors. However, exceptions are granted for 100 percent foreign-owned firms in the agricultural, industrial, tourism, education, and health sectors. Additionally, some Qatari ministries waive the local agent requirement for foreign companies that have contracts directly with the Qatari government.

Banking

Although foreign banks are permitted to open branches and are authorized to conduct all types of business in the Qatar Financial Center (QFC), including provision of Islamic banking services, foreign banks are informally “advised” not to offer services related to retail banking business. Laws and regulations applied to foreign banks registered in the QFC are different from the ones adopted by Qatar Central Bank and more closely resemble international standards.

INVESTMENT BARRIERS

The Organization of Foreign Capital Investment Law allows foreign investors to own up to 100 percent of projects in the agricultural, industrial, health, education, tourism, development and exploitation of natural resources, energy, and mining sectors with prior government approval. In all other sectors, foreign equity is limited to 49 percent. Qatar amended this law in 2004 to allow 100 percent foreign investment in the insurance and banking sectors if the investment is approved by a decree from the Cabinet of Ministers.

For companies listed on Doha Securities Market, foreign investors' total share cannot exceed 25 percent. In October 2009, Qatar amended this law to permit 100 percent foreign ownership in consulting services, the information and technology sector, cultural services, sports services, entertainment services, and distribution services. Although a decree has been issued, detailed regulations to implement the amendments have yet to be finalized.

The investment law permits foreign investors to lease land for up to 99 years, although renewal requires government approval. Foreign ownership of residential property is limited to select real estate projects. Foreigners can be issued residency permits without a local sponsor if they own residential or business property but only if the property is in a designated "investment area."

RUSSIA

TRADE SUMMARY

U.S. goods exports in 2013 were \$11.2 billion, up 4.3 percent from the previous year. Corresponding U.S. imports from Russia were \$27.0 billion, down 8.2 percent. The U.S. goods trade deficit with Russia was \$15.8 billion in 2013, down \$2.9 billion from 2012. Russia is currently the 28th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Russia was \$14.1 billion in 2012 (latest data available), up from \$11.7 billion in 2011. U.S. FDI in Russia is led by the manufacturing, banking, and mining sectors.

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 them. As a consequence, following nearly 20 years of negotiations, the United States and Russia are applying the terms and conditions of the WTO Agreement to each other. In June 2013, USTR issued its first annual “Report on WTO Enforcement Actions: Russia,” and in December 2013, the first annual “Report on Russia’s Implementation of the WTO Agreement” (both reports are available at <http://www.ustr.gov/Russia>).

Russia-Kazakhstan-Belarus Customs Union

On January 1, 2010, the Russia-Kazakhstan-Belarus Customs Union (the Customs Union or CU) adopted a common external tariff (CET) with the majority of the tariff rates established at the level that Russia applied at that time. On July 1, 2010, a common CU Customs Code entered into effect, and on July 1, 2011, the CU Parties abolished all customs posts on their internal borders, allowing for the free flow of most goods among the CU Parties. As a result of Russia joining the WTO, the CU adopted Russia’s WTO schedule of tariff bindings. Beginning in early 2012, the Eurasian Economic Commission (EEC) replaced the CU Commission as the supranational body charged with implementing external trade policy for CU members and with coordinating economic integration among CU Parties with the goal of establishing a Eurasian Economic Union by 2015.

As a consequence of its membership in the CU, Russia’s import tariff levels, trade in transit rules, nontariff import measures (*e.g.*, tariff-rate quotas, import licensing, and trade remedy procedures), and customs policies (*e.g.*, customs valuation, customs fees, and country of origin determinations) are based on the CU legal instruments. On these and other issues involving goods, CU Agreements and CU/EEC Decisions establish the basic principles that are implemented at the national level through domestic laws, regulations, and other measures. CU Agreements and CU/EEC Decisions also cover issues such as border enforcement of intellectual property rights, trade remedy determinations, establishment and administration of special economic and industrial zones, and the development of technical regulations and sanitary and phytosanitary measures. The Agreement on the Functioning of the Customs Union within a Multilateral Trade System establishes the priority of the WTO rules in the CU legal framework.

IMPORT POLICIES

Customs Issues, Taxes, and Tariffs

Importers continue to report that Russian customs officials in some cases inappropriately challenge declared import values. In these instances, customs officials cite reference prices that are inconsistent with the invoice valuation, and this practice results in the application of higher import values, and hence higher duty payments. Importers also complain that Russian customs officials' documentation requirements are unpredictable and inconsistent, and vary from port to port. U.S. officials have raised concerns about such practices with Russian Customs.

A long-standing customs challenge faced by importers of alcoholic products is the requirement that all customs duties, excise taxes, and value-added taxes on alcohol be paid in advance using a bank guarantee and deposit. Because the actual amount of the duties and fees may not be known when the guarantees are obtained, Russia has established fixed guarantee amounts. On occasion, these amounts exceed the final actual amounts due, especially for lower value products. In addition, industry has reported that refunds of these guarantees are sometimes delayed for as long as seven months. The advance payment requirement for duties and taxes, and the length of time the bank guarantee refund is held open, may limit trade volumes due to the amount of money that importers must dedicate to these guarantees.

Customs authorities in Russia continue to assess tariffs on the royalty amounts for the domestic use of imported audiovisual materials, such as television master tapes. U.S. industry has argued that this practice represents a form of double taxation because royalties are also subject to withholding, income, value-added (VAT), and remittance taxes. U.S. consumer goods companies have also reported that Russian customs authorities calculate customs duties based on the value of the product plus the amount of royalty payments that the Russian subsidiary must pay to the overseas parent company for the use of the parent company's trademarks. U.S. companies contend that this methodology leads to inflated valuations for tariff purposes. Of further concern is Russia's rebate of VAT on payments for the "right to use" (*i.e.*, licensing royalties) 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 foreign films. This practice increases the cost of screening U.S. films.

U.S. industry has also raised concerns about copyright levies that are assessed on imported goods which can duplicate copyrighted materials and are provided to an accredited royalty collecting society for distribution to rights holders. Although Russia accredited a collecting society to undertake this collection and distribution, U.S. industry has raised concerns regarding the lack of transparency in the collection and distribution of the royalties. The legitimacy of that collecting society has also been challenged in the Russian courts, creating uncertainty as to its credibility and reliability. In addition, U.S. industry has questioned lack of the equivalence between the list of domestic products subject to copyright levies and the list of imported products subject to the levies. U.S. officials have raised concerns about these issues with Russia's Ministry of Culture. Senior Russian officials have announced that they plan to create a specialized intellectual property agency which would consolidate patent, trademark, and copyright matters, including administration of collective management organizations. The new agency is planned to start operations in mid-2014.

U.S. industry also reports that Russia does not publish all regulations, judicial decisions, and administrative rulings of general application to customs matters. In addition, U.S. exporters report that customs enforcement varies by region and port of entry, and that frequent changes in regulations are unpredictable, adding to costs and delays at the border. In its WTO accession protocol, Russia has committed to publish all trade-related measures and implement notification, public comment, and other

transparency requirements for a broad range of trade-related measures. U.S. officials have pressed Russia to meet these important WTO transparency requirements.

U.S. companies continue to face a wide array of other, often company-specific, nontariff trade barriers when exporting to Russia, such as the December 2, 2013, announcement of a decision by Russian Customs to limit the locations where it accepts TIR Carnets (the TIR Carnet is a customs transit document used to prove the existence of the international guarantee for duties and taxes for the goods shipped) to only the ports of Vyborg (Leningrad Oblast) and Murmansk, effective July 2014.

Import and Activity Licenses

Although Russia simplified its licensing regimes when it became a WTO Member, the processes to obtain an import or activity license remain burdensome and opaque.

When Russia became a WTO Member, it abolished the requirement to obtain an import license for alcohol. However, activity licenses are still required to warehouse and distribute alcohol in Russia, and industry asserts that the difficulty and expense involved in obtaining them is disruptive to trade. For example, Order #59n, originally issued by Russia's Federal Service for Alcohol Market Regulation (FSR) in 2010, governs the warehousing of alcoholic beverages. As a result of bilateral discussions, FSR has amended Order #59n offering some improvements, but many onerous and unnecessary restrictions on the warehousing of alcoholic beverages remain, such as a provision prohibiting the storage of different types of alcohol on one pallet; a provision precluding the storage of other goods with alcohol products; and a provision requiring certificates from third-party government agencies that require a great deal of time and effort to obtain. Several U.S. exporters have experienced months of delays and expended thousands of dollars seeking to bring their warehousing practices into conformity with the regulation after FSR inspections raised compliance issues. The United States will continue to work with FSR to seek modifications to Order #59n that ensure that Russia's regulation of alcoholic beverages does not impose overly burdensome and duplicative requirements on business operators. In addition, Russia (and the EEC) imposes various (and duplicative) technical requirements governing the alcoholic beverage sector (*See the 2014 Report on Technical Barriers to Trade issued by USTR*).

In its WTO accession protocol, Russia committed to reform its import licensing regime for products with cryptographic functionalities ("encryption products"). However, U.S. exporters report that Russia continues to limit the importation of encryption products through the use of import licenses or one-time "notifications." Issues have been raised regarding the process for importing consumer electronic products considered to be "mass market" products under the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. A simple notification process is supposed to apply to these products; however, recent amendments to the CU 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 protocol. Moreover, the requirements to meet the definition of "mass market" are burdensome and appear to go beyond what is required under the CU regulations. As a result, U.S. exports of encryption products, particularly common consumer electronic products, continue to be inhibited.

In addition, in 2012, Russia amended the regulations governing activity licenses for the distribution, among other activities, of encryption products. In doing so, Russia reasserted control over many consumer electronic products that had previously not required 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.

Import licenses and/or activity licenses to engage in wholesale and manufacturing activities are also necessary for the importation of pharmaceuticals, explosive substances, narcotics, nuclear substances, equipment to be used at nuclear installations and corresponding services, hazardous wastes (including radioactive waste), and some food products (*e.g.*, unprocessed products of animal origin). The process for obtaining these licenses is often unpredictable, nontransparent, time-consuming and expensive. U.S. officials have raised concerns about these import licensing issues with Russian and CU officials.

Automotive and Vehicle Recycling Fees

On September 1, 2012, Russia introduced a “recycling fee” on automobiles and certain other wheeled vehicles. Under the new law, importers and manufacturers in Russia of automobiles and certain other wheeled vehicles pay a fee, determined by the age, total mass and engine size of the vehicle, intended to cover the cost of recycling the automobile at the end of its useful life. Rates range from 2,000 rubles to 5.5 million rubles (approximately \$66 to \$185,000) for new vehicles and from 3,000 rubles to 6 million rubles (approximately \$100 to \$200,000) for used vehicles. Originally, automobile manufacturers located in Belarus, Kazakhstan, and Russia were not required to pay this fee if they agreed to establish procedures designed to dispose of a vehicle at the end of its useful life. Russian officials justified the new program on environmental grounds, and promised that the fee would be temporary. The United States, as well as other WTO Members, raised concerns about the consistency of this program with Russia’s WTO obligations, and on October 10, 2013, the European Union requested the establishment of a WTO dispute settlement panel challenging the validity of this fee. On October 21, 2013, President Putin signed a law extending the recycling fee to domestic automobile manufacturers, regardless of any producer’s commitment to recycle its vehicles. However, concerns remain regarding the overall level and calculation of the fee for heavy duty commercial vehicles.

Quotas

On August 23, 2012, the EEC issued Decision No. 143 imposing import quotas on corrosion-resistant pipes and tubes imported into the Customs Union until November 2014. These quotas replace the safeguards duty on corrosion-resistant pipes imported into the Customs Union which lapsed in September 2012. Russia has not notified this measure to the WTO and the rationale for either the replacement of the original measure or the justification behind the quota is unclear.

Import Substitution Policies

Russian officials have called for more local production across a variety of sectors. For example, Pharma 2020, the government’s pharmaceutical industry development plan, calls for Russian manufacturers to account for at least 50 percent of total domestic sales (based on value) by 2020. Other healthcare industry related policies that discriminate against U.S. exporters in favor of domestic producers include a reimbursement system that allows only domestic companies to request annual adjustment of prices registered by the Ministry of Health, and a 15 percent price preference for Russian (and Belarusian) companies in federal and municipal procurement auctions. Russia has also proposed a ban on government procurement of certain medical devices manufactured outside the CU or by a company which does not have an agreement on the localization of production in Russia. Balancing Russia’s desire to develop an indigenous pharmaceutical industry with market access for non-Russian firms will remain an ongoing challenge.

In August 2011, the Ministry of Economic Development and the Ministry of Industry and Trade set the parameters for determining what constitutes domestic telecommunications equipment, and therefore what equipment could be used in specified applications and/or projects. The localization level depends on the

scope of the research activities and technological operations carried out in Russia, resulting in localization levels from 60 percent to 70 percent. Moreover, to qualify, companies manufacturing telecommunications equipment must be a Russian resident with no less than 50 percent ownership by the Russian party. Also, the manufacturer must have the legal rights to the technologies and software, possess its own production base, manufacture printing boards, and carry out final assembly of the telecommunications equipment in Russia.

Russia developed a global navigation positioning technology called GLONASS as an alternative to the U.S. GPS system. Russia's Ministry of Transport issued a rule in March 2012 requiring that GLONASS compatible satellite navigation equipment must be installed on all Russian-manufactured aircraft, with varying deadlines depending on the use, age, and size of the aircraft, but all not later than 2016. In addition, any foreign-manufactured aircraft listed in a Russian airline's Air Operator Certificate must have GLONASS or GLONASS/GPS compatible satellite navigation equipment installed by January 1, 2018 or earlier, depending on the size of the aircraft. Because U.S. aircraft are not currently configured for GLONASS, modifications to the aircraft would be necessary to meet this new rule.

EXPORT POLICIES

Although Russia has eliminated export duties on a few products, it maintains export duties on 240 types of products for both revenue and policy purposes. For example, a variety of products are subject to export tariffs, such as certain fish products, oilseeds, fertilizers, and wood products. Russia has indicated that it intends to eliminate gradually most of these duties, except for products deemed as strategic, such as hydrocarbons and certain scrap metals. Russia has also committed, as part of its WTO accession protocol, to eliminate export duties on nickel, copper, aluminum, and steel scrap within five years of joining the WTO. Although Russia also committed to decrease export duties on timber to levels between 5 percent and 15 percent, domestic industry pressure continues to delay implementation.

Historically, Russia has established high export duties on crude oil to encourage domestic refining. However, recent reductions in export duties on crude oil in conjunction with an increase in the mineral extraction taxes on upstream producers will make domestic crude more expensive for domestic refiners. At the same time, Russia continues to implement a variety of *ad hoc* tax breaks designed to encourage the development of resources that are difficult to extract. Separately, the government maintains a 90 percent export duty on gasoline as well as a 30 percent export tax on natural gas.

In 2012, Russia briefly closed some ports in the Russian Far East (RFE) to exports of ferrous scrap, and published a notice of intent to close other ports, including St. Petersburg, the largest Russian port for scrap exports. Because ferrous scrap is globally traded and Russia is a significant scrap producer-exporter, Russia's actions contributed to a reduction in global ferrous scrap supplies, creating upward pressure on global scrap prices outside of Russia. The measure (Decree No. 1148) was eventually reversed by the Russian courts, and currently there are no port closures in effect for ferrous scrap. Nevertheless, the uncertainty of the availability of Russian ferrous scrap continues to cause concern among U.S. stakeholders of possible market disruptions. Moreover, industry claims that Russia has placed higher rail freight tariffs on certain raw materials intended for export, contrary to its commitment to eliminate discrepancies in its railway tariffs by July 1, 2013. In addition, it has not published any changes to tariff rates or notified the WTO of elimination of differential tariffs.

Russia has burdensome procedures for obtaining export certificates for some items, including samples collected during research expeditions and raw data. Additionally, Russia has strict licenses to control the export of precious stones and metals.

SUBSIDIES AND OTHER BARRIERS

Gazprom, a Russian state-owned company that currently has a monopoly on exports of pipeline natural gas produced in Russia, charges higher prices on exports of natural gas than it charges to most, if not all, domestic customers. U.S. stakeholders have concerns that Russia's natural gas pricing policies effectively operate as a subsidy to domestic industrial users in energy-intensive industries such as the steel industry and the fertilizer industry (which uses natural gas as an input).

GOVERNMENT PROCUREMENT

Although not yet a signatory to the WTO Agreement on Government Procurement (GPA), Russia became an observer to the GPA in May 2013 and committed to initiate negotiations for accession to the GPA by 2016. When it joined the WTO, Russia committed that its government agencies would award contracts in a transparent manner according to published laws, regulations, and guidelines.

As discussed above, Russia has adopted local content requirements in various areas of government procurement. It has argued that because these policies relate to government procurement they are not subject to the national treatment obligations of the General Agreement on Tariffs and Trade (GATT) and General Agreement on Trade in Services (GATS). Given the breadth of the government's role in the economy and hence the scope of government procurement in Russia, including in areas such as health care, such measures impede trade because U.S. exports are excluded from a broad section of the Russian economy.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Russia remained on the Priority Watch List in the 2013 Special 301 Report. A key concern cited in the report was inadequate enforcement against online piracy. In December 2012, under the auspices of the United States of America-Russian Federation Intellectual Property Working Group, the United States and Russia negotiated the United States-Russian Federation IPR Action Plan. That Plan sets forth concrete proposals to address weaknesses in Russia's IPR regime that create obstacles to U.S. exports and investment.

When Russia became a Member of the WTO on August 22, 2012, it undertook commitments under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). While overall IPR legislation has been strengthened and physical counterfeiting appears to be on the decline, copyright violations for films, videos, sound recordings and computer software remain a significant problem, particularly online. In June 2013, Russia approved its first law specifically dedicated to decreasing online piracy of television and film, and legislative measures are currently being drafted to amend the law. The United States will monitor closely evolving laws and practices related to online piracy. Russia's record of enforcement of copyright laws is inconsistent and often unclear. In 2013, the Russian police continued to take actions against copyright infringers, including against street vendor piracy and companies involved in the installation and use of pirated software. However, the overall number of raids, seizures, and criminal cases launched was down from the number of cases undertaken only a few years ago.

Russia also has not adequately prevented illegal optical media sales and illegal camcording. Although legitimate DVD sales are on the rise, partly due to increased law enforcement action against makers of pirated DVDs, a 2008 ban on camcording in movie theaters, and a growing preference for high-quality products, Russia's optical disc production capacity in 2012 continued to exceed domestic demand, highlighting concerns that optical disc piracy is oriented toward exports. According to industry, Russia

remains one of the world's largest producers and distributors of illegal optical media and one of the largest sources of illegally-camcorded movies.

U.S. and multinational companies continue to report counterfeiting of trademarked goods, especially of consumer goods, distilled spirits, agricultural chemicals and biotechnology, and pharmaceuticals.

SERVICES BARRIERS

Russia's services market is largely open to U.S. services suppliers, including in areas such as financial services, education, legal services, and distribution.

However, specific problems remain in particular areas. Russia continues to prohibit foreign banks from establishing branches in Russia. In addition, the ability to provide services to public utilities and certain energy-related services remains limited. Although Russia raised the limit on foreign capital in the insurance sector from 25 percent to 50 percent, a lack of transparency regarding the issuance of licenses, as well as the absence of clear appeal procedures hinders foreign investment in the market. Industry reports that the process for an individual or a company to obtain a license to provide a service remains difficult, and limitations on the form of commercial establishment adversely affect some sectors. For example, Russia has not yet amended its legislation to reflect its WTO commitment to remove the limitation on sales of biologically active substances in pharmacies and specialized stores only.

INVESTMENT BARRIERS

Russia has made improving its investment climate a priority, but U.S. and other foreign investors continue to cite issues, such as corruption, which act as a barrier to investment. Russia's foreign investment regulations and notification requirements can be confusing and contradictory, which also has an adverse effect on foreign investment. In addition, notwithstanding an Anti-Corruption Council created in 2008 and significant anticorruption legislation passed in 2011, various internationally-recognized measures of corruption suggest there has been little progress to date. 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 enforcement of the rule of law.

The 1999 Investment Law permits discrimination against foreign investors in a number of areas, including, where necessary, "the protection of the constitution, public morals and health, and the rights and lawful interest of other persons, and the defense of the state." These broadly defined exceptions give Russia considerable discretion in prohibiting or inhibiting foreign investment in a potentially discriminatory fashion. The Investment Law included a "grandfather clause" that stipulates that existing (as of 1999) "priority" investment projects with foreign participation of over 25 percent will be protected from certain changes in the tax regime or new limitations on foreign investment. The law defines "priority" projects as those with a foreign charter capital of more than \$4.1 million and with a total investment of more than \$41 million. However, the lack of corresponding tax and customs regulations means that any protection afforded by this clause is, at most, very limited.

Article 19 of the Mass Media Law (last amended on November 10, 2011) limits investment in Russia's broadcast sector by foreign entities, Russian entities that are more than 50 percent foreign-owned, and Russian citizens holding dual citizenship. The Law also prevents foreigners, stateless citizens, and Russian legal entities that are more than 50 percent foreign owned from establishing television companies and owning shares in television broadcasting companies that broadcast to more than half of Russia's regions or have a potential audience of over half the nation's population. U.S. industry has also raised

concerns over restrictions in the mining and mineral extraction sectors that discriminate against foreign companies, including limits on direct investments, licensing restrictions, and lack of a “stability clause” protecting investors from subsequent changes in legislation.

Russia enacted the Strategic Sectors Law (SSL) in May 2008. The SSL establishes a list of 42 “strategic” sectors in which purchases of “controlling interests” by foreign investors must be preapproved by Russia’s Commission on Control of Foreign Investment. In 2012, amendments to the SSL removed two activities from the list: banks’ activities in cryptography and radiation sources usage. It also reduced the number of circumstances in which companies need to seek pre-merger approval. However, in November 2013, Russian officials proposed a ban on foreign ownership of any property or tracts of land in Russia without prior approval of the Federal Migration Service. While this law appears intended to address illegal immigration, U.S. businesses have argued the law could inhibit legitimate investment if enacted. The Ministry of Economic Development, in cooperation with the Federal Security Service, is currently working on a draft of the law which is still before the Duma.

Privatization

Russia is slowly pursuing steps to privatize state assets, both to increase market forces in the economy and to raise revenue for the federal budget. However, the government maintains a list of 196 companies that are either wholly or partially owned by the Russian state and that cannot be privatized due to their national significance. The government’s privatization plans with respect to other companies is proceeding slowly. An expanded privatization plan through 2017 was approved in August 2011, but has been revised repeatedly to significantly scale back the scope of these privatizations. Notwithstanding these planned privatizations, the government intends to retain controlling stakes in major Russian companies such as Rosneft, Transneft, the Federal Grid Company, Russia Railways, and banking giants Sberbank and VTB. Moreover, in some of the companies to be fully privatized, the state will keep what is referred to as a “golden share,” a nominal holding that allows the state to retain certain veto powers.

While private enterprises are technically allowed to compete with state corporations on the same terms and conditions, in practice, the market is skewed in favor of state corporations. State corporation holding structures and management arrangements (*e.g.*, representatives of state interests as board members) make it difficult for private enterprises to compete. Furthermore, specific legal constructions can result in preferential treatment of state corporations. For example, state corporations have no unified legal framework, being established and operated under different legislation than that which applies to other corporations. Such a case-by-case approach leaves much scope for discretion and lobbying by company insiders at the expense of private enterprises.

Taxes

Russian and U.S. leasing companies have reported that VAT assessed on inputs for exported final products is often not refunded, and that they often must resort to court action to obtain their reimbursements. Leasing companies have reported that VAT refunds on exports are the source of significant fraud, and actions to prevent fraud makes it even more difficult for legitimate exporters to obtain refunds. In addition, the companies have reported that, in some cases, local tax inspectorates have initiated audits and attempted to seize their bank accounts, thus forcing exporters to seek very expensive and time-consuming court enforcement.

U.S. companies have also raised concerns about Russian tax authorities’ scrutiny of payments that cross Russia’s border, but remain, for tax purposes, in the legal structure of the same Russian company. This tax issue has arisen chiefly in two contexts: (1) when a multinational company transfers an employee

temporarily to the company's Russian office from another office outside Russia; and (2) in intra-company payments for the use of intellectual property. Under internationally accepted accounting standards, these normal business practices are handled as an intra-firm payment from one office to the other, or to the headquarters in the case of royalty payments. However, Russian tax inspectors have in the past disputed such expenses as "economically unjustified" and, consequently, not permissible under the Russian Tax Code. In consultation with foreign firms, Russia developed and adopted a new law on transfer pricing that took effect on January 1, 2012. Transfer pricing on domestic transactions will be phased in over three years. For 2013, domestic transactions were subject to transfer pricing regulations if the aggregate annual income from the parties exceeds 3 billion rubles (approximately \$90 million) in 2012, decreasing to 2 billion rubles (approximately \$60 million) in 2013 and decreasing once more to 1 billion rubles for 2014 (approximately \$30 million) and thereafter. There have not been major complaints regarding implementation of this system but experts state that a more accurate picture of the impact of these changes will not be seen until the entirety of the regulations are phased in by the end of 2014.

Automotive Sector

Russia has maintained an investment incentive regime in the automotive sector since 2005 with domestic content requirements and production targets. In 2011, Russia added a second program that imposes conditions that are more stringent and requires much higher domestic production volumes (300,000/350,000 units for each manufacturer as compared with 25,000 units under the original program).

As part of its WTO accession protocol, Russia agreed to limit the domestic content requirement for automobile producers in Russia, which previously required that a certain amount of labor and components be domestically sourced. Russia has also agreed to end the problematic elements of both programs by July 1, 2018 and to begin consultations in July 2016 with the United States and other WTO Members on WTO-consistent measures it may take in this sector.

ELECTRONIC COMMERCE

In response to an announcement by President Putin on December 12, 2013 in support of "streamlining e-commerce," the Russian Ministry of Finance, with support from the Ministry of Economic Development, Russian Post, Federal Customs Service, and the Presidential administration, announced a proposal to limit duty-free online purchases from non-Customs Union online stores from the current €1,000 per month (approximately \$1,375) to €150 per month (approximately \$206) as well as to limit the number of duty-free packages to one per month (compared to no restrictions under current practice). Russian Customs also proposed imposing a 10 percent fee on parcels being imported into Russia as a result of e-commerce.

SAUDI ARABIA

TRADE SUMMARY

U.S. goods exports in 2013 were \$19.0 billion, up 5.7 percent from the previous year. Corresponding U.S. imports from Saudi Arabia were \$51.8 billion, down 6.9 percent. The U.S. goods trade deficit with Saudi Arabia was \$32.8 billion in 2013, down \$4.9 billion from 2012. Saudi Arabia is currently the 19th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Saudi Arabia were \$6.6 billion in 2012 (latest data available), and U.S. imports were \$487 million. Sales of services in Saudi Arabia by majority U.S.-owned affiliates were \$2.5 billion in 2011 (latest data available), while sales of services in the United States by majority Saudi Arabia-owned firms were \$2.3 billion.

The stock of U.S. foreign direct investment (FDI) in Saudi Arabia was \$9.7 billion in 2012 (latest data available), up from \$8.3 billion in 2011. U.S. FDI in Saudi Arabia is concentrated mostly in the nonbank holding companies sector.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Saudi Arabia applies the GCC common external tariff of 5 percent, with a limited number of GCC-approved country-specific exceptions. In November 2012, Saudi Arabia endorsed the second phase of the GCC common external tariff. In doing so, Saudi Arabia agreed to abolish duty rates of 12 percent, 20 percent, and 40 percent for various food products, as well as the 25 percent seasonal duty imposed on imports of some fruits and vegetables. Saudi Arabia now imposes a 5 percent import duty on most imported agricultural and food products. The current GCC tariff schedule allows duty-free importation of 344 food and agricultural products.

Import Prohibitions and Licenses

In Saudi Arabia, the importation of certain articles is either prohibited or requires special approval from the appropriate authorities. Saudi Arabia prohibits the importation of alcohol, pork products, firearms, used clothing, and automobiles and automotive parts over five years old. Special approval is required for the importation of live animals, horticultural products, seeds for use in agriculture, products containing alcohol, chemicals and harmful materials, pharmaceutical products, wireless equipment, radio-controlled model airplanes, natural asphalt, archaeological artifacts, books, periodicals, audio or visual media, and religious materials that do not adhere to the state-sanctioned version of Islam or that relate to a religion other than Islam. Some media products that are imported are subject to censorship.

GOVERNMENT PROCUREMENT

Contractors must subcontract 30 percent of the value of any government procurement, including support services, to firms that are majority-owned by Saudi nationals. An exemption is granted when no Saudi-owned company can provide the goods or services necessary to fulfill the requirements of a tender. Foreign suppliers are also required to establish a training program for Saudi nationals. The Saudi government may favor joint venture companies with a Saudi partner and provide preferential treatment

for companies that use Saudi goods and services. In addition, Saudi Arabia provides a 10 percent price preference for GCC goods for procurements in which foreign suppliers participate.

Foreign companies can provide services to the Saudi government directly without a local agent and can market their services to other public entities through an office that has been granted temporary registration from the Ministry of Commerce and Industry. 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 2003, the Saudi Council of Ministers increased the transparency of government procurement, requiring public availability of procurement information, including the names of the parties, financial value, a brief description, duration, place of execution, and a point of contact.

Most defense procurement is not subject to the general procurement decrees and regulations; instead, tenders are negotiated on a case-by-case basis. For defense sales, U.S. contractors are subject to an offset rate of 40 percent of the total value of the contract and must ensure that at least half of all offsets be direct.

In 2012, the King Abdullah City for Atomic and Renewable Energy (KACARE) announced plans to install 41 gigawatts (GW) of solar technologies by 2032, including 16 GW from photovoltaic technologies and 25 GW from solar thermal. KACARE has announced that the initial procurement round for the solar investment will include voluntary local content requirements (LCRs), with bidders receiving more points for their bid depending on the level of agreed upon domestic content, and that subsequent rounds will include mandatory LCRs.

In its accession to the WTO, Saudi Arabia committed to initiate negotiations for accession to the WTO Agreement on Government Procurement (GPA) once it became a WTO Member. Although Saudi Arabia became an observer to the WTO Committee on Government Procurement in December 2007, it has not begun GPA accession negotiations, stating that it would begin accession when the revised text of the GPA was adopted. With approval of the revised text in December 2011, Saudi Arabia has begun an Arabic translation and review of the text.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The United States continues to carefully monitor the adequacy and effectiveness of IPR protection and enforcement in Saudi Arabia, including the imposition of deterrent level penalties for violations of Saudi copyright law, action to increase the use of legal software within the Saudi government, and adequate protection for patented pharmaceutical products. Saudi Arabia is in the process of restructuring its IPR regime by creating an IPR Commission to handle copyrights, patents, and trademarks under a single entity. Although the organizational structure and responsibilities of this commission are still unclear, many stakeholders in the private and public sectors have expressed optimism that this effort will increase governmental efficiency.

As the six Member States of the GCC explore further harmonization of their IPR regimes, the United States will continue to engage with GCC institutions and the Member States and provide technical cooperation on intellectual property policy and practice.

SERVICES BARRIERS

Insurance

The 2003 Control Law for Co-Operative Insurance Companies requires that all insurance companies in Saudi Arabia be locally incorporated joint-stock companies, with foreign equity limited to 60 percent and a requirement that the remaining 40 percent be sold in the Saudi stock market. The companies must operate on a cooperative or mutual basis, in effect requiring distribution of any profits between policyholders and the insurance company.

Banking

Saudi Arabia limits foreign ownership in commercial banks to 40 percent of any individual bank operation. The 2004 Saudi Capital Markets Law provides for the creation of investment banks and brokerages in Saudi Arabia, with foreign equity limited to 60 percent.

INVESTMENT BARRIERS

Foreign investment is currently prohibited in 16 manufacturing and service sectors and subsectors, including oil exploration, drilling and production, and manufacturing and services related to military activity. All foreign investment in Saudi Arabia requires a license from the Saudi Arabian General Investment Authority (SAGIA), which must be renewed annually or biannually, depending on the sector. While SAGIA is required to grant or refuse an investment license within 30 days of receiving a complete application, bureaucratic impediments arising from SAGIA and other agencies sometimes delay the process. Companies can also experience bureaucratic delays after receiving their license, such as when obtaining a commercial registry or purchasing property. SAGIA has been working to develop an automated system to streamline the process and reduce delays.

Direct foreign participation in the Saudi stock market is generally prohibited, except for GCC citizens. Non-GCC investors are permitted to purchase shares in bank-operated investment funds, though foreign participation in these funds is limited to 10 percent of the total value of the fund. Non-GCC investors can also participate through swap agreements. Equity held by foreign partners in a joint-venture business is limited to 60 percent.

SINGAPORE

TRADE SUMMARY

U.S. goods exports in 2013 were \$30.7 billion, up 0.7 percent from the previous year. Corresponding U.S. imports from Singapore were \$17.8 billion, down 11.9 percent. The U.S. goods trade surplus with Singapore was \$12.9 billion in 2013, an increase of \$2.6 billion from 2012. Singapore is currently the 13th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Singapore were \$12.25 billion in 2012 (latest data available), and U.S. imports were \$4.9 billion. Sales of services in Singapore by majority U.S.-owned affiliates were \$56.3 billion in 2011 (latest data available), while sales of services in the United States by majority Singapore-owned firms were \$8.9 billion.

The stock of U.S. foreign direct investment (FDI) in Singapore was \$138.6 billion in 2012 (latest data available), up from \$118.6 billion in 2011. U.S. FDI in Singapore is primarily concentrated in nonbank holding companies and the manufacturing sectors.

Trade Agreements

The United States-Singapore Free Trade Agreement (FTA) entered into force on January 1, 2004. Exports from the United States increased 85.5 percent between 2003 and 2013, with steady growth in exports of medical devices, machinery, and electronics components. The United States and Singapore meet regularly to review the implementation of the FTA and resolve outstanding trade issues.

Singapore is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 11 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world; expand U.S. exports, which are critical to the creation and retention of jobs in the United States; and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States and Singapore, the TPP negotiating partners currently include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, and Vietnam.

IMPORT POLICIES

Import Licenses and Internal Taxes

Singapore maintains a tiered motorcycle operator licensing system based on engine displacement which, along with a road tax based on engine size, adversely affects U.S. exports of large motorcycles. Singapore also restricts the import and sale of non-medicinal chewing gum. It levies high excise taxes on distilled spirits and wine, tobacco products, and motor vehicles.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In connection with its FTA commitments and obligations under international treaties and conventions, Singapore has developed a generally strong intellectual property rights (IPR) regime, with the second lowest rate of software piracy in Asia. Still, some concerns have been raised by U.S. rights holders about the absence of legislation making the illicit camcording of a film in a theater a criminal offense, limitations of trade secrets protection, the transshipment of infringing goods through Singapore, insufficient deterrent penalties for end-user software piracy, the lack of effective enforcement against online peer-to-peer infringement, and media box piracy (whereby “boxes,” often with capability to play high definition content, are loaded with large quantities of pirated works). U.S. rights holders have noted concerns regarding pirated online content access from Singapore. The Media Development Authority (MDA), a sub-agency of the Ministry of Communications and Information, after consulting on this issue with stakeholders for over a year, issued three recommendations in 2013 to reduce online piracy through: strengthening public education efforts; encouraging publishers to provide more legitimate, affordable and timely digital content sources; and increasing regulatory/enforcement measures. Singapore has yet to implement these recommendations.

SERVICES BARRIERS

Pay Television

In August 2011, MDA implemented new 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/content to offer that content to other pay television companies for their subscribers at similar commercial rates. MDA plans to review the cross-carriage provisions in 2014. U.S. content providers remain concerned about the negative impact these regulations have on private contractual arrangements, innovation in the packaging and delivery of new content to consumers, and investment in the market. The United States will continue to monitor the implementation of this policy, including the impact it may have on content services provided over the Internet.

Audiovisual and Media Services

Singapore restricts the use of satellite dishes and has not authorized direct-to-home satellite television services. MDA licenses the installation and operation of broadcast receiving equipment, including satellite dishes for television reception. Parties who require television services received via satellite need to apply for a Television Receive-Only System License. MDA issues this license only to organizations that need to access time-sensitive information for business decisions. These include financial institutions, embassies and tertiary education institutions. Singapore has cited its high urban density as the rationale for deciding not to adopt satellite infrastructure for home television services, and to opt for nationwide wired networks (cable and optic fiber) to enable home access to television services.

Distribution, importation, or possession of any “offshore” or foreign newspaper must be approved by the government. Singapore has curtailed or banned the circulation of some foreign publications based on perceived defamation of the Singapore government by the publication.

Licensing of Online News Websites

Citing the need to align the regulatory frameworks of online and traditional news platforms, MDA released new guidelines in May 2013 requiring all online news websites that provide regular reports on Singapore and have significant reach to acquire an individual license. Any news website that reports an

average of at least one article per week on Singapore news and current affairs over a period of two months and reaches at least 50,000 unique Internet Protocol addresses in Singapore over a period of two months requires a special license. The licensed sites must also put up a performance bond of \$42,000, similar to that required for niche television broadcasters. The new license requires holders to take down content that breaches certain standards within 24 hours of being notified by the Singaporean government. MDA identified an initial 10 sites as needing the new license in May 2013 and noted the possibility of the Broadcasting Act being amended at a later date to give the Singaporean government powers to apply the new licensing framework on overseas-based news sites targeting the Singaporean market. It is not yet clear how the regulations will impact technology service providers.

Legal Services

U.S. and other foreign law firms with offices in Singapore cannot practice Singapore law or employ Singapore lawyers to practice Singapore law unless they have a “Qualified Foreign Law Practice” (QFLP) license. Singapore issued QFLP licenses to six foreign law firms in 2008 and to four more in 2013, allowing them to practice Singaporean law, except in certain excluded areas such as litigation, family law, and probate. U.S. law firms hold five of the ten QFLP licenses granted.

Banking

Unless they have been awarded Qualifying Full Bank (QFB) privileges, foreign banks and other financial institutions that issue credit cards in Singapore can 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 credit cards foreign banks issue outside of Singapore do not face these restrictions.

The Minister in charge of the Monetary Authority of Singapore (MAS) must approve the merger or takeover of a local bank or financial holding company, as well as the acquisition of voting shares in such institutions above specific thresholds of 5 percent, 12 percent or 20 percent of shareholdings. Singapore has also indicated that, although it has lifted the formal ceilings on foreign ownership of local banks and finance companies, the Singaporean government must approve controllers of local banks.

Cloud Computing Services for Financial Institutions

Despite the acceptance of public cloud computing (*i.e.*, data from multiple customers stored in shared computing facilities) by financial regulators in major markets, MAS has been resistant to approving cloud computing deployments for financial institutions in Singapore. The United States will continue to raise this issue with Singapore, including ways that vendors can demonstrate how they can meet MAS regulatory goals while implementing innovative computing technologies.

Healthcare: Procedural Transparency and Fairness

U.S. stakeholders have expressed interest in greater transparency regarding Ministry of Health (MOH) policies. In particular, U.S. industry is seeking a feedback mechanism and greater clarity regarding MOH’s process for adding drugs to the Standard Drugs List, including timelines for evaluation and specific criteria for inclusion. Medical device manufacturers have urged MOH to accelerate the review periods for approvals of new medical devices in Singapore and to enhance transparency and procedural fairness related to the determination of reimbursement levels.

SOUTH AFRICA

TRADE SUMMARY

U.S. goods exports in 2013 were \$7.3 billion, down 3.4 percent from the previous year. Corresponding U.S. imports from South Africa were \$8.5 billion, down 2.2 percent. The U.S. goods trade deficit with South Africa was \$1.2 billion in 2013, up \$66 million from 2012. South Africa is currently the 36th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to South Africa were \$2.7 billion in 2012 (latest data available), and U.S. imports were \$1.9 billion. Sales of services in South Africa by majority U.S.-owned affiliates were \$5.1 billion in 2011 (latest data available), while sales of services in the United States by majority South Africa-owned firms were \$315 million.

The stock of U.S. foreign direct investment (FDI) in South Africa was \$5.5 billion in 2011 (latest data available), down from \$5.8 billion in 2010. U.S. FDI in South Africa was led by the manufacturing, and wholesale trade sectors.

IMPORT POLICIES

Tariffs

As a member of the Southern African Customs Union (SACU), South Africa applies the SACU common external tariff (CET). In practice, South Africa sets the level of MFN tariffs applied by all SACU countries, and manages all matters related to trade remedies and disputes. South Africa's average MFN duty in 2012 was 7.6 percent. South Africa has preferential trade agreements with the European Union (EU), the Southern Common Market (MERCOSUR), the European Free Trade Area (EFTA), and the Southern African Development Community (SADC). In addition, South Africa is working towards a new free trade agreement, the Tri-Partite FTA (T-FTA) that would include the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA), and SADC. A preferential trade agreement with India remained under negotiation in 2013. South Africa also participated in negotiations for a SADC Economic Partnership Agreement (EPA) with the EU.

U.S. exports face a disadvantage compared to EU goods in South Africa. The EU-South African Trade and Development Cooperation Agreement of 1999 (TDCA) covers a significant amount of South Africa-EU trade. Tariffs for EU imports on TDCA-covered tariff lines average 4.5 percent based on an unweighted average, while the general tariff rates, which U.S. imports face, average 19.5 percent. Key categories in which the U.S. firms face a tariff disadvantage include cosmetics, plastics, textiles, trucks, agricultural exports, and agricultural machinery.

Final phase-in of EU tariff preferences under the TDCA became effective in 2012, and U.S. companies are increasingly impacted by the tariff differential. There is growing concern about their competitiveness, with several companies reporting a real negative impact on their markets. Concerned importers of U.S. products are dealing with the issue in three ways: (1) substituting EU supply chains for U.S. supply chains (primarily larger U.S. multinationals with complex global supply chains); (2) limiting marketing risk in South Africa, such as testing market response to new U.S. imports; or (3) pressing for tariff parity.

The EPA under negotiation between the EU and a number of SADC countries will further erode U.S. export competitiveness in South Africa and the region when it enters into force. The United States

highlights concern about the tariff disparity consistently in bilateral discussions with South Africa, since this disadvantage contrasts the unilateral advantages the United States offers South African imports under the African Growth and Opportunity Act (AGOA). South African authorities have emphasized that they see no way to address this U.S. concern other than through an FTA – something they note was tried and failed in the 2003-2006 U.S.-SACU FTA negotiations.

In September 2013, the South African International Trade Administration Commission (ITAC) increased import duties for whole chickens to its maximum bound rate of 82 percent, and announced import duty increases for other poultry products. South Africa raised the tariffs in response to requests from its domestic industry. In recent years, the South African government has encouraged industry to appeal for increases up to bound tariff rates where a lack of global competitiveness was a concern.

Nontariff Measures

The Department of Trade and Industry (DTI) prohibits specified classes of imports into South Africa by notice in the Government Gazette, unless the products are imported in accordance with a permit issued by the International Trade Administration Commission (ITAC). The ITAC requires importers to apply for permits on used goods, if such goods are also manufactured domestically. Other categories of controlled imports include waste, scrap, ashes, residues, and goods subject to quality specifications. Other often-cited nontariff barriers to trade include customs valuation above invoice prices, requirements for ITAC import permits for products other than used goods, excessive regulation, and unjustified standards and sanitary and phytosanitary measures.

Antidumping Measures

Unwarranted antidumping duties (ADDs) have been in place on imports of frozen bone-in chicken pieces from the United States for thirteen years. South African producers successfully petitioned ITAC to renew the duties for another five-year term, initiating a sunset review completed in 2012 after South African courts ruled the initial review invalid for failing to comply with administrative timelines. The ITAC opened an investigation into alleged U.S. dumping of soda ash in 2013, which resulted in preliminary ADDs. South Africa dropped ADDs against U.S. exports of acetaminophen in 2013 after South African industry ceased production. The United States continues to raise antidumping issues with South Africa, including during meetings of the U.S.-South Africa Trade and Investment Framework Agreement.

GOVERNMENT PROCUREMENT

South Africa uses competitive tenders for government procurement of goods, services, and construction. South Africa's Preferential Procurement Policy Framework Act of 2000 and its implementing regulations created the legal framework and formula for evaluating tenders for government contracts.

The South African government actively uses fiscal policy and its regulatory government tendering framework to fight unemployment. The 2011 Local Procurement Accord (the Accord) commits the government to significantly expand the value of goods and services it procures from South African 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 (or the rand equivalent). This obligation requires the seller/supplier to engage in local commercial or industrial activity valued at 30 percent or more of the value of the imported content of the total goods 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 (*see the section on Investment Barriers for more detail on B-BBEE*).

South Africa is not a party to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The South African government states that it is committed to enforcement of copyright and trademark rights, but challenges remain. The South African government has introduced measures to enhance enforcement of the 1997 Counterfeit Goods Act. The private sector and law enforcement cooperate extensively to stop the flow of counterfeit goods into the marketplace, and the private sector believes that significant progress has been made since 2001. The number of arrests for trading in pirated or counterfeit goods has increased in recent years. South Africa improved enforcement in 2008 with the establishment of the Companies and Intellectual Property Commission, DTI's enforcement unit, and Commercial Crime Courts in several cities. The South African government has an interagency counterfeit division including the DTI, the South African Revenue Service, and the South African Police Service to improve coordination of IPR enforcement. The DTI is also working with universities and other local groups to incorporate IPR awareness into college curricula and training of local business groups.

Despite efforts to improve IPR enforcement, significant concerns persist and monetary losses from counterfeiting and piracy remain high. South Africa is a transit point for counterfeit materials from East Asia and South Asia primarily to neighboring countries. Government and industry cooperation on digital media violations has improved enforcement in that sector; however, cybercrime is becoming an area of increased concern. The government and the private sector are collaborating on a comprehensive response. The U.S. continues to engage with South Africa on intellectual property issues through regular dialogue and extensive education and training. In September 2013, the Cabinet issued for public comment a national intellectual property strategy which proposes changes to all IP laws in an effort to better protect public welfare and enable development.

SERVICES BARRIERS

Telecommunications regulation is divided between the South African Department of Communications (DOC) and the Independent Communications Authority of South Africa (ICASA), the regulator for South Africa's communications, broadcasting, and postal services sectors. ICASA was established under the ICASA Act (2000), which merged the South African Telecommunications Regulatory Authority and the Independent Broadcasting Authority. ICASA receives its funding from DOC.

Telkom is South Africa's leading communications services provider and dominates fixed-line telecommunications services. Formerly, Telkom operated as a monopoly, but Neotel was launched in 2006 as a fixed-line operator. Even though it has a parallel regulatory role, the DOC is the largest shareholder in Telkom with a 39.8 percent stake. DOC expects Telkom to operate as a private company, but reportedly views Telkom as a strategic asset and often influences management decisions. An ICASA proceeding to determine whether ICASA should regulate foreign direct investment in electronic communications has been pending since 2009.

DOC has implemented measures to address some problems facing smaller operators. As a result, more mobile operators may now install their own fixed lines to link cell towers into their networks, Value Added Network Service (VANS) providers may use infrastructure not owned by Telkom, and VANS

providers may offer voice services. Additionally, private telecommunications network operators may sell spare capacity.

VANS providers remain concerned about Telkom's domination of the local market. In 2012, the Competition Tribunal of South Africa fined Telkom ZAR 449 million (\$50.27 million) for abusing its dominance in the telecommunications market from 1999 to 2004. The Competition Tribunal concluded: "Telkom leveraged its upstream monopoly in the facilities market to advantage its own subsidiary in the competitive VANS market," and "Telkom's conduct caused harm to both competitors and consumers, alike, and impeded competition and innovation in the dynamic VANS market."

Broadcasting

ICASA requires local content for satellite, terrestrial and cable subscription services. Foreign ownership of each broadcaster is capped at a maximum of 20 percent.

In 2006, an agreement with the International Telecommunications Union (ITU) committed South Africa to achieve digital migration by June 1, 2015. After this date, the 11.5 million South African households with a television will require a set-top box (STB) for terrestrial broadcasting transmission signals as the analog broadcasting frequencies' exclusivity will be lifted, resulting in signal interruptions. Seven years later, however, there are concerns that South Africa will miss the global deadline. DOC is attempting dual-illumination, a period wherein digital television signals would be broadcast concurrently with analog television signals. During this transition, South Africa needs to convert all of its analog television households to digital STBs. DOC admits it is "desperately behind schedule," but has no clear timeline to achieve digital migration.

Telecommunications operators are frustrated by the migration delays as well. Telecommunications operators have requested access to the 2.6 GHz band and frequencies below 850 MHz, which will be freed by analog to digital migration, to build next generation mobile broadband networks. However, the spectrum cannot be allocated until the analog to digital migration is complete.

INVESTMENT BARRIERS

While South Africa is generally open to greenfield foreign direct investment, merger and acquisition-related foreign direct investment has been scrutinized closely for its impact on job creation and local industry. Private sector and other stakeholders remain concerned about the politicization of South Africa's posture towards this type of investment.

The B-BBEE Codes of Good Practice, promulgated in 2007 and entered into force in 2011, created a certification system that rates a company's commitment to the empowerment of historically disadvantaged people in South Africa. A high rating is particularly important in competition for public tenders, as the B-BBEE scorecard will account for 10 percent of a bid's assessment. However, it also matters informally for branding purposes and in managing client relationships, as a company's score can influence a client's score.

South Africa introduced stricter B-BBEE requirements in October 2013 with amendments to the 2007 act and 2011 codes of good practice. The government hopes an increased focus on enterprise and skill development on the B-BBEE scorecard will produce more transformation of the South African economy. U.S. firms are wary that the changes will reduce their current B-BBEE levels. U.S. firms have struggled to score well on the "ownership" element, particularly when corporate rules prevent the transfer of discounted equity stakes to South African subsidiaries. Previously, they compensated by scoring

higher in other elements, but the new rules introduce penalties for failing to comply in key elements of ownership, management control diversity, enterprise development, and preferential procurement. In addition to ownership, the preferential procurement category requires localization with “Empowering Suppliers,” which could prove challenging to companies importing products or inputs for value chains.

Sectors such as financial services, mining, and petroleum have their own “transformation charters” intended to promote accelerated empowerment within these sectors. As of 2011, the integrated finance, transport, forest products, construction, tourism, and chartered accountancy sectors’ charters had the force of law in South Africa. In 2012, transformation charters were introduced for information and communication technology, property, and agriculture.

ELECTRONIC COMMERCE

The 2002 Electronic Communications and Transactions Act governs electronic commerce in South Africa. The law was designed to facilitate electronic commerce, but it has been criticized as imposing significant regulatory burdens. The law requires government accreditation for certain electronic signatures, takes government control of South Africa’s “.za” domain name, and requires a long list of disclosures for websites that sell via the Internet.

In 2003, the South African Law Reform Commission began considering the need for new data protection legislation. In 2009, it introduced the Protection of Personal Information Bill to the National Assembly. The bill cleared the National Assembly in August 2013, and President Zuma signed the bill in November 2013. It will enter into effect one year after the commencement date, which is expected within the first six months of 2014.

OTHER BARRIERS

Several laws have been enacted in the last decade and a half to increase transparency and reduce corruption in South Africa’s government, although some of the laws suffer from deficiencies. For example, the 2000 Protected Disclosures Act, intended to protect whistleblowers, is limited by a stipulation that a whistleblower is protected only in disclosing information regarding his or her employer; the same protection does not apply if the whistleblower discloses information about an organization with which his or her employer has a contract. In 2013, in a step said to take the government away from greater transparency, South Africa’s Parliament passed a controversial “Protection of State Information Bill” to regulate the classification, protection, and dissemination of state information. The bill has been criticized by academics, civil society groups, international organizations, and the media as limiting transparency and freedom of expression. Critics do acknowledge, however, that the latest version of the bill is vastly superior to the first proposed version, and that many of their recommendations for changes to the bill have been made. While President Zuma returned the bill to Parliament for technical changes, it is expected to become law during 2014, after which it will likely face a Constitutional challenge.

The implementation of transparency and anticorruption law suffers from challenges. South Africa has more than 10 agencies engaged in anticorruption activities, such as the Public Service Commission, the Office of the Public Protector, and the Office of the Auditor-General, that are constitutionally mandated to address corruption as part of their responsibilities. However, high rates of violent crime strain overall law enforcement capacity and make it difficult for South African criminal and judicial entities to dedicate adequate resources to anticorruption efforts. A number of high-level officials were investigated for corruption during 2013, including former Communications Minister Dina Pule. Pule is alleged to have funneled several contracts and government resources to her partner through the International

Communications Technology Indaba (tradeshow). Pule was removed as Minister of Communications but retains her position in Parliament.

Labor Constraints

Companies in many economic sectors experience difficulty in recruiting because of skills shortages and emigration of skilled workers. Businesses also allege certain labor laws are too stringent and limit job creation and expansion. For a number of years, U.S. and other foreign companies have complained about the difficult procedures for obtaining temporary work permits for their skilled foreign employees.

SRI LANKA

TRADE SUMMARY

U.S. goods exports in 2013 were \$314 million, up 40.0 percent from the previous year. Corresponding U.S. imports from Sri Lanka were \$2.5 billion, up 8.6 percent. The U.S. goods trade deficit with Sri Lanka was \$2.1 billion in 2013, up \$105 million from 2012. Sri Lanka is currently the 117th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Sri Lanka was \$102 million in 2012 (latest data available), up from \$94 million in 2011.

IMPORT POLICIES

The government continues to stress the need to promote import substitution policies, which distort the market. Sri Lanka's 2013 and 2014 budgets emphasized the importance of agricultural self-sufficiency and import substitution.

Import Charges

Sri Lanka's main trade policy instrument has been the import tariff. According to the WTO, Sri Lanka's average applied agricultural tariff in 2010 was 25.4 percent, but its bound rates are significantly higher, averaging 50 percent. However, the compounded duty rates for imported agriculture products are routinely between 80 percent and 100 percent of the cost, insurance, and freight (CIF) value. In 2010, Sri Lanka's average applied tariff for nonagricultural goods was 9.2 percent. However, less than 30 percent of Sri Lanka's nonagricultural tariffs are bound under WTO rules.

Sri Lanka's import tariff structure consists of "bands" in which all products covered by a particular band are subject to the same tariff rate. The import tariff structure was simplified in June 2010 by reducing the number of tariff bands from five to four. The current tariff bands are: 0 percent; 7.5 percent; 15 percent; and 25 percent. Tariffs on semi-processed raw material are 7.5 percent, while intermediate product tariffs are 15 percent. Most tariffs on finished products are 25 percent. There continue to be a number of deviations from the four-band tariff policy. Some items are subject to an *ad valorem* or a specific tariff, whichever is higher, and there is intermittent use of exemptions and waivers. Footwear, ceramic products, and agricultural products carry specific tariffs.

In response to large current account deficits in 2011 and 2012, the government took several policy measures to stem import growth. For example, it depreciated the rupee and moved to a flexible exchange rate policy in early 2012. Sri Lanka also increased tariffs on motor vehicles in a bid to curb imports and imposed a 100 percent deposit requirement on motor vehicle imports, requiring importers to pay upfront the full value of motor vehicles at the time of opening letters of credit with commercial banks.

In addition to the import tariff, there are a number of supplementary taxes and levies on imports. Some supplementary taxes on selected products are increased regularly through annual government budgets, most often to protect local industries. For example, the Export Development Board (EDB) levy on biscuits increased from Rs 60 (approximately \$0.51) per kg in 2012 to Rs 80 (approximately \$0.62) per kg in 2013. The tax was increased further to Rs 100 (approximately \$0.76) per kg in 2014. The EDB levy on cheese was increased from Rs 100 (approximately \$0.86) per kg in 2012 to Rs 200 (approximately \$1.56) per kg in 2013 and to Rs 300 (approximately \$2.29) per kg in 2014. The EDB

levy on butter and dairy spreads increased from Rs 100 (approximately \$0.86) per kg in 2012 to Rs 200 (approximately \$1.56) per kg in 2013. The 2014 budget replaced the import tariff and all supplementary taxes on butter and dairy spreads with a special commodity tax of Rs 880 (approximately \$6.70) per kg. In general, the frequent changes—mostly upward—of these taxes and other levies have added unpredictability to foreign exporters' and local importers' cost calculations. Affected products from the United States include fruits, processed/packaged foods, and personal care products.

Other charges on imports include:

- An EDB levy, often referred to as a “cess,” ranges from 10 percent to 35 percent *ad valorem* on a range of imports identified as “nonessential” or competing with local industries. Most of the items are subject to specific duties as well. Also, when calculating the EDB levy, an imputed profit margin of 10 percent is added onto the import price. In some cases, such as biscuits, chocolates, and soap, the levy is charged not on the import price, but on 65 percent of the maximum retail price. Locally manufactured products are not subject to the EDB levy. The government continues to increase the EDB levy, most recently in November 2013, when it increased the EDB levy on a range of items, including dairy products, meat, fruits, vegetables, and confectionary.
- A Ports and Airports Development Levy of 5 percent is applied on most imports. Locally manufactured products are not subject to the Ports and Airports Development Levy.
- When calculating the Value Added Tax (VAT), an imputed profit margin of 10 percent is added on to the import price. Locally manufactured products are also subject to VAT, but not the imputed profit margin. The current VAT rate is set at 12 percent.
- Excise fees are charged on some products such as aerated water, liquor, beer, motor vehicles, and cigarettes. When calculating the excise fee, an imputed profit margin of 15 percent is added to the import price. The excise fee is applied on the price inclusive of other duties. Locally manufactured products are also subject to excise fees.
- A Nation Building Tax (NBT) of 2 percent is applied on most imports.
- As of November 21, 2011, a Special Commodity Levy (SCL) is charged on some imported food items including oranges, grapes, and apples. The SCL is Rs 65 per kg on oranges, Rs 130 per kg on grapes, and Rs 45 per kg on apples. The items subject to the SCL are exempted from all other taxes.
- In November 2011, the government introduced an all-inclusive tax under the EDB levy on imported textiles not intended for use by the apparel export industry, replacing the import tariff, the EDB Levy, the Ports and Airports Tax, the VAT, and the NBT. Currently, this all-inclusive tax is Rs 100 per kg (approximately \$0.95.)
- Apparel imports are subject to a 15 percent import duty, an Rs 75 (approximately \$0.57) per unit EDB Levy, a 12 percent VAT, a 5 percent Ports and Airports Levy, and a 2 percent NBT.

Import Licenses

Sri Lanka requires import licenses for over 400 items at the 6-digit level of the Harmonized Tariff System, mostly for health, environment, and national security reasons. Importers must pay a fee equal to 0.222 percent of the import price with a minimum fee of Rs 1,000 (approximately \$7.60) to receive an import license.

GOVERNMENT PROCUREMENT

Government procurement of most goods and services is primarily undertaken through a public tender process. Some tenders are open only to registered suppliers. Procurement may also be undertaken

outside the normal competitive tender process. The government publicly subscribes to principles of international competitive bidding, but charges of corruption and unfair awards are common. In 2006, Sri Lanka published guidelines and a procurement manual to improve the public procurement process. However, in early 2008, the government disbanded the National Procurement Agency, which it had established in 2004, and shifted its functions to a unit in the Ministry of Finance. A special cabinet-appointed review committee reviews unsolicited development proposals, and this committee has considered the most important infrastructure projects and investment proposals, which occur outside the tender process. These moves have raised concerns about the government's commitment to improve the transparency of procurements.

Sri Lanka is not a signatory to the WTO Agreement on Government Procurement and has indicated it has no plans to join despite its status as an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Although intellectual property rights (IPR) enforcement has improved in Sri Lanka, counterfeit goods continue to be widely available. Local agents of well-known U.S. and other international companies representing recording, software, movie, clothing, and consumer product industries continue to complain that lack of IPR protection is damaging their businesses. Piracy of sound recordings and software is widespread, making it difficult for the legitimate industries to protect their market and realize their potential in Sri Lanka. According to a recent industry-commissioned study, the rate of software piracy in Sri Lanka was 84 percent and the value of pirated software was \$86 million in 2011. With respect to the government sector, the government of Sri Lanka published a policy in 2010 requiring all government ministries and departments to use only licensed software, specifying that licenses can be for either proprietary software or for open source software. This has enabled government organizations to legalize the software they use. However, the government has yet to put systems in place to monitor compliance with this policy.

Redress through the courts for IPR infringement is often a frustrating and time-consuming process. While police can initiate action against counterfeiting and piracy without complaints by rights holders, they rarely do so. In the apparel, software, tobacco, and electronics sectors, however, rights holders have had some successes in combating trademark counterfeiting through the courts.

SERVICES BARRIERS

Insurance

Sri Lanka does not allow the cross-border supply of insurance, with the exception of health and travel insurance. In order to provide all other insurance services to resident Sri Lankans, insurance companies must be incorporated in Sri Lanka. Branch offices are not permitted. The Sri Lankan government requires all insurance companies to reinsure 20 percent of their insurance business with a state-run insurance fund. (The government also requires insurance companies, both local and foreign, to list on the Colombo Stock Exchange by 2016). However, the government is in the process of developing regulations to exempt foreign-owned companies from this listing requirement.

Broadcasting

The government imposes taxes on foreign movies, programs, and commercials to be shown on television, ranging from Rs 25,000 (approximately \$190) for an imported English-language movie to Rs 90,000 (approximately \$690) per half hour of a foreign-language program dubbed in the local language, Sinhala.

Foreign television commercials are taxed at Rs 500,000 (approximately \$3,820) per year, and rates for non-English foreign programming are even higher. Government approval is required for all foreign films and programs shown on television.

INVESTMENT BARRIERS

Although Sri Lanka welcomes foreign investment, there are restrictions in a wide range of sectors. For example, foreign investment is not permitted in certain types of money lending activities, in the coastal fishing sector, and in retail trade for investments of less than \$2 million (or \$150,000 in the case of international brands and franchises). In other sectors, foreign investment is subject to case-by-case screening and approval when foreign equity exceeds 40 percent. These sectors include shipping and travel agencies, freight forwarding, mass communications, deep-sea fishing, timber industries, mining and primary processing of natural resources, and the cultivation and primary processing of certain agriculture commodities. Foreign equity restrictions also apply in the air transportation, coastal shipping, lotteries, and gem mining sectors, as well as in sensitive industries such as military hardware.

Sri Lanka prohibits the sale of public and private lands to foreigners despite the fact that there is no current basis in law for this prohibition. Any investment with over 25 percent foreign equity is treated as “foreign” for the purpose of these measures. The measures do not apply to the purchase of condominium properties above the fourth floor of a building. The government also imposes a 15 percent tax on land and property leased to foreign investors (waived for leases of condominium properties above the third floor of a building); the tax for the entirety of the lease period is due at the time the lease is signed. Although these measures are not yet reflected in current law, the government has instructed land registries to begin enforcing these policies in advance of amendments to the existing law.

In November 2011, the government approved a new law, the Revival of Underperforming Enterprises and Underutilized Assets Act, which allows for the nationalization of assets belonging to 37 companies deemed by the government to be underperforming and not meeting lease conditions. Although many of the companies were defunct, several were operating businesses, including one that was owned by a prominent member of the opposition. The measure was passed under procedures that limited Parliamentary debate to one day. While the Central Bank noted that the enactment of the law was a “one-off” measure, the government subsequently announced plans to retake 25,000 hectares of tea plantation leased land that was not being fully utilized and to acquire abandoned private paddy land. The law significantly increases investor uncertainty regarding property rights in Sri Lanka.

OTHER BARRIERS

Public sector corruption, including bribery of public officials, remains a significant challenge for U.S. firms operating in Sri Lanka. While the country has generally adequate laws and regulations to combat corruption, enforcement is weak and inconsistent. U.S. firms identify corruption as a constraint on foreign investment. In particular, U.S. industry has expressed concern about corruption in large projects and with respect to government procurement.

SWITZERLAND

TRADE SUMMARY

U.S. goods exports in 2013 were \$27.0 billion, up 2.2 percent from the previous year. Corresponding U.S. imports from Switzerland were \$28.3 billion, up 10.1 percent. The U.S. goods trade deficit with Switzerland was \$1.3 billion in 2013, shifting from a surplus of \$718 million in 2012. Switzerland is currently the 14th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Switzerland were \$26.3 billion in 2012 (latest data available), and U.S. imports were \$21.1 billion. Sales of services in Switzerland by majority U.S.-owned affiliates were \$70.4 billion in 2011 (latest data available), while sales of services in the United States by majority Switzerland-owned firms were \$55.5 billion.

The stock of U.S. foreign direct investment (FDI) in Switzerland was \$130.3 billion in 2012 (latest data available), up from \$113.7 billion in 2011. U.S. FDI in Switzerland is led by the nonbank holding companies, manufacturing, wholesale trade, and finance/insurance sectors.

IMPORT POLICIES

Switzerland, along with Norway, Iceland, and Liechtenstein, is a member of the European Free Trade Association (EFTA). However, unlike other EFTA members, Switzerland does not participate in the European Union (EU) single market through the European Economic Area (EEA) accord. According to the WTO, Switzerland's simple average applied tariff is 33.5 percent for agricultural goods and 2.0 percent for non-agricultural goods.

Agricultural Products

Access for U.S. agricultural products is restricted by high tariffs on certain products, preferential tariff rates for other trading partners, and government regulation. Switzerland's tariff schedule is comprised only of specific (non-*ad valorem*) duties. Imports of nearly all agricultural products, particularly those that compete with Swiss products, are subject to seasonal import duties, quotas, and import licensing. Agricultural products that are not produced in Switzerland, such as tropical fruit and nuts, tend to have lower tariffs.

GOVERNMENT PROCUREMENT

Switzerland is a signatory to the WTO Agreement on Government Procurement (GPA), which covers both cantonal and federal procurement. However, since cantons are allowed to implement the GPA independent of federal intervention, disparities in procedures may be found among the cantons which may hamper participation by foreign firms.

In contrast to cantonal and communal practice, federal authorities are not required to inform unsuccessful bidders of the selected tender or give reasons why the successful bidders were awarded the contract.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Although Switzerland generally maintains high standards of intellectual property rights (IPR) protection, U.S. copyright holders have expressed concerns about the subsequent interpretation by prosecutors and

judges of a verdict of the Swiss Supreme Court in 2010, which has significantly diminished the ability of copyright holders to defend their intellectual property from piracy over the Internet. In 2013, Switzerland convened two dialogues on copyright protection and enforcement that the United States supports – a round-table process on the 2010 verdict and the Working Group on Copyright 2012 (AUGR12). On December 6, 2013, the Swiss Federal Council published a final AUGR12 report. The United States looks forward to consulting with Switzerland and interested stakeholders on the contents of that report and combatting copyright piracy generally.

SERVICES BARRIERS

Insurance

The manager of a foreign-owned branch must be a resident in Switzerland and the majority of the Board of Directors of the Swiss subsidiary must have citizenship in an EU or EFTA country. Public monopolies exist for fire and natural damage insurance in 19 cantons and for the insurance of workplace accidents in certain industries.

TAIWAN

TRADE SUMMARY

U.S. goods exports in 2013 were \$25.6 billion, up 5.3 percent from the previous year. Corresponding U.S. imports from Taiwan were \$37.9 billion, down 2.4 percent. The U.S. goods trade deficit with Taiwan was \$12.3 billion in 2013, down \$2.2 billion from 2012. Taiwan is currently the 16th largest export market for U.S. goods.

IMPORT POLICIES

Tariffs

When Taiwan became a WTO Member in January 2002, the authorities implemented tariff-rate quotas (TRQs) on small passenger automobiles and 24 agricultural products. Taiwan subsequently eliminated TRQs for eight agricultural products. On January 1, 2007, in accordance with its WTO commitments, Taiwan made additional tariff cuts and increased TRQ amounts on the remaining products. Beginning in January 2011, Taiwan fully eliminated TRQs on small passenger automobiles. In addition, the commodity tax on small passenger automobiles dropped from 35 percent to 30 percent.

Taiwan maintains Special Safeguards (SSGs) for a number of 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, SSG trigger volumes are relatively low. Over the last few years, Taiwan has applied SSG provisions in several agricultural product categories, including poultry meat, certain types of offal, and milk.

U.S. industry continues to request that Taiwan lower or eliminate tariffs on many goods, including large motorcycles, agricultural products, and soda ash.

Agriculture and Fish Products

Prior to joining the WTO, Taiwan banned or restricted imports of 42 agriculture and fish products. In January 2002, Taiwan eliminated restrictions on the importation of 18 of these products and implemented TRQs on the remaining 24. In October 2002, market access for rice was changed from a minimum market access regime to a TRQ. On January 1, 2005, Taiwan eliminated TRQs on four products of interest to the United States, including chicken meat, poultry offal, pork bellies and pork offal. In February 2005, Taiwan eliminated its sugar TRQ. At the end of 2007, Taiwan phased out TRQs for persimmons, mackerel, carangid, and sardines. Currently, 16 agricultural products still are subject to TRQs.

Beef and Pork

Despite administrative measures implemented in September 2012 that led to improved market access for U.S. beef previously restricted due to ractopamine, the United States remains concerned about Taiwan's other trade practices, including an excessive import licensing regime and box-by-box inspection, affecting U.S. meat exports, including beef offal and pork, as well as remaining market access restrictions on certain beef and all pork products produced using ractopamine. For details, please see the 2014 USTR Report on Sanitary and Phytosanitary Barriers.

Rice

Upon accession to the WTO in 2002, Taiwan committed to lifting the ban on rice imports and opened an import quota of 144,720 metric tons (MT) on a brown rice basis under a “special treatment” regime. Taiwan's annual WTO TRQ is divided into two portions: 35 percent or 50,652 MT for private sector imports and 65 percent or 94,068 MT for public sector imports. The amount allocated to public sector imports is divided by both country of origin and tender type (*i.e.*, the simultaneous buy-sell (SBS) scheme and normal tenders.) The SBS scheme is attractive to U.S. exporters because private importers bear all costs of importing, storing and distributing the rice.

In 2003, based on input from the United States and WTO members, Taiwan implemented a public sector import quota based on a country-specific quota (CSQ) regime, with the U.S. quota of 64,634 MT accounting for the largest share, valued at approximately \$45 million at current world prices. However, in 2007 and 2008, Taiwan rejected all bids for U.S. rice under its WTO CSQ, arguing that high U.S. prices had exceeded Taiwan's ceiling price. U.S. exporters raised concerns that Taiwan's ceiling price mechanism, which is not made public, had arbitrarily set prices lower than the levels bid by U.S. exporters, causing the tenders to fail. Taiwan authorities have not agreed to fill the 2007 and 2008 shortfalls (approximately 80,000 MT on a brown rice basis).

As of March 2014, Taiwan has yet to fulfill their 2013 CSQ purchase obligations. Taiwan notified AIT that 3,000 MT of 2013 U.S. rice under the normal tender would have to be re-tendered as the miller lost his license due to mislabeled rice. But, recent reports suggest an additional 2,000 MT of 2013 rice, allotted under the SBS tender, will also have to be re-tendered. Taiwan has assured AIT that it will fulfill the 3,000 MT normal tender shortfall, but has not acknowledged reports on the additional 2013 tonnage. The United States continues to engage Taiwan on the ceiling price mechanism and ensuring it fulfills its future obligations not based on import licenses issued but on actual import figures.

In 2012, Taiwan authorities unilaterally decided to shift a larger percentage of the U.S. CSQ to SBS tenders. Although the SBS tenders have been working well, U.S. industry is concerned that relatively low default penalties create a situation where a successful bidder can simply walk away from a purchase for any reason, leaving the quota unfilled. In response to U.S. concerns about the adequacy of the performance bond under the SBS scheme, Taiwan replaced the 10 percent bond with a higher-value NT \$2000 (\$66) per ton bond for 2013 rice CSQ imports under the SBS scheme. Nevertheless, the United States is still concerned that the performance bond price may be too low, especially in years with high rice prices. Additionally, included in the March 18, 2013 tender is language effectively allowing the contractor to terminate the contract with full refund of performance bond, should pending regulatory amendments, come into force during the contract performance period. The U.S. Government continues to monitor the situation to ensure that the SBS scheme functions well, so no barriers impede filling all the rice quotas.

Industrial Goods

Distilled Spirits

Differential taxation for domestic and imported distilled spirits has been a contentious issue between Taiwan and a number of its important trading partners in the past, and it was the subject of negotiations during Taiwan's WTO accession process. On September 16, 2010, Taiwan implemented a significant tax reduction on domestic miju rice wine. This tax reduction resulted from the amendment of Taiwan's Enforcement Rules of the Tobacco and Alcohol Tax Act, which created a new subcategory of “cooking rice wine,” that includes miju rice wine, a domestically produced distilled spirit. Prior to this

amendment, the enforcement rules required that “cooking alcoholic products” contain a minimum salt content of more than 0.5 percent of total volume, ensuring that such products would be distinguished from other distilled spirits and not consumed as a beverage. The 2010 amendment categorized cooking wine into two subgroups, one group with a salt content requirement, and the other under “cooking alcoholic products” for products with alcohol content no greater than 20 percent, labeled “exclusively used for cooking.” Based on these specifications, mijiú rice wine under these categories is taxed at NT\$9 (\$0.30) per liter, a much lower tax rate than that applied to non-cooking alcoholic products, NT\$2.5 (\$0.08) per liter per degree (percentage) of alcohol content.

The United States and other trading partners continue to express their strong concerns to the Taiwan authorities that steps should be taken to ensure that the domestic mijiú rice wine will not compete with, or substitute for, like imported alcoholic beverages, and that imported alcoholic beverages should not be taxed at a higher rate than like domestically produced alcoholic beverages.

EXPORT SUBSIDIES

Taiwan provides incentives to industrial firms in export processing zones and to firms in designated emerging industries. Taiwan has notified the WTO of these programs. To increase Taiwan's export competitiveness and spur economic growth, the Ministry of Finance in October 2011 resumed tax rebates for customs duties on certain components and raw materials that are imported into Taiwan and then used to produce goods for export. The program was expanded to cover additional items on January 1, 2013. The rebate currently applies to 1,751 products in categories including electronics, textiles, machinery, chemicals, mineral products, basic metal products, and plastics.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Rights holders continue to express a number of concerns, including as to infringement of copyrighted material on the Internet (including, but not limited to, file sharing and the use of media box hardware that may contain or facilitate the user's access via the Internet to pirated content), illegal textbook copying on university campuses and nearby businesses, inadequate protection for the packaging, configuration, and outward appearance of products (trade dress), end-user piracy of software, cable television signal theft, and trade secret misappropriation. The importation and trans-shipment of counterfeit products is also a problem, as is the collusion of some Taiwan companies in supplying components to factories in China producing “Shanzhai” counterfeits.

While the Legislative Yuan amended the Taiwan Copyright Law in 2009 to require Internet service providers (ISPs) to undertake specific and effective notice-and-takedown actions against online infringers to avoid liability for the infringing activities of users on their networks, the law has not been effectively implemented to date. In 2013, Taiwan Intellectual Property Office (TIPO) put forward, but then rescinded, a proposal to strengthen administrative enforcement against Internet piracy, including provisions that would instruct ISPs to block access to IP addresses and domain names known to host copyright-infringing content. Taiwan authorities have yet to develop an effective response to media box piracy.

The Legislative Yuan amended Taiwan's Trade Secrets Law in January 2013 to provide for greater deterrents and enhanced penalties for trade secrets misappropriation done with the intention of using trade secrets outside of Taiwan. Additional steps should be taken to address the systemic obstacles preventing companies from fully protecting and enforcing against trade secret misappropriation.

SERVICES BARRIERS

Banking Services

Industry has raised concerns that Taiwan's banking regulatory body, the Financial Supervisory Commission (FSC), asked foreign banks operating in Taiwan to surrender their branch office licenses, if they had since established subsidiaries in Taiwan. This demand was contrary to the banks' prior understanding with the FSC that the banks could maintain both forms of operation. In November 2013, FSC indicated that it would allow foreign banks in Taiwan to keep both their subsidiary and branch operations, but asked that foreign banks' branches limit their primary business scope to corporate finance and derivatives services for large companies.

In late 2011, the FSC passed a rule to require foreign subsidiary banks to establish standalone onshore data centers within the next four years for servicing local residents and enterprises, despite concerns raised by foreign banks. U.S. banks and electronic payment service suppliers have grown increasingly concerned as the deadline for implementation nears. FSC officials have argued that offshore, regional data centers neither provide Taiwan customers real time service nor guarantee their information security. FSC has also expressed concerns about its ability to exercise supervision over the operations of offshore data centers and these centers' ability to respond to Taiwan customers' needs during an emergency.

Securities Services

In December 2012, the FSC announced that it would adopt a differential management approach, provide preferential licensing procedures for foreign trust fund companies that meet FSC's localized data storage standards. The Taiwan Central Bank signed a currency settlement MOU with its Chinese counterpart that went into effect February 2013, under which Taiwan securities firms are able to provide RMB-denominated financial products.

Pay Television Services

The Cable Radio and Television Law restricts foreign investment in pay television services to a total equity share of 20 percent for direct investment, or 60 percent for direct plus indirect investment. The National Communications Commission (NCC) announced in July 2012 that it would relax geographic restrictions on cable franchises for new and incumbent operators agreeing to use digital signals. Taiwan's cable digital television (DTV) penetration rate rose from 18.2 percent in September 2012 to 30.9 percent in June 2013, while NCC's target is to reach 100 percent in 2014. However, many experts point to continuing caps of NT\$600 (\$20) on monthly cable television fees as hampering the Taiwan public's access to a broader range and higher quality of programming. The NCC has announced plans to implement "a la carte" DTV service by 2017, which would remove the cap on monthly fees and allow for differential payment by consumers.

INVESTMENT BARRIERS

Taiwan prohibits or restricts foreign investment in certain sectors, including agricultural production, chemical manufacturing, bus transportation, and public social services (including public education, health, child care, sewage, and water services). In June 2012, national treatment was accorded in beer and wine production, pharmaceutical manufacturing, and harbor service operations. Shipping companies registered in Taiwan are subject to a foreign ownership limit of 50 percent. Foreign ownership of Taiwan-registered merchant ships is limited to a 50 percent stake for ships engaged in both domestic and international shipping, increased from a previous 33 percent limit for domestic shipping. For vessels

operating between Taiwan and the PRC, there is no foreign ownership requirement as long as a Taiwan-registered company registers the shipment.

The total direct and indirect foreign ownership limit on wireless and wire line telecommunications firms is 60 percent, including a direct foreign investment limit of 49 percent. Separate rules exist for Chunghwa Telecom (CHT) – the legacy carrier still partially owned by the Ministry of Transportation and Communications. CHT controls 97 percent of the fixed line telecommunications market. For CHT, the cap on direct and indirect foreign investment was raised to 55 percent in December 2007, including a direct foreign investment limit of 49 percent. The total direct and indirect foreign ownership limit on cable television broadcasting services is 60 percent, which includes a 20 percent limit on foreign direct investment.

Foreign ownership in satellite television broadcasting services, power transmission and distribution, piped distribution of natural gas, and high speed railways is limited to 49 percent of the total shares issued. The foreign ownership ceiling on airline companies, airport ground handling companies, forwarders, air cargo terminals, and catering companies is 49.99 percent, with each individual foreign investor subject to an ownership limit of 25 percent. These sectors remain closed to investment from the People's Republic of China. Taiwan allows 100 percent foreign ownership of port facilities, but sets a ceiling of 49.99 percent on the share of investment from the People's Republic of China, which is further restricted to Build-Operate-Transfer projects.

Portfolio Investment

Foreign portfolio investors are required to register and can do so via the Internet. Up to 30 percent of funds remitted for purposes of portfolio investment may be held in money market or other similar instruments. Funds for futures trading, however, must be remitted to Taiwan specifically for that purpose and are segregated from funds remitted for equity investment. The cap on the balance of a foreign investor's New Taiwan Dollar (NTD) omnibus account resulting from profits gained from futures trading in Taiwan is NT\$300 million (\$10 million). If the balance exceeds the limit, the foreign investor is required to convert the NT dollars into U.S. dollars within 5 working days, with the new NTD balance below NT\$10 million (\$0.3 million).

Foreign hedge funds have been permitted to trade in Taiwan's stock market since 2003, but they are subject to Taiwan authorities' close surveillance. Foreign individual investors are subject to an investment limit. Onshore foreign individuals and institutional investors are also subject to annual inward and outward limits of \$5 million and \$50 million respectively.

OTHER BARRIERS

Pharmaceuticals

U.S. industry continues to underscore the need to create a more stable market for pharmaceuticals, including innovative pharmaceuticals, in Taiwan's health care system.

In January 2013, Taiwan implemented the 2nd Generation National Health Insurance (2G NHI) program, which replaced the 1st Generation NHI program launched in 1995. The 2G NHI Act aimed to reduce the NHI program's deficit, as well as introduce more equitability and efficiency into the health insurance system. One of the core elements of the 2013 health system reforms was a two-year pilot program (from January 2013 to December 2014) replacing Biennial Price Volume Surveys (PVS) with a Drug Expenditure Target (DET). While intended to address the gap between pharmaceutical reimbursements

and actual costs, the PVS had led in practice to price unpredictability for pharmaceutical products and had long been of concern to U.S. industry. Under the DET, medical and pharmaceutical industries and Taiwan's Bureau of National Health Insurance (BNHI) would negotiate to set an annual target for pharmaceutical expenditures using the previous year's drug expenses as a baseline and a nominal growth rate to account for increasing costs and demand. Proponents of these reforms hope that they will reduce incentives that create the price gap between reimbursement rates and actual prices paid for the pharmaceutical products, improve the predictability of reimbursement rates, improve reimbursements for breakthrough drugs, and adjust reimbursement mechanisms to more adequately match reimbursement rates to the value of innovative and generic pharmaceutical products. However, important questions about implementation remain, including how Taiwan authorities would respond if the annual expenditure for pharmaceuticals under this program exceeds the target. If Taiwan authorities do not permit the DET to grow at a rate reflecting the needs of Taiwan's patients or even reduce permitted expenditures to make up for years in which spending exceeds the target, there could be significant downward pressure on the prices of pharmaceuticals, potentially leading to lessened availability of innovative pharmaceutical products in Taiwan.

The United States encourages Taiwan to continue to consult with relevant stakeholders in implementing policies that will facilitate the private sector's development of innovative products and improve patients' access to such products.

Medical Devices

The U.S. medical device industry continues to stress its concerns over product license approvals and pricing review mechanisms. A main industry goal had been to simplify the documentation required in the approval process. Taiwan Food and Drug Administration (TFDA) classifies medical devices into Class I, Class II and Class III based on risk level. Class I products require only desk reviews, while Class II and III devices require increasing levels of documentation. TFDA has offered a fast track for Class II product registration by waiving clinical trials, but TFDA continues to require documentation for fast-track approval that is no longer issued by the U.S. Food and Drug Administration (FDA), such as a Certificate for Foreign Government. Moreover, TFDA currently requires both EU and U.S. market clearance documents, and industry believes that only one of the two sets of market clearance documents should suffice.

Self-pay and balance billing are two mechanisms introduced by Taiwan authorities to allow Taiwan patients to have the option of choosing medical devices that are not paid in-full by the government. The Bureau of National Health Insurance (BNHI) promulgated Self-pay Guidelines to hospitals in 2012. Under current practice, BNHI reimburses hospitals with both an operation fee and a procedure fee, with the procedure fee set at 53 percent of the operation fee. The stated goal of this policy is to control hospitals' expenditures on general-use devices. At present, however, BNHI does not provide reimbursement for implanted devices under either fee scheme. Implants, in addition to a range of other commonly used devices not approved for reimbursement, must instead be issued a self-pay code. Industry estimates some 2,000 devices regularly used by hospitals must apply for a self-pay code under the BNHI guidelines. Any devices that fail to obtain a self-pay code are not permitted to be sold in the Taiwan market, and hospitals that ask patients to self-pay for devices without a code are subject to administrative penalties by BNHI.

The balance billing mechanism, introduced in January 2013, allows partial patient self pay for higher end devices or new technologies. BNHI has the authority to introduce a price cap that applies a ceiling on the price a patient will pay on new balance billing items, but has agreed to refrain from doing so for the first two years of implementation. The 2G NHI Act does not require the BNHI to put a ceiling on the amount

of balance billing allowed for a given device, but consumer, patient and employer representatives in a new product and technology price review committee, the Pharmaceutical Benefit and Price Schedule (PBPS) Committee, can request the BNHI to make a price-cap recommendation for specific products. If BNHI's recommendation for or against a cap is not accepted by the PBPS Committee, reimbursement price approval will be delayed. The result would be to delay product launch in the Taiwan market.

U.S. industry and trade officials have pressed for a flexible approach that would reduce such strict limitations on what products may enter the market as self-pay or balance-billing devices, provide Taiwan consumers of advanced medical devices greater flexibility and choice, and provide clear self-payment guidelines to allow earlier access to new devices prior to the establishment of a reimbursement price.

The medical device industry (like the pharmaceutical industry) has proposed suspending the PVS permanently, arguing that it lacks transparency and does not reduce budgetary waste as intended. The medical device industry has expressed concern over reimbursement policies that specify a single purchase price for all medical devices that treat a given indication. This policy does not take into account differences in quality. It therefore effectively subsidizes lower-cost devices while underpaying for more advanced, higher quality devices, thereby discouraging the introduction of these devices into the Taiwan market.

Currently, both pharmaceutical products and medical devices are governed under the Pharmaceutical Affairs Law. In response to industry concerns, TFDA has agreed to establish a separate regulation governing medical devices in the near future.

THAILAND

TRADE SUMMARY

U.S. goods exports in 2013 were \$11.8 billion, up 8.6 percent from the previous year. Corresponding U.S. imports from Thailand were \$26.2 billion, up 0.2 percent. The U.S. goods trade deficit with Thailand was \$14.3 billion in 2013, down \$875 million in 2012. Thailand is currently the 27th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Thailand were \$2.4 billion in 2012 (latest data available), and U.S. imports were \$2.2 billion. Sales of services in Thailand by majority U.S.-owned affiliates were \$4.6 billion in 2011 (latest data available), while sales of services in the United States by majority Thailand-owned firms were \$103 million.

The stock of U.S. foreign direct investment (FDI) in Thailand was \$16.9 billion in 2012 (latest data available), up from \$14.5 billion in 2011. U.S. FDI in Thailand is led by the manufacturing and banking sectors.

IMPORT POLICIES

Tariffs

High tariffs in many sectors remain an impediment to access to the Thai market. While Thailand's average applied most favored nation (MFN) tariff rate was 9.8 percent *ad valorem* in 2011, *ad valorem* tariffs can be as high as 80 percent, and the *ad valorem* equivalent of some specific tariffs (charged mostly on agricultural products) is even higher. Thailand has bound all tariffs on agricultural products in the WTO but only approximately 70 percent of its tariff lines on industrial products. The highest *ad valorem* tariff rates apply to imports competing with locally produced goods, including automobiles and automotive parts, motorcycles, beef, pork, poultry, tea, tobacco, flowers, wine, beer and spirits, and textiles and apparel. About one-third of Thailand's MFN tariff schedule involves duties of less than 5 percent, and almost 30 percent of tariff lines are MFN duty free, including for products such as chemicals, electronics, industrial machinery, and paper.

Thailand has bound its agricultural tariffs at an average of 39.9 percent *ad valorem*, compared with its average applied MFN tariff on agricultural products of 22 percent. Applied MFN duties on imported processed food products typically range from 30 percent to 50 percent, which limits the ability of U.S. exporters of such products to compete in the Thai market. 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 out-of-quota tariff is 70 percent. High tariffs are sometimes applied to products even when there is little domestic production. The type of potato used to produce frozen French fries, for example, is not produced in Thailand, yet imports of these potatoes face a 30 percent tariff. Tariffs on apples are 10 percent, while duties on pears, cherries, citrus, and table grapes range from 30 percent to 40 percent. Application of preferential tariffs as a result of free trade agreements with countries such as China, Australia, and New Zealand has eroded the competitiveness of U.S. products, including agricultural products, in recent years.

Thailand's average bound tariff for non-agricultural products is approximately 25.5 percent. Thailand's applied tariffs on industrial goods tend to be much lower than its bindings, averaging 8 percent in 2011. However, Thailand applies high tariffs in some sectors. For example, Thailand applies import tariffs of

80 percent on motor vehicles, 60 percent on motorcycles and certain clothing products, 54 percent to 60 percent on distilled spirits, and 30 percent on certain articles of plastic and restaurant equipment. Among the range of products on which Thailand charges tariffs of 10 percent to 30 percent are certain audiovisual products, reception apparatus, and other consumer electronics, despite the importance of the electronics sector to its economy. Thailand applies a 10 percent tariff on most pharmaceutical products, including almost all products on the World Health Organization's list of essential medicines.

Nontariff Barriers

Import licenses are required for some products, including certain chemical and pharmaceutical products such as clenbuterol, albuterol, or salbutamol; unfinished garments, parts, or components except collars, cuffs, waistbands, pockets, and cuffs for trousers; worked monument or building stone; used automobiles, including cars, motorcycles and six-wheeled buses having 30 seats or more; certain used diesel engines; machinery and parts that can be used to violate copyrights via digital video and compact discs; intaglio printing machines and color copier machines; waste and scraps of plastic; chainsaws and accessories; fish meal with protein content less than 60 percent; caffeine; and potassium permanganate. Imports of used motorcycle parts, medical devices, and gaming machines are prohibited. Import licenses for used automobiles and used motorcycles are granted only for imports intended for re-export or for individual, non-commercial use. Imports of certain minerals, arms and ammunition, and art objects require special permits from the relevant ministries.

Although Thailand has been relatively open to imports of feed ingredients, including corn, soybeans, and soybean meal, U.S. industry has raised concerns about requirements for feed products containing dairy ingredients that it considers excessively burdensome. Thailand maintains tariff-rate quotas (TRQs) on some products of export interest to the United States, including non-fat dry milk and corn that it administers in a nontransparent manner. Thailand imposes domestic purchase requirements on importers of several TRQ products, including soybeans and soybean meal. Thailand also maintains a limited import window for its corn TRQ.

Price Controls

Thailand's government retains authority to control prices or set *de facto* price ceilings for selected goods and services, including staple agricultural products (such as sugar, pork, cooking oil, condensed milk, and wheat flour), liquefied petroleum gas, medicines, sound recordings, and student uniforms. Price control review mechanisms are nontransparent. In practice, Thailand's government influences prices in the local market through its control of state monopoly suppliers of products and services, such as in the petroleum, aviation, and telecommunications sectors.

Excise Taxes

Excise taxes are high on some items such as unleaded gasoline, beer, wine, and distilled spirits. When import duties, excise taxes, and other surcharges are calculated, the cumulative duty and tax burden on imported spirits and wines range from 300 percent to 600 percent. U.S. industry has expressed concern that the current excise tax structure imposes higher taxes on imported spirits than on locally-produced white spirits.

Excise taxes on automobiles in Thailand are based on various vehicle characteristics, such as engine size, weight, and wheelbase. In July 2004, Thailand revised its excise tax structure, but the tax calculation remains complex and heavily favors domestically-manufactured vehicles. Excise taxes on passenger vehicles range from 30 percent to 50 percent, while pickup trucks, mostly produced in Thailand, are taxed

at a rate of 3 percent. However, small passenger cars using E-20 gasoline and “eco” cars face reduced excise taxes of 25 percent and 17 percent, respectively.

Customs Barriers

The United States continues to have serious concerns about the lack of transparency in Thailand's customs regime and the significant discretionary authority exercised by Customs Department officials. The Customs Department Director General has the authority and discretion to increase the customs value of imports for reasons that are not authorized by the WTO Agreement on Customs Valuation. The United States has raised concerns with Thailand's government regarding this authority and has urged Thailand to eliminate this practice. The U.S. Government and industry also have expressed concern about the inconsistent application of Thailand's transaction valuation methodology and reports of repeated use of arbitrary values by the Customs Department. In addition, overly punitive penalties and the threat of criminal prosecution over minor or technical issues in Customs import documentation are significant concerns for importers.

The U.S. Government and exporters continue to urge the Customs Department to implement overdue reforms, including publishing proposals for changes in customs laws, regulations, and providing notifications and allowing sufficient time for comments on these proposals. Additional concerns involve the failure to publish customs rulings and the lengthy appeals process for these rulings, both of which create considerable uncertainty for importers.

U.S. companies also continue to report serious concerns about corruption and the cost, uncertainty, and lack of transparency associated with the penalty/reward system. This system creates conflicts of interest for customs officials and encourages customs investigations for personal financial gain. In 2009, Thailand's government proposed a series of reforms to its customs laws and procedures that were to be sent to Thailand's Parliament. However, the proposed legislation stalled and must be reintroduced to Parliament in order for it to be considered.

GOVERNMENT PROCUREMENT

A specific set of rules, commonly referred to as the Prime Minister's Procurement Regulations, governs public sector procurement for ministries and state-owned enterprises. While these regulations require that nondiscriminatory treatment be accorded to all potential bidders and open competition be applied in all procurements, state enterprises and ministries typically apply additional procurement policies and practices that are inconsistent with these requirements. Preferential treatment is provided to domestic suppliers, including subsidiaries of U.S. firms registered as Thai companies, through an automatic 7 percent price advantage over foreign bidders in evaluations in the initial bid round.

If corruption is suspected during the bidding process, government agencies and State enterprises reserve the right to accept or reject any or all bids at any time and may also modify the technical requirements. This allows considerable leeway for government agencies and State-owned enterprises to manage procurements, while denying bidders recourse to challenge procedures. Foreign businesses have frequently alleged that Thailand's government makes changes to technical requirements for this purpose during the course of procurements.

Despite an official commitment to transparency in government procurement by Thailand's government, U.S. companies and the Thai media have reported allegations of irregularities. Arbitration clauses included in concessions and government contracts require cabinet approval and are considered on a case-by-case basis. Complaints may be made in administrative and judicial courts governed by Thai laws.

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

SUBSIDIES

The Thai government's price support programs covering the domestic rice industry result in substantial government-owned stockpiles of rice (approximately 15 million to 16 million metric tons of rice). U.S. rice exporters have expressed concern that these stockpiles are subsequently released onto global markets, depressing prices to below the cost of acquisition.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Thailand was again listed on the Priority Watch List in the 2013 Special 301 Report. The United States recognizes the Thai government's continuing efforts to strengthen intellectual property rights (IPR) protection and enforcement including through the establishment of a National Intellectual Property Center of Enforcement (NICE). However, the United States remains concerned about the IPR regime, in particular with respect to widespread copyright piracy and trademark counterfeiting, including recent increases in optical disc piracy and illegal camcording and growing challenges in the areas of Internet, cable, and signal piracy. The United States continues to encourage Thailand to enact proposed legislation to amend its copyright law to implement the WIPO Internet Treaties, address landlord liability for infringement, take sustained and effective action against illegal camcording, and enhance the authority of Thai Customs to take enforcement actions *ex officio*. The United States also continues to urge Thailand to take enforcement action against widespread piracy and counterfeiting in the country, and to impose sentences that would deter potential offenders.

Another area of U.S. concern is the lack of transparency and opportunities for stakeholders to be included meaningfully in IPR policy discussions taking place at the Ministry of Public Health. The United States will continue to encourage Thailand to consult and engage in a meaningful and transparent manner with all relevant stakeholders, including IP rights holders, as it considers ways to promote access to medicines, use of generics, and a patent system that promotes the development of new, life-saving drugs.

SERVICES BARRIERS

Audiovisual Trade Barriers

The Motion Picture and Video Act gives the Film Board the authority to establish ratios and quotas against foreign films. Foreign ownership and investment in terrestrial broadcast networks is prohibited.

Telecommunications Services

Thailand has taken steps to reform its telecommunications regulatory regime, but significant obstacles to foreign investment remain. Despite capping foreign equity at 20 percent in its provisional 1997 WTO commitments, Thai law allows foreign equity up to 49 percent in basic telecommunications service firms and higher levels for providers of value-added services that do not own their own telecommunications network, such as Internet service providers, audio text providers, and resale service providers (prepaid calling cards). Thailand is delinquent, however, in revising its WTO schedule, as it committed to do in 1997, to reflect both these higher foreign equity limits and the pro-competitive regulatory measures it subsequently enacted.

In 2011, Thailand adopted regulations to restrict "foreign dominance" in telecommunications. The regulations prohibit foreign ownership beyond 49 percent and look beyond traditional accounting methods for classifying shareholdings. Although the regulations were modified in 2012, the criteria by

which foreign dominance is determined remain unclear and have prompted concern that implementation of the regulations will be inconsistent and nontransparent. U.S. and other foreign telecommunications companies also have expressed concern that the regulations may be extended to other telecommunications businesses or applied to other industries.

Other issues in the telecommunications sector include the phasing-out of the concession contracts of the State-owned TOT and CAT Telecom; preferences accorded to TOT and CAT with respect to spectrum; the privatization of TOT and CAT; and enforcing the interconnection obligations of these two operators.

Legal Services

U.S. investors may own law firms in Thailand if they enter into commercial association with local attorneys or local law firms, but U.S. citizens and other foreign nationals (with the exception of “grandfathered” non-citizens) may not provide legal services. In certain circumstances, foreign attorneys can obtain a limited license entitling them to offer advisory services in foreign and international law.

Financial Services

Foreign banks can open branches, subsidiaries, or representative offices subject to licensing requirements, and the number of licenses for branches and subsidiaries is limited. In practice, foreign banks’ only channel to enter the market is by acquiring shares of existing domestic financial institutions, and the 2008 Financial Institutions Business Act limits such investments to 25 percent, although the Bank of Thailand has the authority to raise the foreign ownership limit in a local bank from 25 percent to 49 percent on a case-by-case basis. The Act also allows the Minister of Finance, with a recommendation from the Bank of Thailand, to authorize foreign ownership above 49 percent if deemed necessary to support the stability of a financial institution or the overall financial system during an economic crisis.

Since March 2010, existing foreign bank branches have been permitted to open two additional branches in Thailand without having to meet additional capital requirements, except under a temporary expansion program in 2012 that permitted up to 20 branches and 20 off-premise ATMs.

In 2012, the Thai Securities and Exchange Commission (Thailand SEC) began to grant licenses to new domestic and foreign securities companies that meet Thailand SEC requirements. Securities firms with foreign equity participation greater than 49 percent are required to obtain permission from the Ministry of Commerce under Annex 3 (21) of the Foreign Business Act in order to supply non-brokerage services, such as securities underwriting, securities dealing, investment advisory services, mutual fund management, and private fund management. Various ownership structures are allowed, including 100 percent Thai or foreign ownership, strategic foreign partnerships, joint ventures between Thai and foreign companies, or bank affiliate status.

Restrictions on foreign investment and ownership in the insurance sector have been relaxed but barriers remain. Under the 2008 amended Life and Non-Life Insurance Acts, foreign investors are limited to a 24.99 percent equity stake in existing insurance firms and may only hold up to 25 percent of board director seats. The Insurance Commission may, as empowered by its board of directors, approve an increase of foreign shareholding up to 49 percent on a case-by-case basis if the company is financially sound with a good reputation, has a good track record of business performance, can demonstrate its business strength and contributions to the insurance industry, and has a solid business plan. The Insurance Commission must also approve the company directors. In cases where domestic insurance companies face financial problems that place insured members or the general public at risk, the Minister

of Finance may further relax ownership restrictions upon recommendation by the Insurance Commission, within certain limits.

Accounting Services

Foreigners are permitted to own up to 49 percent of most professional services companies, including accounting, through a limited liability company registered in Thailand. Foreigners cannot be licensed as Certified Public Accountants, however, unless they pass the required examination in the Thai language, are citizens of a country with a reciprocity agreement, and legally reside in Thailand. Foreign accountants may serve as business consultants.

Postal and Express Delivery Services

Private express delivery companies must pay postal “fines” and penalties for delivery of documents in Thailand. These fines amount to an average of 37 baht per item (slightly more than \$1) for shipments that weigh up to two kilograms. Thailand also imposes a 49 percent limit on foreign ownership in land transport (trucking).

INVESTMENT BARRIERS

The Foreign Business Act (FBA) lays out the overall framework governing foreign investment in Thailand. Under the FBA, a foreigner (defined as a person or company of non-Thai nationality or a company in which foreign ownership accounts for 50 percent or more of total shares) needs to obtain an alien business license from the relevant ministry before commencement of business in a sector restricted by the FBA. Although the FBA prohibits majority foreign ownership in most sectors, U.S. investors are exempted pursuant to the United States-Thailand Treaty of Amity and Economic Relations (AER). Under the AER, Thailand may prohibit U.S. investment only in the following areas: “communications, transportation, fiduciary functions, banking involving depository functions, the exploitation of land or other natural resources, and domestic trade in indigenous agricultural products.” In all other sectors, Thailand must accord U.S. investors national treatment in respect of the establishment and acquisition of interests in enterprises. This obligation does not extend to “the practice of professions, or callings reserved for Thai nationals.”

Following an announcement in 2012 on the development of new guidelines for inspecting firms with foreign shareholders under the FBA, the Department of Business Development now may review the percentage of shareholdings, voting rights, administrative power, source of funds and investment capital, dividend payments, and financial transactions when it deems such review warranted.

OTHER BARRIERS

U.S. stakeholders have expressed concern that processes for revising laws and regulations affecting trade and investment lack consistency, transparency, and broad stakeholder engagement.

In the pharmaceutical sector, the Government Pharmaceutical Organization, a State-owned entity, is not subject to Thailand’s Food and Drug Administration licensing requirements on the production, sale, and importation of pharmaceutical products and is exempt from rules against anticompetitive practices. Thailand’s government established a National List of Essential Drugs (NLED) for procurement and dispensing at government hospitals that uses median pricing and reimbursement schemes that exclude innovative medicines from listing under government health plans. U.S. stakeholders have expressed concerns about the lack of transparency and due process for decisions on which drugs to include in the

NLED and other issues. U.S. stakeholders also have expressed serious concerns regarding the uncertain business climate following Thai Cabinet-level resolutions that cite compulsory licensing as an acceptable cost reduction method for health care and the issuance of policies that appear to favor local generic drug producers over foreign producers.

Thailand bans all motorcycles from highways, even though heavyweight motorcycles are designed for highway use, most countries accept their use, and many traffic studies demonstrate there is no underlying safety rationale for such bans.

The 2007 Thai Constitution contains provisions to combat corruption, including enhancement of the status and powers of the National Anti-Corruption Commission (NACC), which is independent from other branches of government and is thus unique among Thai bodies aimed at countering corruption. Persons holding high political office and members of their immediate families are required to disclose their assets and liabilities before assuming office, every three years while in office, upon leaving office, and for one year after leaving office. Moreover, a law regulating the bidding process for government contracts defines actionable corruption offenses and increases penalties for violations. Despite these steps, corruption continues to be a serious concern in Thailand.

While the NACC is the primary constitutional body vested with powers and duties to counter corruption in the public sector, several different agencies have jurisdiction over corruption issues, and clear jurisdictional responsibilities and differing bureaucratic structures mean their actions are not always complementary. Investigative and prosecutorial capacity is limited and Thai laws focus predominantly on abuse of office as opposed to financial or asset-related malfeasance. The latest version of Thailand's anti-money laundering law provides improved supervisory powers to monitor and regulate the illegal flow of money through Thai financial institutions, but Thai officials reportedly have not been provided the training necessary to implement the law. Anticorruption mechanisms continue to be employed unevenly, and the lack of transparency in many government administrative procedures facilitates corruption.

TURKEY

TRADE SUMMARY

U.S. goods exports in 2013 were \$12.1 billion, down 3.6 percent from the previous year. Corresponding U.S. imports from Turkey were \$6.7 billion, up 6.0 percent. The U.S. goods trade surplus with Turkey was \$5.4 billion in 2013, a decrease of \$831 million from 2012. Turkey is currently the 26th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Turkey was \$6.0 billion in 2012 (latest data available), up from \$4.9 billion in 2011. U.S. FDI in Turkey is led by the manufacturing and wholesale trade sectors.

IMPORT POLICIES

Tariffs and Quantitative Restrictions

Turkey applies the European Union's (EU) common external customs tariff to third-country nonagricultural imports (including those from the United States), although it exempts from duties nonagricultural products imported from the EU and a number of other countries (in accordance with customs union and free trade agreements, respectively, that it has concluded with those trading partners).

Turkey continues to maintain high tariff rates on many imported food and agricultural products. Tariffs on fresh fruits range from 15.4 percent to 145.8 percent. Tariffs on processed fruit, fruit juice, and vegetables range between 19.5 percent and 130 percent. The Turkish government also levies high tariffs, excise taxes, and other domestic charges on imported alcoholic beverages that increase wholesale prices by more than 200 percent.

U.S. exporters of rice, dried beans, pulses, sunflower seeds, and wheat have reported concerns with valuation of their products by Turkish customs authorities.

Import Licenses and Other Restrictions

Import licenses are required for products that need after-sales service (*e.g.*, photocopiers, advanced data processing equipment, and diesel generators) and for some agricultural products. 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. U.S. companies also frequently find Turkish documentation requirements affecting food imports to be onerous, inconsistent, and non-transparent, resulting in shipments being held up at port.

Turkey's efforts to harmonize its national law on food safety with EU legislation have at times resulted in regulatory requirements and enforcement actions that are not transparent. Turkey has frequently implemented changes to its requirements without notification or consultation with trading partners, resulting in additional costs to exporters. Moreover, U.S. companies can experience difficulties certifying compliance with Turkish standards that are modeled after, but not entirely consistent with, EU standards.

The Turkish government has taken a number of steps to liberalize the spirits and tobacco markets – including completing the privatization of the state-owned alcoholic beverage company and the state-owned tobacco company, as well as permitting some imports by private firms of wine and alcoholic

beverages. However, sales of imported products in these sectors have been inhibited by inordinately high tariffs and special tax treatment in some cases. New Turkish alcohol regulations implemented in 2013 include a requirement for the label, “Alcohol is Not Your Friend.” The international business community has expressed concern that the label lacks scientific rationale.

GOVERNMENT PROCUREMENT

Turkey is not a signatory to the WTO Agreement on Government Procurement; however, it is an observer to the WTO Committee on Government Procurement.

The Turkish public sector gives some preference in procurement tenders to Turkish products. For procurement of goods and services, Turkish government contracting authorities may insert provisions into tender documents that restrict foreign companies’ participation in public procurement. Also, domestic bidders are allowed a price advantage up to 15 percent higher than foreign bidders, as long as the procuring Ministry confirms the goods and services receiving such preference are domestic in origin.

Although Turkish law requires competitive bidding procedures, U.S. companies have complained that Turkey’s procurement processes can be lengthy and overly complicated. One of the problems they have identified is the requirement to use model contracts, which some Turkish government procuring agencies interpret as not being subject to modification. When model contracts contain non-germane financial requirements or technical specifications, U.S. companies can find it difficult to formulate proposals fully responsive to procuring agencies’ requirements.

Turkish military procurement policy generally mandates including offset requirements in procurement specifications. Since the offset guidelines were modified in 2005 to encourage localization commitments regarding foreign direct investment and technology transfers, U.S. companies have won few new commercial defense sales. Some U.S. companies, in fact, have declined to submit bids. In 2014, the Turkish Parliament is expected to consider an omnibus bill that would allow the Ministry of Science, Industry and Technology and the Ministry of Health to implement localization requirements (offsets) in civilian government procurement tenders.

Other requirements to which companies object include those related to *force majeure*, liability, and requirements for technical data packages and the grant of certain licenses at the time of submission (prelicensing).

EXPORT SUBSIDIES

Turkey employs a number of incentives to promote exports, although programs have been scaled back in recent years to comply with EU directives and WTO commitments. Export subsidies ranging from 5 percent to 20 percent of a product’s export value are granted to exports in 16 agricultural or processed agricultural product categories. These subsidies take the form of tax credits and debt-forgiveness programs, and are paid for by taxes on exports of primary products such as hazelnuts and leather. The Turkish Grain Board generally sells domestic wheat at world prices (which are well below domestic prices) to Turkish flour and pasta manufacturers in quantities based upon their exports of flour and pasta.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Turkey remained on the Watch List in the 2013 Special 301 Report. Turkish efforts to protect and enforce intellectual property rights (IPR) have been characterized by the same pattern in recent years: incremental but encouraging progress on public awareness and training, and a variety of law enforcement

efforts (led by the Ministry of Culture and Tourism, the Ministry of Customs and Trade, and the Turkish National Police). However, serious problems remain with both the export and transshipment of counterfeit goods, as well as online piracy. The Turkish Patent Institute has drafted amendments to the patent law; these amendments are expected to be voted on by the Turkish Parliament in 2014. The Ministry of Culture and Tourism has also drafted amendments to the copyright law; once the draft is finalized, it will be submitted to the Prime Ministry for review before being sent to the Parliament.

SERVICES BARRIERS

There are restrictions on establishment in some sectors, including financial services, legal services, and mining. In the area of professional services, Turkish citizenship is required to practice as an accountant or certified public accountant or to represent clients in Turkish courts.

INVESTMENT BARRIERS

Energy Sector

Turkish law calls for a liberalized energy market in which private firms are able to develop projects with a license obtained from the Energy Market Regulatory Authority, an independent regulatory body. The state electricity utility has been unbundled into power generation, transmission, distribution, and trading companies. All 21 regional distribution companies have been fully privatized.

The Turkish government has continued to privatize generation facilities over the last decade. Turkey's electricity demand growth recently has outpaced overall economic growth by an average of 2 percent per year, and much of this demand growth has been met by new private sector investment. Currently, Turkey's total installed capacity is 64,000 MW. Private sector companies have 65 percent of the total installed capacity, including build-own-transfer (BOT) and build-own-operate (BOO) power plants. Of a total power-generation capacity of 24,000 MW still owned by the state, 15,000 MW is slated to be privatized by 2016. U.S. companies have raised concerns with Turkey's use of local content requirements as a condition for foreign companies' receipt of certain investment incentives in the renewable energy sector.

Liberalization in the natural gas sector has faced delays. The state pipeline company, BOTAS, remains dominant in gas importation. Despite legislation requiring a phased transfer of 80 percent of its gas purchase contracts to the private sector by the end of 2009, BOTAS still controls over 75 percent of such contracts.

The Turkish government has introduced an amendment to the natural gas market law which will be considered by Parliament in 2014. According to the draft amendment, BOTAS would be broken up into three different companies charged with transportation, trading, and storage, respectively, and the timetable for transferring BOTAS contracts to the private sector would be extended. Natural gas distribution in Turkish cities is dominated by the private sector.

The Turkish government approved a new Petroleum Law in May 2013. This new law provides greater investment incentives and protections for private, including foreign, investors than was available previously.

Real Estate

Foreign ownership of real estate in Turkey has long been a contentious issue. In May 2012, the Turkish Parliament passed Law 6302 amending the existing title deed law. This amendment increased the amount of land that foreign individuals can own from 2.5 acres to 12 acres. No foreign individual may own more than 10 percent of the land in any district. There are no limits on the amount of land that can be owned by foreign companies with a legal presence in Turkey, so long as the land is being used in accordance with their business activities.

ELECTRONIC COMMERCE

The Information and Communication Technologies Authority (BTK), which is affiliated with the Ministry of Transportation, Maritime Affairs, and Communications, is responsible for enforcing bans on Internet content determined by Turkish courts to be offensive. This has on many occasions led to BTK blocking access for all consumers to various Internet-based service providers, including U.S.-based suppliers. On February 6, 2014, the Turkish Parliament passed legislation that included an amendment to expand the government's authority to restrict Internet access. The amendment has attracted opposition from a wide range of journalistic freedom advocates and business interests.

OTHER BARRIERS

Corruption

Turkey has ratified the OECD anti-bribery convention and passed implementing legislation that makes bribery of foreign and domestic officials illegal and no longer tax-deductible. Despite this, many foreign firms doing business in Turkey perceive corruption of some government officials and politicians to be a problem.

The judicial system is also perceived by many observers to be susceptible to external influence and to be somewhat biased against foreigners.

Taxes

In January 2014, Turkey raised its special consumption tax to between 45 percent and 145 percent on all motor vehicles based on engine size. Previously the rate range was 37 percent to 130 percent. This tax has a disproportionate effect on automobiles imported from the United States. The government also increased already high taxes on mobile phones, cigarettes, and alcohol.

Corporate Governance

According to the OECD, Turkey's overall corporate governance outlook is positive because regulators have already adopted, or are introducing, high quality corporate governance standards (including audit standards). Transparency has improved significantly. However, the OECD notes that Turkey needs to ensure that related-party transactions and self-dealing are better controlled, as well as more fully disclosed. Furthermore, Turkey should better protect minority shareholders and promote the role that corporate boards can play in overseeing management and controlling shareholders.

Pharmaceuticals

Pharmaceutical industry sales have been severely affected by Turkish government price controls spurred by budgetary overruns, as well as an awkward, burdensome reimbursement system. The Turkish Ministry of Health (MOH) and the Turkish Ministry of Labor and Social Security (MLSS) both play important roles in pharmaceutical pricing. The MOH sets the maximum price that can be charged for medicines, and the MLSS negotiates pharmaceutical bulk prices for products that are distributed through Turkey's national health care system. In 2009, the MOH negotiated a protocol with the industry that allowed for a gradual increase in pharmaceutical spending each year through 2012. Since that time, MOH and MLSS have asked for and been granted additional discounts by the companies, and currently, Turkey's discount regime is among the highest in the world.

Other countries are now using Turkey for reference pricing and thus beginning to demand price discounts similar to those negotiated by the Turkish MLSS. This has led some U.S. companies to consider ceasing to launch new products in Turkey.

U.S. companies also suffer from an exchange rate issue. In 2009, they negotiated with the MOH to sell their products using a 1.95 TL = 1 Euro exchange rate. Since 2009, the Turkish Lira has depreciated significantly against the Euro, with the current exchange rate at 2.95 TL = 1 Euro. The government of Turkey agreed in 2009 to adjust the exchange rate if it went up or down by over 15 percent compared to the 2009 baseline. The exchange rate shift exceeded 15 percent of the baseline in 2011, but the Turkish government has thus far provided no relief.

Effective March 2010, the MOH began to require that pharmaceutical imports receive a Good Manufacturing Practices (GMP) inspection certificate issued by the MOH before applying for market authorization in Turkey. Although the MOH is building its GMP inspection capacity, the process continues to move slowly, and some U.S. manufacturers report that this effectively is closing the Turkish market to the registration of some new innovative drugs. The Turkish government has considered allowing parallel processing of GMP inspections and market authorization applications, in order to expedite market entry for pharmaceutical products, but it has been slow to announce adoption of such parallel processing.

UKRAINE

TRADE SUMMARY

U.S. goods exports in 2013 were \$1.9 billion, down 0.7 percent from the previous year. Corresponding U.S. imports from Ukraine were \$1.0 billion, down 23.3 percent. The U.S. goods trade surplus with Ukraine was \$888 million in 2013, an increase of \$301 million from 2012. Ukraine is currently the 63rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ukraine was \$840 million in 2012 (latest data available), up from \$690 million in 2011.

The United States-Ukraine Trade and Investment Cooperation Agreement

The United States and Ukraine signed a Trade and Investment Cooperation Agreement (TICA) on April 1, 2008, establishing a forum for discussion of bilateral trade and investment relations. The TICA established a joint United States-Ukraine Trade and Investment Council (TIC), which addresses a wide range of trade and investment issues, including market access, intellectual property rights protection, value-added tax issues, and specific business disputes. The TIC seeks to increase commercial and investment opportunities by identifying and working to remove impediments to trade and investment flows between the United States and Ukraine. The TIC last met in July 2012. At that meeting, the chairs established the Trade Experts Group (TEG), a working-level government-to-government mechanism to discuss impediments to increased trade and investment between Council meetings. The first TEG meeting was held on February 5, 2013.

IMPORT POLICIES

Tariffs/Customs

U.S. exports are subject to Ukraine's most favored nation (MFN) applied tariff rate. The average applied rate for imported goods is 4.5 percent. For agricultural goods, it is 9.5 percent, while for industrial goods, the average applied rate is currently 3.67 percent. Ukraine applies preferential tariff rates to imports from its 12 FTA partners and certain Commonwealth of Independent States (CIS) countries. Most MFN customs tariffs are levied at *ad valorem* rates, and only 0.9 percent of tariff lines (down from 5.97 percent prior to Ukraine's WTO accession) are subject to specific rates of duty. These specific rates apply primarily to agricultural goods that compete with agricultural goods produced in Ukraine, such as grains, sugar, and vegetables, including carrots and potatoes.

On September 12, 2012, Ukraine notified the WTO that it intends to renegotiate more than 350 tariff bindings on key agricultural and industrial products under Article XXVIII of the GATT 1994. If Ukraine follows through with its proposed action, it is likely to have negative systemic implications for the multilateral trading system. More than 125 WTO Members, including the United States, raised serious concerns about Ukraine's proposed action, and the U.S. Government has repeatedly urged Ukraine not to pursue it. In 2013, Ukraine did not take any steps to implement its proposal to renegotiate tariff bindings, but did not rescind the notification either.

Although Ukraine's MFN applied tariff rates are relatively low, U.S. businesses in the past often raised concerns that the Ministry of Revenues and Duties (MRD) assigns higher customs values to imports, including food, agricultural products, and pharmaceuticals, than are provided in the import

documentation. However, it appears that changes to the Customs Code made in 2012 have had a positive effect. According to the MRD and a recent survey of U.S. businesses, customs valuation now appears to be determined by transaction value provided on the customs declaration in nearly 90 percent of cases. The amended Customs Code also streamlined customs clearance procedures. The average time for customs clearance of imported goods is now less than two hours. In addition, the new procedures provide for a review of denials of customs clearance within 24 hours and reduce the number of documents required for customs clearance.

Import Licenses

Ukraine requires import licenses for some goods. The Cabinet of Ministers reviews and amends annually the list of goods covered by the licensing regime and the license terms. In 2013, the list included printer ink; paper with watermarks; optical media production inputs (*e.g.*, polycarbonate); equipment for the production of compact discs; pharmaceuticals; paints and lacquers, dyes; hygiene products including shampoos, cosmetic products, pedicure and manicure products, 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; self-defense aerosol products; poultry meat and related products; pig and poultry fat; fungicides; insecticides; herbicides; plant growth enhancers and regulators; and other selected industrial chemical products. Imports of coke and coking coal became subject to licensing and import quotas in March 2013. Applicants must obtain permits for these and other products from the relevant administrative agency before receiving the necessary import license from the Ministry of Economic Development and Trade.

The Ukrainian State Veterinary and Phytosanitary Service is authorized to issue import permits (approvals) under Ukraine's Law on Veterinary Medicine. Approvals are required for all commodities subject to veterinary control. Approvals are needed even for cases in which a bilateral veterinary certificate is issued by the country of origin. U.S. exporters have faced delays and difficulties in obtaining permits for imports of meat products.

For some goods, product certification is a prerequisite for an import license. Importers can request that a foreign facility be certified as in compliance with Ukraine's technical regulations that apply to imports. If approved, the supplier receives a certificate of conformity that is valid for two to three years and avoids the burdens of certifying each shipment and undergoing mandatory laboratory testing of its goods upon arrival in Ukraine. The U.S. distilled spirits industry reports that this option usually involves a burdensome and costly inspection visit by Ukrainian government officials.

GOVERNMENT PROCUREMENT

Ukraine is not yet a signatory to the WTO Agreement on Government Procurement (GPA), but it commenced negotiations to accede to the GPA in February 2011, in accordance with its commitment when it became a WTO Member. Ukraine has held observer status in the GPA since 2009.

The Ukrainian government adopted its basic law on Government Procurement in 2010. The law outlines major requirements for government procurement and tender procedures largely in line with international standards. This law requires that all government procurement of goods and services valued at more than Ukrainian Hryvnia (UAH) 100,000 (approximately \$12,500) and public works valued at more than UAH 300,000 (approximately \$38,000) be procured through competitive tenders. However, a large percentage of government procurement is exempted from the procurement rules and can be conducted using sole-source contracts. Open international tenders are used where procurement is financed by an entity outside of Ukraine. The Anti-Monopoly Committee of Ukraine has the authority to review disputes arising from

public procurements. Courts may also hear government procurement-related cases. Complaints must be filed on tight timelines, often within 14 days of the alleged violation.

During summer 2012, the Ukrainian parliament introduced a number of controversial provisions to the 2010 law, leading to reduced transparency in government procurement. The amendments have expanded the range of government procurements that can be excluded from public tender requirements. The amendments limited the requirement to use open tender procedures and publish information on procurement by state-owned companies only to procurement using state budgetary funds; however, there is no mechanism to allocate state funds to specific procurements within such companies, making the open tender requirement meaningless.

Ukraine's procurement rules generally do not restrict foreign enterprises from participating in government procurement, but in practice, foreign companies claim that they are rarely able to compete on an equal footing with domestic companies. Foreign companies win only a tiny fraction of total procurements. Among the problems faced by foreign firms are: (1) the lack of public notice of tender rules and requirements; (2) nontransparent preferences in tender awards; (3) the imposition of conditions that were not part of the original tender requirements; and (4) ineffective grievance and dispute resolution mechanisms, which often allow a losing bidder to block the tender after the contract has been awarded.

EXPORT BARRIERS

Exports of some categories of products are subject to registration by the Ministry of Economic Development and Trade. Products that must receive a license prior to export from Ukraine include precious metals (silver and gold); unrefined oil and gas; scrap metal; slag and ash containing zinc and copper; printers' ink; optical polycarbonates for laser reading systems; optical disc manufacturing equipment; paper with watermarks; pharmaceuticals; paints and lacquers; dyes; cosmetic products; pedicure and manicure products; hygiene products including shampoos, toothpaste, and detergents, shaving aerosols and deodorants; lubricants; waxes; shoe polishes; insecticides; solvents; silicone; fire extinguishers and the chemicals that fill extinguishers; refrigerators and freezers; air conditioners; humidifiers; aerosols used for self-defense; poultry meat and related products; pig and poultry fat; fungicides; insecticides; herbicides; plant growth enhancers and regulators; and other selected industrial chemical products. The government has eliminated most export duties, with the notable exception of duties on natural gas, livestock, raw hides, some oil seeds, and scrap metal. Exports of ferrous scrap from Ukraine are subject to export licensing and in 2013, a failure by the government of Ukraine to issue new licenses led to an effective ban on ferrous scrap exports.

Live Cattle, Sheep, Hides, and Skins

Export duties remain in place on live cattle, sheep, hides, and skins. Trade in these products has been negligible. Pursuant to its WTO accession commitments, Ukraine continues a staged reduction of these export duties. Export duties on live calves, cows, and sheep, currently at 25 percent, will fall to 10 percent in 2016. The export duty on raw hides, currently at 25 percent, will fall to 20 percent in 2018.

Scrap Metal

Upon WTO accession, Ukraine lowered export duties on ferrous scrap exports to €25 per metric ton for ferrous metals and to 30 percent *ad valorem* (with minimum specific rates for some products) for nonferrous metals. Laws passed in 2006 and 2007 as part of the accession process provide for staged duty reductions to €10 per metric ton over a period of 6 years (2008 to 2014) for ferrous metals and reductions to 15 percent *ad valorem* but not less than €0.20 per metric ton to €0.80 per metric ton over a

period of 5 years (2008 to 2013) for nonferrous metals. Export licenses that restrict exports of scrap, however, may nullify the trade liberalizing effect of the export duty reductions Ukraine agreed to as part of its accession.

Sunflower Seed, Flaxseed, and Linseed

Sunflower seed, flaxseed, and linseed have been subject to an export duty since June 2001. As required by its WTO accession agreement, the export duty on sunflower seed was 10 percent in 2013.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In May 2013, Ukraine was designated as a Priority Foreign Country in the 2013 Special 301 Report. This determination was based on three issues: failure to implement an effective and systemic means to combat widespread online infringement of copyrights and related rights, widespread use of unlicensed software by the Ukrainian government, and unfair and nontransparent administration of collecting societies for copyright royalties.

The need to improve its protection and enforcement of intellectual property rights (IPR) was a major theme of the bilateral 2010 and 2012 TIC meetings. During the 2010 TIC meeting, the United States and Ukraine agreed to an IPR Action Plan which identified steps to be taken by Ukraine with respect to IPR public awareness, enforcement, passage of pending legislation, violations of data protection, pharmaceutical patents, and government use of unlicensed software. At the July 2012 TIC meeting, the U.S. Trade Representative and the Deputy Prime Minister of Ukraine reviewed the Action Plan and its implementation and found a lack of measurable progress on the Action Plan, despite intensive U.S. engagement. Online and physical markets in Ukraine were identified on USTR's 2014 Notorious Market List, and other concerns remain unaddressed.

SERVICES BARRIERS

Audiovisual Services

Ukrainian law requires film prints and digital encryption keys to be produced in Ukraine, each of which is a significant impediment for distributors of foreign films. Ukrainian law also imposes a language content requirement for radio and television broadcasting.

Financial Services

Ukraine's non-banking financial services sector remains small and fragmented. Application of international regulatory standards in terms of capitalization, quality of assets, and protection of consumer rights is needed. Local and international banks note deficiencies in the market infrastructure of the Central Depository system which impede smooth operations.

INVESTMENT BARRIERS

Taxation

Companies report that Ukraine's taxation system is a major obstacle to doing business in Ukraine. In recent years, delays in the payment of refunds for the value-added tax (VAT) to foreign invested exporters have been a problem. In 2011, the State Tax Administration (now part of the Ministry of Revenues and Duties (MRD)) instituted an automated system for VAT refunds, but nontransparent

criteria have prevented many firms, and particularly smaller firms, from receiving their refunds. While overall VAT refund volumes increased in 2013, suggesting some improvement in the VAT refund system, Ukraine's inability to refund VAT in a timely manner remains a problem. Delays in reimbursement have become an important cost factor for many foreign companies.

The government of Ukraine continues to: accumulate substantial new arrears in VAT refunds to U.S. and other companies; demand prepayment of the corporate profits tax in exchange for the same amount of refunds; write-off claimed VAT payments for spurious reasons; and distribute VAT refunds in an arbitrary fashion that appears to favor companies connected to, or otherwise favored by, the government. With respect to arrears, the government floated the possibility of repaying the VAT refund arrears with financial promissory notes to be issued in 2014. It is uncertain whether such a mechanism will be workable, and the MRD admitted that they saw no demand from business for such notes in 2013.

Privatization

The State Property Fund oversees the privatization process in Ukraine. Privatization rules generally apply to both foreign and domestic investors, and, in theory, a relatively level playing field exists. Observers claim, however, that the terms of a privatization contest are arbitrarily adjusted to fit the characteristics of a pre-selected bidder. Only a few major new privatizations have been conducted since the privatization rush of 2004, with the most notable being the privatization of telecommunications company Ukrtelecom in 2011. In this case, a 97 percent stake was sold to a small Austrian investment firm for \$1.3 billion in a nontransparent one-bid auction. Strict tender conditions restricted potential buyers.

In 2013, the large electricity company Donbasenerho was privatized. The privatization involved restrictive pre-bid qualification criteria that limited participants to companies that currently produced power or coal in Ukraine. The privatization was conducted at what analysts consider a below-market price.

In April 2013, the Ukrainian government postponed the privatization of state-owned coal mines and stopped the process of transforming the mines into joint stock companies. This action was taken concurrently with trade restrictions on imports of coke and coking coal.

In 2013, Ukraine extended its moratorium on the sale of agricultural farmland to January 1, 2016. This provision blocks private investors from purchasing some of the 33 million hectares of arable land in Ukraine and constitutes an obstacle to the development of the agricultural sector. Currently, investors rely on long-term lease agreements to accumulate their land portfolios. Legislation on the tradability of such lease agreements, as well as land registration rules, is often unclear and frequently amended, requiring investors to dedicate additional resources to monitor the legal status of their land portfolios.

Corporate Raiding

Ukraine continues to have high-profile problems with corporate raiding activities. Some researchers claim that thousands of Ukrainian enterprises have suffered from such activities in recent years. These raiders frequently purchase a small stake in a company, and then take advantage of deficient legislation, corrupt courts, and a weak regulatory system to gain control of the company to the detriment of rightful shareholders. This development harms investors, including U.S. companies and shareholders, and has damaged the image of Ukraine among foreign investors. The government has taken little action to stop this phenomenon, and some foreign investors complain that the government protects raiders who are politically connected. The government has now created a special Interagency Commission on Anti-Raiding to examine numerous raiding cases in Ukraine, with focus on industrial property and real estate

raiding. In December 2013, amendments to the Criminal Code were enacted which envisage criminal responsibility for corporate raiding in cases where fraudulent documents and seals are used.

Local Content

In 2012, Ukraine adopted amendments to its Law on Electricity, applicable to all new investments in energy power plants, which set out a 50 percent "local component requirement" for the fixed assets of the plant, services acquired by the plant's owners, and all material inputs used in power production. Additionally, the amendments to the law introduce a Feed-In-Tariff (FIT) for the production of electricity from renewable sources. The granting of the FIT is conditional to the fulfilment of the local content requirement in the production of such electricity.

UNITED ARAB EMIRATES

TRADE SUMMARY

U.S. goods exports in 2013 were \$24.6 billion, up 9.1 percent from the previous year. Corresponding U.S. imports from United Arab Emirates were \$2.3 billion, up 1.7 percent. The U.S. goods trade surplus with United Arab Emirates was \$22.3 billion in 2013, an increase of \$2.0 billion from 2012. United Arab Emirates is currently the 17th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in United Arab Emirates was \$7.8 billion in 2011 (latest data available), up from \$5.9 billion in 2011. Reported U.S. FDI in the United Arab Emirates is led by the finance/insurance sector.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), the UAE applies the GCC common external tariff of 5 percent, with a limited number of GCC-approved country-specific exceptions. The UAE's exceptions include alcohol (50 percent) and tobacco (100 percent). A total of 811 items are exempt from customs duties, including imports of the diplomatic corps, military goods, personal goods, used household items, gifts, returned goods, and imports by philanthropic societies.

Import Licenses

Only firms with an appropriate license are permitted to engage in importation, and only UAE-registered companies, which must have at least 51 percent UAE ownership, may obtain such a license. This licensing requirement does not apply to goods imported into free zones. Some goods for personal consumption also do not require import licenses.

Documentation Requirements

Since 1998, the UAE has required that documentation for all imported products be authenticated by the UAE Embassy in the exporting country. There is an established fee schedule for this authentication. For U.S. exports, if validation is not obtained in the United States, customs authorities will apply the fee when the goods arrive in the UAE.

GOVERNMENT PROCUREMENT

In 2013, the UAE established a set-aside of 10 percent of federal government procurement to support small and medium size enterprises (SMEs). This is in addition to the UAE's already existent 10 percent price preference for local firms in government procurement. The UAE requires companies to register with the government before they can participate in government procurement, and in order to be eligible for registration, a company must have at least 51 percent UAE ownership. This requirement does not apply to major projects or defense contracts where there is no local company able to provide the goods or services required. Both the federal government and the Abu Dhabi Emirate government are incorporating electronic procurement and tendering systems to ease the process and cost for suppliers and contractors.

The UAE's Tawazun Economic Council, previously known as the UAE Offset Program, requires defense contractors that are awarded contracts valued at more than \$10 million to establish commercially viable joint ventures with local business partners that would be projected to yield profits equivalent to 60 percent of the contract value within a specified period (usually 7 years). While industry has commented that the complexity of the offset program complicates implementation, over 40 such joint venture projects have been launched.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The music recording industry has continuously raised concerns regarding the UAE's failure to establish a royalty collecting mechanism for the use of recorded music. However, industry representatives indicate that the ministry responsible for administering the UAE copyright law, the Ministry of Economy, is closer to establishing such a mechanism in cooperation with various U.S. and local stakeholders.

In addition, U.S. rights holders have raised concerns regarding the lack of transparency and information exchange when UAE customs officials conduct raids and seizures of pirated and counterfeit goods. The UAE government continues to work to improve protection of intellectual property rights (IPR) by launching public awareness campaigns and seizing counterfeit goods, including CDs, DVDs, perfume, car parts, watches, garments, medicine, television and stereo sets, and printers. The Ministry of Economy announced preparations for a new law combatting commercial fraud, which UAE officials assert would boost IPR protection and enforcement. However, the international business community has expressed concerns with provisions in the draft law regarding the return of counterfeit items to their point of origin, rather than requiring immediate destruction. Ministry of Economy officials have assured that these particular provisions will be removed. As of December 2013, the UAE Federal National Council reported that the draft law is currently under review.

As the six Member States of the GCC explore further harmonization of their IPR regimes, the United States will continue to engage with GCC institutions and the Member States and provide technical cooperation on intellectual property policy and practice.

SERVICES BARRIERS

Agent and Distributor Rules

In order to distribute products in the UAE, foreign firms must employ a local agent. The Agency Law (Federal Law Number 18 of 1981 on the Organization of Commercial Agencies as amended by Federal Law Number 14 of 1988) established requirements for registered commercial agents. Only UAE nationals or companies wholly owned by UAE nationals can register with the Ministry of Economy as commercial agents.

The UAE government allows some food products to be sold by foreign companies without a local agent in order to stabilize the prices of these products. In January 2012, the UAE Cabinet approved the addition of 12 commodities to the previous list of 15 goods that can be sold without a local agent, including livestock, dairy products, fats and oils, honey, eggs, fruit juices, salt, yeast, animal feed, detergents, and hygiene products.

In March 2010, the UAE amended certain provisions of the Agency Law in Federal Law Number 2 of 2010 to prevent the termination or non-renewal of a commercial agency unless the foreign principal has a

material reason to justify the termination or non-renewal. In addition, the foreign principal may not re-register a commercial agency in the name of another agent even if the previous agency was for a fixed term unless: (1) it is amicably terminated by the principal and the agent; (2) termination or non-renewal is for justifiable reasons that are satisfactory to the Commercial Agencies Committee; or (3) a final judicial judgment is issued ordering the cancellation of the agency.

The 2010 amendments also reinstated (after being eliminated in 2006) the specialized Commercial Agencies Committee, which has original jurisdiction over disputes involving registered commercial agents. The UAE Cabinet further outlined the responsibilities of the Committee in April 2011 in Resolution Number 3 of 2011 (Concerning the Commercial Agency Committee). These responsibilities include receiving applications for settling agency disputes and managing the process of cancelling registered agencies. The Committee is permitted to abstain from settling a dispute referred to it and can advise the parties to refer the matter to litigation. A party may challenge the determination of the Committee by bringing a matter to the UAE courts within 30 days of receiving notice of the Committee's resolution. The Committee is permitted to seek the assistance of any expert or "appropriate person" for performing its duties. It also has the right to demand the submission of further information and documentation involved in the dispute.

Telecommunications

The UAE currently has two telecommunications companies that are largely government owned: Emirates Telecommunications Corporation (Etisalat), the former telecommunications monopoly; and Emirates Integrated Technology Company (which operates under the trade name Du). The UAE has committed that after December 31, 2015, it will issue more licenses thereby eliminating the duopoly. The Telecommunications Regulation Authority (TRA) reiterated in 2012 that it has no plans to grant licenses to any new operator before the end of 2015.

The UAE restricts the provision of Voice over Internet Protocol (VoIP) services to licensed telecommunications companies. U.S. providers of VoIP services have raised concerns that the UAE limits their ability to provide these services by licensing only the two current telecommunications companies; other companies using this technology are subject to having their services blocked.

Transportation

Federal Law Number 9 of 2011 on Land Transport and Public Roads was implemented in September 2013 and restricts licenses of all commercial transport vehicles, including those used by couriers, to UAE citizens only.

Insurance

Foreign insurance companies may operate only as branches in the UAE. An insurance company established in the UAE must be a public joint stock company, and foreign equity is limited to 25 percent. Since 2008, new UAE insurance licenses have been issued only to UAE and GCC firms.

The Emirate of Abu Dhabi limits insurance coverage for construction projects and companies under the Abu Dhabi National Oil Company to Abu Dhabi-based national insurance companies.

INVESTMENT BARRIERS

Companies must have at least 51 percent UAE ownership, except for those located in one of the UAE's free zones. More specifically, a company engaged in importation and distribution must be either a 100 percent UAE-owned agency or a 51 percent UAE-owned limited liability company. The UAE government considered a revision to its Company Law that would liberalize specific sectors where there is a need for foreign expertise or where local investments are insufficient to sustain 100 percent local ownership. However, in February 2013, the UAE Federal National Council rejected a clause in the revised Company Law that would have allowed foreigners to fully own certain companies. The Ministry of Economy says it may reconsider this clause in an upcoming draft law on foreign investments.

In February 2013, the UAE also passed the Competition Law which introduced regulations on restrictive agreements, abuse of market power, and mergers and acquisitions. The law prohibits all agreements or alliances among establishments that aim to reduce or prevent competition, including schemes to fix prices through restricted production or distribution of goods or services. The law also bans collusion in bidding or refusal to deal with certain establishments during the bidding process, as well as market-sharing schemes that block market access for other establishments. Any dominant establishment is proscribed from abusing its position by engaging in price-fixing, predatory pricing, discrimination between customers with similar contracts without justification, and forcing customers to refrain from dealing with competing entities. The law includes stiff financial penalties ranging from approximately \$140,000 to \$1,400,000. However, since the law allows for exemptions for individual companies and does not cover telecommunications, transportation, oil and gas, finance and government enterprises, Emirati-owned firms do not face penalties if they engage in anti-competitive practices in these sectors.

Foreign investors continue to raise concerns about the resolution of investment disputes in the UAE. Among other issues, they are concerned that pursuing arbitration in disputes with a local company may jeopardize business activities in the UAE. They have also raised concerns about a lack of impartiality within the Emirati court system, as well as about the length of dispute resolution proceedings within the domestic court system. Both the federal government and the Dubai emirate government have taken steps to address these concerns. For example, the federal government is drafting a new commercial arbitration law, and the Dubai International Financial Center courts are expanding their jurisdiction to include commercial parties not located within the center. Additionally, a new arbitration center is planned for the upcoming financial free zone in Abu Dhabi, the Abu Dhabi Global Market. The chambers of commerce in different Emirates have also established centers for commercial reconciliation and arbitration to help address dispute resolution issues.

U.S. companies continue to raise concerns about lengthy delays and burdensome procedures in receiving payment for projects undertaken in the UAE, particularly for work done on behalf of certain government entities.

UZBEKISTAN

TRADE SUMMARY

U.S. goods exports in 2013 were \$321 million, up 12.8 percent from the previous year. Corresponding U.S. imports from Uzbekistan were \$27 million, up 2.5 percent. The U.S. goods trade surplus with Uzbekistan was \$294 million in 2013, up \$36 billion from 2012. Uzbekistan is currently the 115th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Uzbekistan was \$71 million in 2012 (latest data available), up from \$63 million in 2011.

Membership in the World Trade Organization

Uzbekistan is not yet a member of the WTO. Uzbekistan applied for membership in 1994 and participated in three Working Party meetings, but its accession process has been inactive since October 2005. Since 2005, however, Uzbekistan has continued to update its legislative framework to be consistent with WTO requirements. During 2013, Uzbekistan requested the assistance from the WTO Secretariat to prepare to resume its WTO accession negotiations. This would require revised and updated documentation.

IMPORT POLICIES

Tariffs

Uzbekistan maintains relatively high import tariffs. Customs duties for imported goods are as high as 200 percent, but the average rate is approximately 30 percent. As of 2009, no customs duties were applied to imported live animals, milk and cream, wheat, X-ray films, and computer hardware; import duties ranging from 10 percent to 30 percent were applied to clothing, furniture, metals, foodstuffs; and 50 percent duties were applied to luxury consumer goods such as cigarettes and cars. The highest customs duty is levied on imported ice cream products.

Customs and Border Requirements

Border and customs restrictions are among the most serious challenges to doing business in Uzbekistan. Bureaucratic requirements still remain far more onerous than the global norm. According to the World Bank, fourteen documents are required for the importation of goods by the various government ministries, customs authorities, container terminal authorities, health and technical control agencies, and banks involved in import. The average cost per container to import is \$5,325.

In 2013, exporters to Uzbekistan faced burdensome new documentation requirements with respect to customs valuation. New import measures were implemented that required all imports to be accompanied by an official export customs declaration for the purposes of customs valuation. Such a document is not issued for exports from the United States, nor do many other countries issue it to their exporters. Although the Uzbek Council of Ministers' passed a resolution on this issue allowing for use of different types of documentation to verify value, No. 139 of May 22, 2013, companies are still periodically asked to provide export declarations. Companies report that if they do not present the documentation, they are assessed an automatic surcharge that assumes a higher value of the good than the value that is declared, resulting in higher duties.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Uzbekistan has been listed on the USTR annual Special 301 Watch List since 2000 due to persistent deficiencies in its intellectual property rights (IPR) regime. Uzbekistan has not joined the Convention for the Protection of Producers Against Unauthorized Duplication of Their Phonograms (Geneva Phonograms Convention) or modernized its copyright law for the digital age. Industry has raised concerns that many government agencies are not using licensed software. Uzbekistan needs to increase enforcement in areas such as providing enforcement officials, including customs officials, with *ex officio* authority to initiate enforcement actions and investigations.

A major positive change in IPR protection in 2013 was the passage of amendments to the 2006 IPR law which withdrew Uzbekistan's reservation to Article 18 of the Berne Convention for the Protection of Literary and Artistic Works. That Article is related to the protection of works created before 2005. In addition, several years ago, the government of Uzbekistan created the Uzbek Agency for Intellectual Property which centralizes responsibility for IPR issues.

SERVICES BARRIERS

Banking: The private sector has access to only a limited variety of credit instruments, due to a combination of burdensome regulations and underdevelopment of the credit market. Access to foreign banks is limited. Local businesses generally may not use foreign financial institutions without going through a local bank. A special government decree is required for a local business to receive direct financing from a foreign financial institution. Commercial banks are permitted to use credit lines from international financial institutions to finance small and medium businesses, but this is subject to limitations such as requirements that the credit lines be covered by government or other guarantees. In addition, these guarantees may be subject to quotas. In late 2012, several private banks lost their licenses to conduct transactions in foreign currency.

Telecommunications: State-owned firm Uztelecom dominates the market for the provision of wireline services. The government of Uzbekistan has previously announced efforts to privatize Uztelecom but has not followed through. The procedures for obtaining permission to operate in Uzbekistan (*e.g.*, licensing, frequency) are extremely complicated.

INVESTMENT BARRIERS

Foreign investment is limited in certain sectors. Foreign ownership and control are prohibited in the airline, railway, power generation, and other sectors deemed to be related to national security. Restrictions also apply to media, banking, insurance and tourism. Foreign investment in media enterprises is limited to thirty percent. In banking, foreign investors may operate only as joint venture partners with Uzbek firms, and banks with foreign participation face fixed charter funding requirements (approximately \$13.5 million for commercial banks, \$6.8 million for private banks), while the required size of the charter funds for Uzbek owned banks is set on a case-by-case basis. In the tourism sector, foreign ownership of a firm cannot exceed 49 percent.

Currency Conversion Policies

The government of Uzbekistan's rules, procedures, and informal practices regarding currency conversion include surrender requirements which are often cited by the business community as the single biggest business climate impediment in Uzbekistan and the most significant factor limiting their business

operations. Foreign and domestic traders and investors, private companies, and companies with joint ventures with the government of Uzbekistan have raised concerns about their inability to access foreign currency in a timely manner due to policies on currency conversion. There are significant delays in obtaining foreign currency for import and export transactions and for the repatriation of profits from investments. Based on company reports, the delays for receiving foreign currency extend well beyond a year in many cases; such delays seem to have increased in 2013.

Under Uzbek law, 50 percent of foreign currency earned from exports must be exchanged for local currency through authorized banks at the official exchange rate and proceeds from these exchanges are earmarked to satisfy currency conversion requests. Unfortunately, the official rate is approximately 21 percent less than the black market rate and 34 percent less than the commodities exchange rate, so most local companies endeavor to keep their hard currency revenues in foreign banks and therefore out of the pool available for conversion requests. The law theoretically guarantees foreign investors' and traders' ability transfer of funds in foreign currency to and from Uzbekistan without any limitations, provided that they have paid taxes and other obligatory payments. In practice, however, all legal entities must obtain permission from the Central Bank to access foreign currency, they must spend significant time navigating the bureaucracy, and their money is held in a non-interest-bearing custodial account while the decision is pending. The majority of foreign investors, regardless of nationality, report frequent difficulty obtaining sufficient foreign currency for operational requirements and to repatriate profits. The government reportedly issues banks confidential instructions regarding which orders are to be filled. The government of Uzbekistan has expressed its interest in improving these procedures so that conversion can happen more quickly.

Expropriation

The government has authority to seize foreign investor assets for violation of legislation, breach of contract, failure to complete investment commitments, and for reasons such as revaluation of assets and site development programs. Although the government is obligated to make fair market compensation for legally seized property, it has offered less than market value in several recent cases with foreign and local businesses, and with individuals. Compensation to foreign partners is required to be made in a transferrable currency but in most cases is made in local currency.

Bilateral Investment Treaty

The U.S. negotiated and concluded a bilateral investment treaty (BIT) with Uzbekistan in 1994; the Senate consented to ratification of the treaty in 2000 with the explicit understanding that the United States would not exchange instruments of ratification until Uzbekistan was in full compliance with the terms of the BIT, particularly regarding currency convertibility standards. On several occasions, Uzbekistan has imposed foreign exchange controls that violate the requirements in the BIT on transfers. As a result, the United States and Uzbekistan have not exchanged instruments of ratification.

VENEZUELA

TRADE SUMMARY

U.S. goods exports in 2013 were \$13.2 billion, down 24.5 percent from the previous year. Corresponding U.S. imports from Venezuela were \$32.0 billion, down 17.4 percent. The U.S. goods trade deficit with Venezuela was \$18.8 billion in 2013, down \$2.4 billion from 2012. Venezuela is currently the 24th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Venezuela were \$6.6 billion in 2012 (latest data available), and U.S. imports were \$891 million. Sales of services in Venezuela by majority U.S.-owned affiliates were \$3.5 billion in 2011 (latest data available), while sales of services in the United States by majority Venezuela-owned firms were not available in 2011 (\$479 million in 2010).

The stock of U.S. foreign direct investment (FDI) in Venezuela was \$15.0 billion in 2012 (latest data available), up from \$11.9 billion in 2011. Reported U.S. FDI in Venezuela is primarily concentrated in the manufacturing sector.

IMPORT POLICIES

Public sector entities and state-owned enterprises are not required to present or maintain import licenses, to pay tariffs, or to present any documents or certificates related to the regulation of customs and duties, according to an executive resolution signed in March 2012. The Venezuelan government has stated that this measure was passed in order to simplify administrative procedures for import and export. However, it imposes significant competitive disadvantages on private sector entities, which are typically denied similar treatment. Venezuela has on occasion extended this treatment to private sector actors for short periods of time in order to facilitate imports of products it deems to be in shortage.

Tariffs

The latest WTO tariff data indicates that in 2012 Venezuela applied a simple average tariff of 16.8 percent on agricultural goods and 12.8 percent on non-agricultural goods.

The Mercado Común del Sur (MERCOSUR) admitted Venezuela as its fifth full member, on July 31, 2012. Venezuela has four years from its date of accession to adopt the MERCOSUR Common External Tariff (CET) and to provide duty-free treatment to its four MERCOSUR partners on all goods, with a two year extension allowed for sensitive products. On April 1, 2013, Venezuela adopted the CET for 28 percent of the goods in its tariff schedule. It will phase in the adoption of the remainder of the CET schedule on an annual basis starting on April 1, 2014 with full implementation of the CET completed in 2016.

Price Controls

In an attempt to regulate local production and control market prices of basic consumable products, Venezuela has instituted a number of laws and decrees that impose price controls, dictate product movement from manufacture to retail, and limit profit margins of manufacturers and retailers. These measures have led to significant decreases in local production, forcing the government to increase imports to meet total demand. Total imports now represent more than 70 percent of total consumption.

To control imports, Venezuela has increased direct government purchases and implemented new import requirements and procedures for obtaining pre-import approval, import permits, and foreign exchange. These measures have disrupted trade by increasing the burden on exporters and importers. Many of these requirements are being waived when increased imports are necessary to maintain minimum levels of supply.

On January 24, 2014, President Maduro used decree authority to promulgate the Fair Costs and Prices Law with the intent to further regulate the private sector with profit limits, audits, and penalties. Any resident in Venezuela conducting any type of economic activity is subject to the law. The law created a new Venezuelan government institution, the National Superintendent for the Defense of Socio-Economic Rights (SUNDDE), by merging the Superintendent for Fair Costs and Prices and the Institute for the People's Defense for Access to Goods and Services. SUNDDE is the new authority empowered to decide whether prices are "fair" and to identify profit limits for businesses. Businesses that are found in compliance will be given a "Certificate of Fair Prices" that will be required in order to apply for hard currency through the newly established National Center for International Trade (CENCOEX).

Currency Controls

Venezuela introduced strict currency controls in 2003. The measures continue to pose a significant obstacle to most trade with Venezuela. Most companies report that they cannot obtain sufficient foreign exchange to satisfy their business needs.

On November 29, 2013, President Maduro created a new institutional structure for the national currency exchange system through CENCOEX. CENCOEX absorbed the Currency Administration Commission (CADIVI) and now administers two Complementary System of Currency Administration (SICAD and SICAD 2).

Importers who wish to use the SICAD system must first enroll in SUNDDE's Registry for People that Develop Economic Activities. Theoretically, SICAD holds weekly sales to sell U.S. dollars to any bidders under a secret auction mechanism. In practice, Venezuelan authorities decide which sectors of the economy can participate in each sale (*e.g.*, metallurgic, tourism, graphic arts). The Venezuela Central Reserve Bank (BCV) may later publish the exchange rate at which SICAD sold U.S. dollars in the auction, generally in a band between 10 bolivars and 12 bolivars per dollar. In October 2013, the BCV began conducting weekly \$100 million sales through SICAD that totaled approximately \$900 million by the end of 2013. As of February 2014, Venezuela had held one SICAD sale totaling \$440 million.

In March 2014 the GBRV opened a third foreign-exchange mechanism, called SICAD 2. Under its governing laws and regulations, the GBRV, state oil firm PDVSA, the central bank, public- and private-sector firms, and private individuals may buy and sell both dollars and dollar-denominated securities on a daily basis, with Venezuelan banks and stock brokers serving as intermediaries. The foreign ministry and the central bank will oversee SICAD 2 and are authorized to intervene to regulate the mechanism's exchange rate. Details remain limited regarding the volumes and exchange rates that will be transacted through SICAD 2.

Accessing U.S. dollars through SICAD requires Venezuelan authorities' acceptance of the importer's bid. Venezuelan authorities have asserted the right to reject any application determined to be inconsistent with government priorities. Private sector firms and independent analysts have said SICAD's sales are arbitrary and lack transparency. The time to receive authorization for foreign currency through SICAD varies in length, but can take on average more than nine months from the beginning to the end of the

process and require the submission of various supporting documents by the Venezuelan importer, with the support or collaboration of the exporter. Businesses and individuals report rejections of applications after initial approval and approval of applications after rejection.

Local Content Requirements

Venezuela implemented a flat 50 percent local content requirement in domestically-assembled vehicles and required motors to be fully assembled in-country effective January 1, 2013. Assemblers have stated that these two requirements are extremely problematic. Local industry is unable to produce sufficient components to allow 50 percent local content, and the variety of motors and the necessary large production runs make local motor assembly prohibitively expensive. Since September 2012, Venezuela has required domestically-produced and imported vehicles to use a Venezuela-specific vehicle identification number, contrary to international standards and patterns.

Tariff-Rate Quotas

Venezuela maintains the authority to impose tariff-rate quotas (TRQs) for up to 62 tariff lines. Venezuela administers TRQs for oilseeds, corn, wheat, milk and dairy, and sugar. The issuance of import licenses under these TRQs lacks transparency. The impact on imports has varied because of inconsistent application by Venezuela authorities. For example, given the significant reduction in domestic production of grains over the past several years the TRQ for basic grains is routinely suspended and a tariff of zero percent is applied. Venezuela has denied import licenses for both in-quota and over-quota quantities on a case-by-case basis, even though importers are often willing to pay the over-quota tariff. In addition, Venezuela has not published regulations establishing the TRQ mechanism for some eligible products while for products that have established TRQ mechanisms such as pork, the TRQ mechanism is not applied and U.S. exporters face a range of duties from 8 percent to 20 percent.

GOVERNMENT PROCUREMENT

Venezuela's government procurement law covers purchases by government entities, national universities, and autonomous state and municipal institutions. It is not clear to what degree the procurement law applies to joint ventures in which a state entity has a controlling interest. The law requires a procuring entity to prepare a budget estimate for a procurement based on reference prices maintained by the Ministry of Light Industry and Trade.

Although the law forbids discrimination between domestic and foreign suppliers, it provides that the President can mandate temporary changes in the bidding process "under exceptional circumstances," in accordance with "economic development plans" that promote national development or provide preferences to domestic goods and suppliers. These measures can include price preferences for domestic goods and suppliers, reservation of procurements for nationals, requirements for domestic content, technology transfer, or the use of local labor and other incentives to purchase from companies domiciled in Venezuela. For example, Government Decree 1892 establishes a 5 percent preference for bids from companies whose products have over 20 percent local content. In addition, half of that 20 percent of content must be from small to medium domestic enterprises.

The Venezuelan government is increasingly awarding contracts directly, thus avoiding competition required by the government procurement law. A presidential decree in 2008 established a National Service of Contractors, with which firms must register in order to sell to government entities. Tenders are not accepted without prior registration.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Venezuela was listed on the Priority Watch List in the 2013 Special 301 Report. Key concerns cited in the report relate to the deteriorating environment for the protection and enforcement of intellectual property rights (IPR) in Venezuela. The reinstatement of the 1955 Industrial Property Law in 2008 created uncertainty with respect to patent and trademark protections. Copyright piracy and trademark counterfeiting remain widespread, including piracy over the Internet. Other concerns include the lack of effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. In 2011, Venezuelan enforcement officials seized a larger number of counterfeit and pirated products than in previous years. Additionally, Venezuela has taken steps to enforce the 2010 Law on Crimes and Contraband, which establishes enhanced penalties for smuggling violations and provides for the seizure of infringing goods. However, Venezuela must still make significant improvements to its regime for IPR protection and enforcement. In 2012, the Supreme Court accepted a request (presented in 2009) by the Venezuelan Pharmaceutical Chamber of Commerce to decide if 10 articles from the 1955 Industrial Property Law conflict with Venezuela's international obligations, including its obligations under the Paris Convention and the TRIPS Agreement. The case is still under consideration.

SERVICES BARRIERS

Venezuela maintains restrictions on a number of services sectors, including professional services, audiovisual, and telecommunications services. In any enterprise with more than 10 workers, foreign employees are restricted to 10 percent of the work force, and Venezuelan law limits foreign employee salaries to 20 percent of the payroll.

Professional Services

Foreign equity participation in professional firms is restricted to a maximum of 19.9 percent. Only Venezuelan citizens may provide accounting and auditing services to government institutions and other government entities such as banks and hospitals. In addition, only Venezuelan citizens may act as accountants for companies in which the government has at least a 25 percent ownership interest. Foreigners are required to establish a commercial presence for the provision of engineering services.

Financial Services

A Venezuelan insurance law, approved in July 2010, establishes that for all insurance companies, at least half of the members of the board must be of Venezuelan nationality. In addition, all members of the board must be living in and have resident status in the country.

Audiovisual Services

Venezuela limits foreign equity participation to less than 20 percent for enterprises engaged in Spanish language television and radio broadcasting. At least half of the television programming must be dedicated to national programming. Additionally, half of both FM and AM radio broadcasting must be dedicated to Venezuelan-produced material. In the case of music, 50 percent of the Venezuelan-produced material must be traditional Venezuelan songs. There is also an annual quota regarding the distribution and exhibition of Venezuelan films required of cinema owners and film distributors. Additionally, there is a requirement that a percentage of film copying be done in Venezuelan facilities.

INVESTMENT BARRIERS

The Venezuelan government continues to control key sectors of the economy, including oil, petrochemicals, and much of the mining and aluminum industries. Venezuela began an ambitious program of privatization under the Caldera administration (1994-1999), but under the late President Chavez Administration, privatization has been halted and the Venezuelan government has re-nationalized certain key sectors of the economy. Since the beginning of 2011, the Venezuelan government has taken over or redistributed more than 2.7 million acres of land. The 2013 National Land Institute increased its budget for land expropriations by 13 percent from 2012, to finance a maximum of 980,000 land interventions. There have been 1,280 state interventions (expropriations, private property seizures, and nationalizations) in the private sector since 2002, an increase by 112 from the previous reporting period, according to the industry association CONINDUSTRIA (Confederación Venezolana de Industriales). Of these, 40 percent have been companies involved in the construction sector, 32 percent in the industrial sector (manufacturing, agro-industrial, agriculture or related industries), 17 percent in the oil sector, and 9 percent in the service and trade-related sectors. Other sectors affected have included food, mining, chemical, and transport services.

Foreign investment continues to be restricted in the petroleum sector. The exploration (except for natural gas offshore), production, refinement, transportation, storage, and foreign and domestic sale of hydrocarbons are reserved to the government. However, private companies may engage in oil and gas production through joint ventures with the state-owned petroleum company, Petroleo de Venezuela, S.A. (PDVSA). Venezuelan law requires a competitive process for awarding stakes in exploration and production acreage to private partners for projects to be developed by PDVSA. However, the government may directly award contracts when the project is to be developed under special circumstances or is of national interest. Oil companies from politically strategic partner countries seem to be the preferred partners for the development of many new projects.

National government decisions to force international oil companies to accept the conversion of their projects to minority stakes in joint ventures without the right to operate, to impose windfall profits taxes, and other moves have substantially increased uncertainty in the hydrocarbons sector. In 2007, ConocoPhillips and ExxonMobil refused to transfer their investment stakes in three oilfield projects, as the result of which the government of Venezuela took control of these investments. Both companies filed international arbitration claims against Venezuela and received favorable rulings from the International Chamber of Commerce's arbitration tribunal: ConocoPhillips was awarded \$66.8 million in September 2012, while ExxonMobil confirmed an award of \$907.6 million in January 2012. In September 2013, the World Bank's International Centre for the Settlement of Investment Disputes (ICSID) ruled that Venezuela unlawfully expropriated ConocoPhillips' three significant oil investments. Venezuela appealed the ICSID ruling.

Former President Chavez announced on January 8, 2012, that Venezuela would not recognize any ICSID decision related to ExxonMobil's claim and officially withdrew from the ICSID Convention on July 25, 2012. At least 26 ICSID cases against Venezuela are currently pending, making Venezuela the country with the largest number of pending ICSID claims.

Venezuela also controls the state assets and services involved in the injection of water, steam, or gas into petroleum reservoirs; and gas compression. The government is required to have at least a 50 percent ownership stake in petrochemical companies. In October 2010, the government nationalized a petrochemical plant that was partly owned by a private U.S. entity.

FOREIGN TRADE BARRIERS

The National Assembly passed a law in August 2010 that merged all electricity utilities under one central holding entity with 75 percent direct government ownership and 25 percent PDVSA ownership. The state-owned electric company, CORPOELEC, controls electric power generation, transmission, and distribution.

The state-owned Corporación Venezolana de Guayana controls steel and aluminum production, electricity generation, and mining. In 2008, the government revoked U.S.-based Gold Reserve's gold mining concession. In 2009, Gold Reserve filed for international arbitration against the Venezuelan government and it is still pending with the ICSID. In 2010, then-President Chavez declared that he would order the Ministry of Basic Industry and Mines to cancel all mine concession agreements and expropriate gold and diamond mining activity taking place in the state of Bolivar. In practice, Venezuela has waited in some cases for concessions to expire and then has announced it would not renew them. In 2012, the government failed to renew the concession for the Pasa Diablo coal mine, partly owned by U.S. firm Peabody Company, and a nickel mining concession, taking control of a company owned by London-based Anglo-American Company.

VIETNAM

TRADE SUMMARY

U.S. goods exports in 2013 were \$5.0 billion, up 8.4 percent from the previous year. Corresponding U.S. imports from Vietnam were \$24.6 billion, up 21.6 percent. The U.S. goods trade deficit with Vietnam was \$19.6 billion in 2013, up \$4.0 billion from 2012. Vietnam is currently the 44th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Vietnam was \$1.1 billion in 2012 (latest data available), up from \$964 million in 2011.

Trade Agreements

Vietnam is a participant in the Trans-Pacific Partnership (TPP) negotiations, through which the United States and 11 other Asia-Pacific partners are seeking to establish a comprehensive, next-generation regional agreement to liberalize trade and investment. This agreement will advance U.S. economic interests with some of the fastest-growing economies in the world, expand U.S. exports which are critical to the creation and retention of jobs in the United States, and serve as a potential platform for economic integration across the Asia-Pacific region. The TPP agreement will include ambitious commitments on goods, services, and other traditional trade and investment matters. It will also include a range of new and emerging issues to address trade concerns our businesses and workers face in the 21st century. In addition to the United States and Vietnam, the TPP negotiating partners currently include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, and Singapore.

IMPORT POLICIES

Tariffs

Vietnam significantly reduced its tariff rates on many products of interest to the United States when it joined the WTO in January 2007. As a result, the majority of U.S. exports now face tariffs of 15 percent or less. However, in recent years, Vietnam has increased applied tariff rates on a number of products, although the rates remain below its WTO bound levels. Products affected by such tariff adjustments include sweeteners (such as fructose and glucose), shelled walnuts, ketchup and other tomato sauces, inkjet printers, soda ash, and stainless steel bars and rods.

Nontariff Barriers

Vietnam eliminated many nontariff barriers under the 2001 United States-Vietnam Bilateral Trade Agreement (BTA) and through its accession to the WTO, including quantitative restrictions on imports, quotas, bans, permit requirements, prior authorization requirements, licensing requirements, and other restrictions having the same effect, that appeared to be inconsistent with its WTO commitments. Nonetheless, many other nontariff barriers remain.

Import prohibitions: Vietnam currently prohibits the commercial importation of some products, including cultural products deemed “depraved and reactionary,” certain children’s toys, second-hand consumer goods, used spare parts for vehicles, used internal combustion engines of less than 30 horsepower, and encryption devices and encryption software.

Quantitative restrictions and import licenses: Vietnam has tariff-rate quota regimes for salt, tobacco, eggs, and sugar.

Imports of iron and steel are subject to a licensing requirement pursuant to Circular 23, issued on August 7, 2012. On September 7, 2012, the Prime Minister issued Directive 23, increasing restrictions on “Certain Imports for Re-Export and Trans-shipment Trade.” On February 18, 2013, the Ministry of Industry and Trade (MOIT) issued Circular 5/2013/TT-BCT, which provided implementation details for Directive 23. The circular bans imports for re-export and transshipment of a variety of hazardous waste items and temporarily bans imports for re-export and transshipment of a variety of products. On January 27, 2014 MOIT issued Circular 05/2014, which replaced Circular 05/2013 and updates the lists of items subject to permanent and temporary bans for re-export.

Vietnam’s Decree 94 on “Wine Production and Wine Trading,” entered into force on January 1, 2013. Decree 94 establishes three types of licenses (liquor distribution licenses, liquor wholesale licenses, and liquor retail licenses), provides that only enterprises with liquor distribution licenses are permitted to directly import liquor, and establishes tight quotas for each category of trading license. These new licensing guidelines have generated concerns about the impact on access of imported products to the Vietnamese market.

On September 17, 2012, the Prime Minister issued Directive No. 24 on “The Vietnamese People Using Vietnam Made Products” and the Government Resolution on “Ensuring Macro-economic Stability, Curbing High Inflation, and Trade Deficits.” The Prime Minister ordered government agencies to implement appropriate measures to encourage the consumption of domestically produced products.

Price Registration and Stabilization: Circular 122 on price management and registration entered into force in 2010. Circular 122 states that the Ministry of Finance may apply price controls when prices increase or decrease without a “legitimate excuse” and subjects an extensive list of goods to pricing registration. On June 20, 2012, the National Assembly promulgated the Price Law which became effective on January 1, 2013. While this law supersedes Circular 122, Vietnamese government policy regarding price stabilization of certain items will not change.

Customs: Vietnam implemented the WTO Customs Valuation Agreement through the 2006 Customs Law and related regulations, significantly improving its customs valuation process. Despite this positive step, U.S. exporters continue to have concerns about other aspects of the customs clearance process, citing inefficiency, red tape, and corruption as issues. The United States will continue to work with Vietnam to monitor its implementation of the WTO Customs Valuation Agreement.

On September 10, 2013, the Ministry of Finance issued Circular 128, which imposed new regulations on customs procedures, customs control and supervision, and import and export duty administration. The Vietnamese Customs Department maintains a list of reference prices for various agricultural and industrial products which has generated concerns from trading partners, including the United States.

Trading rights: Import rights are granted for all goods except for a limited number of products reserved for importation through state trading enterprises, as well as certain products subject to a phase-in period for trading rights under Vietnam’s WTO accession agreement. Vietnam has reserved the right of importation to state trading entities in the following product categories: cigars and cigarettes, crude oil, newspapers, journals and periodicals, and recorded media for sound or pictures (with certain exclusions).

Other Nontariff Barriers: U.S. stakeholders have expressed concern about the impact on foreign firms of product registration requirements for imported pharmaceuticals. Ministry of Health Decision 2962 issued

in 2012 limits market access for international pharmaceutical companies, including some from the United States.

GOVERNMENT PROCUREMENT

Vietnam's 2006 Law on Procurement provides for enhanced transparency in procurement procedures; decentralization of procurement decision making to the ministries, agencies, and local authorities; appeals processes; and enforcement provisions.

In 2009, the branch of the Communist Party linked to the state-owned oil and gas enterprise PetroVietnam issued a resolution requiring subsidiaries of the PetroVietnam to give priority to domestic companies when purchasing goods or services relating to oil and gas projects. This measure has significant effects on foreign companies seeking to provide goods and services to support the industry because PetroVietnam dominates the oil and gas industry in Vietnam.

In 2010, the Prime Minister issued Directive 494 on the use and supply of domestic goods in projects using State capital. This directive stipulates that large projects using State capital should be divided into multiple smaller projects to ensure that domestic enterprises can bid and carry out the projects. Furthermore, authorities and state business groups should only call for international tenders on projects using State capital when local companies are not able to meet the qualifications to bid.

In early 2012, the Ministry of Health and Ministry of Finance issued Circular 01/2012/TTLT-BYT-BTC on medicine procurement in health care units. This circular stipulates that domestic medical products should be given preference in procurement orders using government funding for hospitals and clinics if the price and quality is the same as the equivalent foreign product. The U.S. Government has raised this issue with the government of Vietnam.

Vietnam is not a signatory to the WTO Agreement on Government Procurement. However, Vietnam became an observer to the WTO Committee on Government Procurement on December 5, 2012.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Vietnam remained on the Special 301 Watch List in the 2013. While recognizing the strides Vietnam has made in improving its intellectual property (IP) regulatory framework and enforcement efforts over the past few years, the United States noted that widespread counterfeiting and piracy, including over the Internet, remain serious concerns. In addition, while Vietnam took action to address signal theft by its State-owned television provider, stakeholders note that unauthorized reception and distribution of satellite channels via illegal decoders and domestic pay television platforms continue.

In the area of enforcement, administrative actions and penalties – which are the most common method of addressing IP infringement in Vietnam – have not had a significant deterrent effect. In recent years, Vietnamese agencies have taken some initial steps to enforce IP protections on the Internet, including by issuing warning letters and by meeting with Internet service providers in response to rights holders' requests to address infringing content. The United States continues to urge Vietnam to undertake more aggressive actions to combat the rising problem of intellectual property infringement, including digital piracy. Vietnam has stated it will clarify IP-related provisions in the Criminal Code through an implementing decree. If adopted, these guidelines would be an important step towards improving law enforcement-related to IP in Vietnam.

SERVICES BARRIERS

Advertising Services

Decree No. 181/2013/ND-CP (Decree 181), issued in 2013, introduced new restrictions with respect to online advertising. The Decree requires Vietnamese advertisers to contract with a Vietnam-based advertising services provider (VASP) in order to place advertisements on foreign websites, and requires any foreign websites to notify the Ministry of Culture, Sports and Tourism in writing of the name and main business lines of the VASP that it has retained in Vietnam at least 15 days before publishing an advertisement.

Audiovisual Services

Foreigners may invest in cinema construction and operation only through joint ventures with local Vietnamese partners, subject to government approval. Films are subject to censorship before public viewing, a process that is nontransparent and for which the right to appeal a censor's decision is not well established.

Broadcasting

In March 2011, the Prime Minister issued Decision 20 (Regulation on Pay TV Operation Management), which requires that foreign pay television providers use a local agent to translate in advance all movies and programming on science, education, sports, entertainment, and music. In response to criticism, Decision 18a/2013/QD-TTG was issued in 2013, which removed the requirements for news channels to translate their broadcasts and provide a summary of the content in Vietnamese in advance of airing. The measure still requires foreign content providers to secure the services of a local editing company for post-production work (including translation, content review, and payment of a placement fee) in order for advertisements to be approved for placement in a Vietnamese broadcast. The Decision allowed for a one-year grace period for compliance, followed by two six-month extensions. The U.S. Government continues to raise concerns over Decision 20 with the Ministry of Information and Communication and will continue to monitor the implementation of these regulations.

Telecommunications

Vietnam permits foreign participation in the telecommunications sector, with varying equity limitations depending on the sub-sector (Vietnam has identified five basic and eight value-added sub-sectors). For instance, foreign ownership in services supplying closed-user networks (*e.g.*, corporate data networks) is permitted up to 70 percent while foreign ownership in facility-based basic services (*e.g.*, public voice service where the supplier owns its transmission facilities) is generally capped at 49 percent. Vietnam also allows foreign equity of up to 65 percent for non-facilities-based public telecommunications services (*i.e.*, services provided by a supplier that does not own its own transmission capacity but contracts for such capacity, including submarine cable capacity, from a facilities-based supplier).

Opportunities for foreign firms to form joint-ventures in the facilities-based sector are further restricted by a policy requiring facilities-based operators to be majority State-owned firms, limiting the pool of such partners and reinforcing government control over market entry. The share of the market accounted for by the top three telecommunications companies has grown to nearly 95 percent. The Vietnam Post and Telecommunications Group, which is owned by the Ministry of Information and Communications (MIC), has a majority stake in both Vinaphone and Mobiphone, the second and third largest mobile networks in

Vietnam. In addition, the three largest telecommunications firms, which Vietnam had pledged to equitize, remain non-incorporated governmental assets and subject to nontransparent governmental influence. In the last several years, users frequently reported having no access to certain websites, including foreign-based social networking sites. Nevertheless, the inability to access legitimate websites appears, for most Internet service providers, to be less pervasive. The United States has raised concerns about these Internet restrictions with the Vietnamese government and will continue to monitor this issue closely.

Decree 72 took effect on September 1, 2013 and created numerous concerns for cross-border Internet services providers. The decree enumerates stringent licensing requirements and expands the categories of domestic websites subject to those requirements, such as in-house management controls, local server requirements, and the centralization and authentication of user information. If implemented in its current form, the regulations would establish a "self-policing" model of internet regulation for domestic website companies.

Distribution Services

The Ministry of Industry and Trade (MOIT) issued Circular 8 on April 22, 2013 which provides additional details on the application of an economic needs test which was first introduced in 2007. In Vietnam's retail sector, foreign investors who seek to open a second retail establishment are subject to an economic needs test which is evaluated by the local authorities and approved by the MOIT. The only exception from the economic needs test requirement is for small and mid-sized retail outlets (less than 500 square meters) located in commercial zones. Additionally, Circular 8 stipulates that foreign-invested enterprises with export trading licenses can only buy agricultural products from local traders, as opposed to directly purchasing products from local farmers.

Banking and Securities Services

Vietnamese banking regulations make a distinction between domestic "joint stock" banks (commercial banks with any amount of private share ownership) and "joint venture" banks (new banks set up expressly based on a joint venture agreement). Total cumulative foreign ownership in any domestic "joint stock" bank is limited to 30 percent of equity. In contrast, foreign equity is permitted up to 49 percent for "joint venture" banks.

New regulations designed to improve the capital position of the banking industry have also introduced new requirements and restrictions, such as those for calculation of capital adequacy ratios, which can cause compliance-related difficulties. Foreign bank branches face restrictions, such as being limited to one office per province.

INVESTMENT BARRIERS

Vietnam's Investment Law sets criteria designating certain sectors in which foreign investment is prohibited and others in which foreign investment is subject to conditions ("conditional sectors"). Investments in conditional sectors and other projects deemed sensitive are subject to extensive and additional review, sometimes requiring the Prime Minister's approval, which can often delay the approval of investment licenses.

All land in Vietnam is owned and managed by the government, and, as such, neither foreign nationals nor Vietnamese nationals can own land. The 2006 Investment Law permits foreign-invested enterprises to lease land for a period of 50 years and up to 70 years in special cases. Investors can obtain land use rights and can mortgage both the structures erected on that land and the value of the use rights.

ELECTRONIC COMMERCE

Electronic commerce is growing rapidly in Vietnam. The 2006 Law on Electronic Transactions gave legal standing to electronic contracts and electronic signatures and allocated the responsibilities of parties with respect to the transmission and receipt of electronic data. On May 16, 2013, Vietnam issued Decree No. 52/2013/ND-CP which outlines registration and licensing procedures for electronic businesses, which came into force on July 1, 2013.

In the area of cloud computing services, stakeholders have raised concerns over a draft decree issued by the Ministry of Information and Communication that would impose licensing and registration requirements on providers of information technology services, including restrictions on the cross-border supply of cloud computing and data center services.

OTHER BARRIERS

The lack of transparency and accountability, along with widespread official corruption and inefficient bureaucracy, continues to be problems in Vietnam. With the assistance of the United States and other donors, Vietnam is in the process of implementing a public administration reform program and continuing to enhance overall transparency. The United States will continue to work with Vietnam to support these reform efforts and to promote greater transparency.

In 2013, the Vietnamese courts rejected cotton contract default arbitration awards. In 2012, dozens of Vietnamese companies signed purchase contracts with U.S. cotton suppliers but failed to execute the contracts when world cotton prices fell. The International Cotton Association monitors the execution of purchase contracts and can grant arbitration awards to cotton suppliers when purchasers default on their contracts. The September 10, 2013 International Cotton Association Default List included 34 cases of Vietnamese companies that failed to fulfill awards decided by international arbitral bodies. As of March 7, 2014, Vietnamese courts have rejected 29 of the 30 cotton contract arbitration awards brought before them.

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,¹ USTR prepared a report that identified trade barriers that face U.S. exporters of GHGIRTs 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.² The Act also calls for USTR to report annually on progress made with respect to removing the barriers identified in the initial report. USTR submitted the first annual progress report in October 2007; this report, as well as the initial report, are available at <http://www.ustr.gov>. USTR will continue to submit further annual progress reports as part of the NTE Report.

As described in the initial 2006 GHGIRT report, barriers to the exports of GHGIRTs are generally those identified in the NTE with respect to other exports to the 25 developing countries: *e.g.*, lack of adequate and effective intellectual property rights protections; lack of regulatory transparency and sound legal infrastructure; state-controlled oil and energy sectors, which are often slower to invest in new technologies; cumbersome and unpredictable customs procedures; corruption; import licensing schemes; local content requirements; investment restrictions, including requirements to partner with domestic firms; and high applied tariff rates for some countries. Progress in removing such barriers is noted below in the appropriate country chapter of the report. The reader is also referred to USTR's "Special 301" report pursuant to section 182 of the Trade Act of 1974. The "Special 301" report describes the adequacy and effectiveness of intellectual property rights protection and enforcement of U.S. trading partners; the 2013 report will be released later this year.

Increased trade in environmental technologies, such as GHGIRTs, is an important part of President Obama's Climate Action Plan, announced in June 2013, a key objective of U.S. leadership in global trade policy, and a potential driver of job growth here at home.

China, with the largest energy consumption in the world, is a significant player in the area of smart grid technologies, and is currently pursuing a multi-year plan to invest over \$500 billion in its electric infrastructure. In 2013 the United States closely monitored China's implementation of its commitments at the U.S.-China Joint Commission on Commerce and Trade to assure an open and transparent standards development process in this sector. USTR consulted closely with U.S. stakeholders and worked with the U.S. Trade and Development Agency which is funding programs for collaboration between Chinese and

¹ Section 1611 of the Act amends the Global Environmental Protection Assistance Act of 1989 (Public Law 101-240) to add new Sections 731-39. Section 732(a)(2)(A) directs the Department of State to identify the top 25 GHG emitting developing countries for the purpose of promoting climate change technology. The Secretary of State has submitted its report to Congress identifying these 25 countries. Section 734 calls on the United States Trade Representative "(as appropriate and consistent with applicable bilateral, regional, and mutual trade agreements) [to] (1) identify trade-relations barriers maintained by foreign countries to the export of greenhouse gas intensity reducing technologies and practices from the United States to the developing countries identified in the report submitted under section 732(a)(2)(A); and (2) negotiate with foreign countries for the removal of those barriers."

² These 25 countries were identified in the Department of State's 2006 "Report to Congress on Developing Country Emissions of Greenhouse Gases and Climate Change Technology Deployment." They are: China; India; South Africa; Mexico; Brazil; Indonesia; Thailand; Kazakhstan; Malaysia; Egypt; Argentina; Venezuela; Uzbekistan; Pakistan; Nigeria; Algeria; Philippines; Iraq; Vietnam; Colombia; Chile; Libya; Turkmenistan; Bangladesh; and Azerbaijan. In 2008, Morocco replaced Azerbaijan on the list.

U.S. smart grid experts, as well as a roadmap for continued U.S.-China smart grid technical standards cooperation on international standards development. Since 2011, we have encouraged Chinese entities to join the Smart Grid Interoperability Panel to ensure that China can engage stakeholders from the entire smart grid community in a participatory public process to identify applicable standards, gaps, and priorities for new standardization activities for the evolving smart grid.

In January 2014, the United States joined with 13 of the world's largest traders, including China, together accounting for 86 percent of global trade in environmental goods, to announce a new initiative to liberalize trade in environmental goods, which will build on the tariff-reducing agreement struck at the U.S.-hosted meeting of Asia-Pacific leaders in Honolulu in 2011. By eliminating tariffs on the environmental technologies we need to protect our environment, we can make them cheaper and more accessible for everyone. USTR will consult closely with Congress, cleared advisors and other stakeholders in moving this WTO initiative forward in order to ensure that it advances our environmental objectives and supports economic growth, green jobs and innovation.

Global trade in environmental goods totals nearly one trillion dollars annually, and some countries currently apply tariffs as high as 35 percent.

In addition to continued U.S. leadership on environmental goods in the WTO in 2014, the United States will also continue to play an active leadership role in APEC in close cooperation with China during its host year, including to ensure that economies are on track to implement their commitment to reduce tariffs to 5 percent or less by the end of 2015. The United States will also play an active role in getting the newly-created APEC Public-Private Partnership on Environmental Goods and Services off the ground by focusing initially on renewable energy technologies, including GHGIRTs.

In addition, we will continue to press for model TPP commitments on EGS, including immediate duty-free treatment for GHGIRTs, and substantial new market access for environmental and related clean energy services, as well as elimination of problematic LCRs.

APPENDIX II

APPENDIX
US Data for Given Trade Partners in Rank Order of US Goods Exports
(Values in Millions of Dollars)

Country	Trade Balance		Change 2012-13	Exports* 2012	Exports* 2013	Change 2012/13		Imports** 2012	Imports** 2013	Change 2012/13		FDI*** 2011	FDI*** 2012	% Change 2011-12	FDI Area
	2012	2013				Value	Percent			Value	Percent				
World	-729,611	-688,004	41,607	1,545,709	1,578,851	33,143	2.1	2,275,320	2,266,855	-8,464	-0.4	4,084,659	4,453,307	9.0	Nonbank Holding Co, Finance/Ins, Manuf
Canada	-31,397	-31,833	-437	292,540	300,245	7,705	2.6	323,936	332,078	8,141	2.5	331,666	351,460	6.0	Nonbank Holding Co, Manuf, Finance/Ins
Mexico	-61,639	-54,303	7,336	215,931	226,153	10,222	4.7	277,570	280,456	2,886	1.0	90,795	101,030	11.3	Manuf, Nonbank Holding Co, Finance/Ins
China	-315,095	-318,417	-3,322	110,484	122,016	11,533	10.4	425,579	440,434	14,855	3.5	55,304	51,363	-7.1	Manuf, Wholesale, Banking, and Finance/Ins
Japan	-76,437	-73,389	3,049	69,955	65,145	-4,810	-6.9	146,392	138,534	-7,859	-5.4	126,030	133,967	6.3	Finance/Insurance, Manufacturing
Germany	-59,911	-67,202	-7,291	48,797	47,442	-1,355	-2.8	108,708	114,644	5,936	5.5	111,088	121,184	9.1	Manuf, Nonbank Holding Co,
United Kingdom	-112	-5,263	-5,151	54,851	47,355	-7,495	-13.7	54,962	52,618	-2,344	-4.3	515,991	597,813	15.9	Nonbank Holding Co, Finance/Ins, Manuf.
Brazil	11,683	16,563	4,880	43,806	44,116	310	0.7	32,123	27,553	-4,570	-14.2	73,836	79,394	7.5	Manuf, Finance/Insurance
Netherlands	18,370	23,434	5,064	40,627	42,654	2,027	5.0	22,257	19,220	-3,037	-13.6	573,721	645,098	12.4	Nonbank Holding Co, Manuf, Finance/In
Hong Kong	32,006	36,816	4,810	37,461	42,450	4,989	13.3	5,455	5,635	179	3.3	39,998	47,767	19.4	Nonbank Holding Co, Wholesale, Fin/Ins
Korea, Republic of	-16,612	-20,673	-4,061	42,284	41,555	-728	-1.7	58,896	62,228	3,333	5.7	30,160	35,125	16.5	Manufacturing, Finance/Insurance
France	-10,944	-13,349	-2,406	30,806	31,969	1,163	3.8	41,750	45,318	3,569	8.5	79,621	85,596	7.5	Manuf, Fin/Ins, Nonbank Holding Co
Belgium	12,085	12,711	627	29,449	31,727	2,278	7.7	17,364	19,016	1,652	9.5	50,941	53,769	5.6	Manufacturing, Finance/Insurance
Singapore	10,293	12,896	2,603	30,525	30,724	199	0.7	20,232	17,828	-2,404	-11.9	118,571	138,603	16.9	Nonbank Holding Co, Manufacturing
Switzerland	718	-1,288	-2,005	26,390	26,980	590	2.2	25,673	28,268	2,595	10.1	113,715	130,315	14.6	Nonbank Holding Co, Manuf, Wholesale trade
Australia	21,602	16,776	-4,826	31,151	26,047	-5,104	-16.4	9,549	9,272	-277	-2.9	137,261	132,825	-3.2	Nonbank Holding Co, Mining, Finance/In
Taiwan	-14,509	-12,292	2,217	24,349	25,639	1,290	5.3	38,858	37,931	-926	-2.4	15,720	16,482	4.8	Manuf, Wholesale trade, Finance/Ins
United Arab Emirates	20,293	22,316	2,023	22,546	24,607	2,061	9.1	2,253	2,291	38	1.7	5,864	7,826	33.5	Finance/Insurance
India	-18,409	-19,954	-1,545	22,105	21,875	-230	-1.0	40,514	41,829	1,315	3.2	24,622	28,385	15.3	Prof, scient, and tech services, Fin/Ins, Info
Saudi Arabia	-37,695	-32,812	4,883	17,972	18,988	1,016	5.7	55,667	51,800	-3,867	-6.9	8,250	9,692	17.5	Nonbank Holding Co
Colombia	-8,265	-3,011	5,254	16,355	18,606	2,251	13.8	24,620	21,617	-3,002	-12.2	6,475	8,434	30.3	Manufacturing, Finance/Insurance
Chile	9,395	7,221	-2,173	18,766	17,585	-1,181	-6.3	9,371	10,363	992	10.6	34,966	39,870	14.0	Finance/Insurance, Manufacturing
Italy	-20,841	-22,146	-1,306	16,098	16,512	414	2.6	36,939	38,658	1,720	4.7	25,981	26,754	3.0	Manuf, Information, Fin/Insurance
Israel	-7,862	-8,938	-1,076	14,268	13,738	-530	-3.7	22,129	22,676	546	2.5	9,271	10,208	10.1	Manufacturing
Venezuela	-21,208	-18,777	2,430	17,516	13,220	-4,296	-24.5	38,724	31,997	-6,726	-17.4	11,871	15,034	26.6	Manufacturing
Malaysia	-13,092	-14,280	-1,188	12,841	13,006	165	1.3	25,933	27,286	1,353	5.2	12,386	15,001	21.1	Manufacturing, Mining
Turkey	6,227	5,396	-831	12,520	12,067	-454	-3.6	6,293	6,670	378	6.0	4,851	6,028	24.3	Manufacturing, Wholesale Trade
Thailand	-15,220	-14,345	875	10,888	11,825	937	8.6	26,108	26,169	61	0.2	14,537	16,882	16.1	Manufacturing, Banking
Russia	-18,681	-15,797	2,884	10,700	11,164	465	4.3	29,381	26,961	-2,419	-8.2	11,658	14,066	20.7	Manufacturing, Banking, Mining
Panama	9,294	10,333	1,038	9,835	10,782	947	9.6	540	449	-91	-16.9	5,362	5,113	-4.6	Nonbank Holding Co, Manufacturing
Spain	-2,216	-1,454	762	9,551	10,237	685	7.2	11,767	11,691	-76	-0.6	48,581	31,377	-35.4	Manuf, Finance/Insurance, Nonbank Hold Co
Argentina	5,918	5,560	-358	10,268	10,201	-67	-0.7	4,350	4,641	291	6.7	13,498	14,396	6.7	Manufacturing, Nonbank Holding Co
Peru	2,927	1,933	-994	9,345	10,056	711	7.6	6,418	8,122	1,704	26.6	8,993	10,918	21.4	Mining
Indonesia	-10,001	-9,790	211	7,997	9,088	1,091	13.6	17,998	18,878	880	4.9	11,972	13,480	12.6	Mining
Philippines	-1,519	-862	658	8,060	8,402	341	4.2	9,580	9,263	-316	-3.3	4,766	4,591	-3.7	Manufacturing
Ecuador	-2,792	-4,159	-1,366	6,692	7,330	638	9.5	9,485	11,489	2,004	21.1	793	851	7.3	Mining, Manufacturing
South Africa	-1,121	-1,187	-66	7,552	7,293	-259	-3.4	8,673	8,480	-193	-2.2	5,830	5,502	-5.6	Manufacturing, Wholesale Trade
Costa Rica	-4,811	-4,676	135	7,231	7,230	-1	0.0	12,042	11,906	-136	-1.1	1,857	1,681	-9.5	Manufacturing
Dominican Republic	2,609	2,940	332	6,974	7,196	223	3.2	4,365	4,256	-109	-2.5	1,467	1,655	12.8	Manufacturing
Ireland	-25,935	-24,960	975	7,392	6,623	-769	-10.4	33,327	31,582	-1,745	-5.2	189,449	203,779	7.6	Nonbank Holding Co, Manuf, Information
Nigeria	-13,986	-5,249	8,736	5,029	6,475	1,446	28.8	19,014	11,724	-7,290	-38.3	5,307	8,152	53.6	Mining
Guatemala	1,259	1,355	96	5,750	5,522	-227	-3.9	4,490	4,168	-323	-7.2	1,121	1,078	-3.8	
Honduras	1,074	735	-340	5,722	5,278	-444	-7.8	4,648	4,543	-105	-2.3	821	881	7.3	Manufacturing
Egypt	2,499	3,604	1,105	5,499	5,218	-281	-5.1	3,000	1,614	-1,386	-46.2	14,950	17,134	14.6	
Vietnam	-15,642	-19,636	-3,994	4,624	5,013	389	8.4	20,266	24,649	4,383	21.6	964	1,064	10.4	
Qatar	2,549	3,590	1,041	3,577	4,958	1,381	38.6	1,028	1,368	340	33.0	7,883	10,572	34.1	
Norway	-3,065	-1,000	2,064	3,501	4,488	4,488	128.2	6,566	5,489	-1,077	-16.4	33,283	38,803	16.6	Mining, Manufacturing
Sweden	-4,969	-4,847	122	5,248	4,311	-937	-17.9	10,217	9,158	-1,059	-10.4	24,827	24,532	-1.2	Manufacturing, Finance/Insurance
Poland	-1,277	-1,009	268	3,344	3,896	3,896	116.5	4,621	4,905	284	6.1	13,446	14,178	5.4	Manuf, Wholesale trade, Finance/Insurance
Austria	-6,030	-6,210	-180	3,419	3,570	3,570	104.4	9,449	9,781	331	3.5	13,763	15,591	13.3	Manufacturing, Banking

*US Total Goods Exports (f.a.s.); **US General Goods Imports (customs value); ***Stock of US Foreign Direct Investment Abroad

APPENDIX
US Data for Given Trade Partners in Rank Order of US Goods Exports
(Values in Millions of Dollars)

Country	Trade Balance		Change 2012-13	Exports*		Change 2012/13		Imports**		Change 2012/13		FDI***		% Change 2011-12	FDI Area
	2012	2013		2012	2013	Value	Percent	2012	2013	Value	Percent	2011	2012		
New Zealand	-209	-260	-52	3,227	3,223	3,223	99.9	3,436	3,483	47	1.4	7,930	9,466	19.4	Finance/Insurance, Manufacturing
El Salvador	509	731	222	3,096	3,168	72	2.3	2,587	2,437	-150	-5.8	2,630	2,697	2.5	
Kuwait	-10,337	-10,043	295	2,684	2,594	-89	-3.3	13,021	12,637	-384	-2.9	158	331	109.5	
Finland	-2,543	-2,303	240	2,566	2,357	-210	-8.2	5,109	4,659	-450	-8.8	2,184	2,013	-7.8	Manufacturing
Morocco	1,243	1,328	85	2,175	2,305	130	6.0	932	977	45	4.8	550	613	11.5	
Denmark	-4,554	-4,252	303	2,221	2,231	10	0.5	6,775	6,483	-292	-4.3	15,019	15,092	0.5	Nonbank Holding Co, Manufacturing
Jordan	611	890	279	1,766	2,087	321	18.2	1,156	1,197	41	3.6	182	189	3.8	
Iraq	-17,212	-11,277	5,935	2,053	2,026	-27	-1.3	19,265	13,303	-5,962	-30.9	468	1,235	163.9	
Czech Republic	-2,098	-1,977	122	1,832	1,944	112	6.1	3,931	3,921	-10	-0.3	5,804	6,389	10.1	Manufacturing
Ukraine	587	888	301	1,937	1,924	-13	-0.7	1,350	1,036	-314	-23.3	690	840	21.7	
Paraguay	1,546	1,643	97	1,743	1,920	177	10.2	197	277	80	40.6	149			
Luxembourg	1,353	1,216	-137	1,902	1,860	-42	-2.2	550	645	95	17.3	350,619	383,603	9.4	Nonbank Holding co., Finance/Insurance
Hungary	-1,635	-2,031	-396	1,566	1,733	167	10.7	3,201	3,764	563	17.6	5,651	6,014	6.4	Manufacturing, Wholesale trade
Pakistan	-2,098	-2,040	58	1,530	1,647	117	7.7	3,628	3,687	59	1.6	254	218		
Oman	393	482	89	1,747	1,504	-243	-13.9	1,354	1,022	-332	-24.5				
Angola	-8,333	-7,295	1,039	1,490	1,450	-40	-2.7	9,824	8,745	-1,079	-11.0	5,473	1,245	-77.3	
Kazakhstan	-682	-295	388	882	1,096	213	24.2	1,565	1,390	-175	-11.2	11,755	11,392	-3.1	
Ghana	1,031	701	-330	1,322	1,067	-255	-19.3	291	366	75	25.7	3,169	3,629	14.5	
Nicaragua	-1,619	-1,747	-128	1,129	1,057	-71	-6.3	2,748	2,804	56	2.0	357	219	-38.7	
Bahrain	510	383	-127	1,211	1,018	-193	-15.9	701	635	-66	-9.4				
Bolivia	-919	-355	565	763	932	170	22.2	1,682	1,287	-395	-23.5	547	502	-8.2	
Portugal	-1,514	-1,996	-482	1,096	835	-261	-23.8	2,610	2,831	221	8.5	2,477	2,383	-3.8	Manuf, Wholesale trade, Finance/Insurance
Romania	-788	-963	-176	831	747	-84	-10.1	1,619	1,710	92	5.7	1,533	1,606	4.8	
Greece	-182	-217	-35	805	737	-68	-8.4	987	954	-33	-3.4	1,189	969	-18.5	Manufacturing
Ethiopia	1,092	485	-607	1,275	678	-597	-46.8	183	194	10	5.7	9	11	22.2	
Kenya	179	201	21	569	651	83	14.5	389	451	61	15.7	390	259	-33.6	
Brunei	71	541	470	158	559	401	254.4	86	17	-69	-80.1	99	116	17.2	
Sri Lanka	-2,033	-2,138	-105	224	314	90	40.0	2,257	2,451	194	8.6	94	102	8.5	
Cambodia	-2,465	-2,532	-67	226	241	15	6.5	2,692	2,773	82	3.0	37	54	45.9	
Laos	8	-6	-14	33	25	-9	-26.2	25	31	5	21.9				
European Union - 27	-115,982	-125,084	-9,102	265,670	262,255	-3,414	-1.3	381,652	387,339	5,687	1.5	1,895,227	2,094,413	10.5	Nonbank Holding Co, Finance/Ins, Manuf

*US Total Goods Exports (f.a.s.); **US General Goods Imports (customs value); ***Stock of US Foreign Direct Investment Abroad

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