2023 National Trade Estimate Report on

# FOREIGN TRADE BARRIERS

UNITED STATES TRADE REPRESENTATIVE

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

# LIST OF FREQUENTLY USED ACRONYMS

| | |
|---|---|
| APHIS | Animal and Plant Health Inspection Service, U.S. Department of Agriculture |
| CVA | WTO Customs Valuation Agreement |
| DOL | U.S. Department of Labor |
| EU[1] | European Union |
| FDA | Food and Drug Administration, U.S. Department of Health and Human Services |
| FTA | Free Trade Agreement |
| GATT | General Agreement on Tariffs and Trade |
| GATS | WTO General Agreement on Trade in Services |
| GI | Geographical Indication |
| GPA | WTO Agreement on Government Procurement |
| G20 | Group of Twenty |
| HS | Harmonized System |
| HTS | Harmonized Tariff Schedule |
| ICT | Information and Communication Technology |
| IP | Intellectual Property |
| MFN | Most-Favored-Nation |
| MOU | Memorandum of Understanding |
| MRL | Maximum Residue Limit |
| OECD | Organization for Economic Cooperation and Development |
| SBA | U.S. Small Business Administration |
| SME | Small and Medium-Sized Enterprise |
| SPS | Sanitary and Phytosanitary |
| TBT | Technical Barriers to Trade |
| TFA | WTO Trade Facilitation Agreement |
| TIFA | Trade and Investment Framework Agreement |
| TRQ | Tariff-Rate Quota |
| USAID | U.S. Agency for International Development |
| USDA | U.S. Department of Agriculture |
| USTR | United States Trade Representative |
| VAT | Value-Added Tax |
| WTO | World Trade Organization |

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

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# FOREWORD

## SCOPE AND COVERAGE

The 2023 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the 38th report in an annual series that highlights significant foreign barriers to U.S. exports, U.S. foreign direct investment, and U.S. electronic commerce. This document is a companion piece to the President's 2023 Trade Policy Agenda and 2022 Annual Report, published by the Office of the United States Trade Representative (USTR) on March 1, 2023.

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

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

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

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

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

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

- Import policies (*e.g.*, tariffs and other import charges, quantitative restrictions, import licensing, pre-shipment inspection, customs barriers and shortcomings in trade facilitation or in valuation practices, and other market access barriers);

- Technical barriers to trade (*e.g.*, unnecessarily trade restrictive or discriminatory standards, conformity assessment procedures, labeling, or technical regulations, including unnecessary or discriminatory technical regulations or standards for telecommunications products);

- Sanitary and phytosanitary measures (*e.g.*, measures relating to food safety, or animal and plant life or health that are unnecessarily trade restrictive, discriminatory, or not based on scientific evidence);

- Government procurement (*e.g.*, closed bidding and bidding processes that lack transparency);

- Intellectual property protection (*e.g.*, inadequate patent, copyright, and trademark regimes; trade secret theft; and inadequate enforcement of intellectual property rights);

- Services (*e.g.*, prohibitions or restrictions on foreign participation in the market, discriminatory licensing requirements or standards, local-presence requirements, and unreasonable restrictions on what services may be offered);

- Digital trade and electronic commerce (*e.g.*, barriers to cross-border data flows, including data localization requirements, discriminatory practices affecting trade in digital products, restrictions on the supply of Internet-enabled services, and other restrictive technology requirements);

- Investment (*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);

- Subsidies, especially export subsidies (*e.g.*, subsidies contingent upon export performance, and agricultural export subsidies that displace U.S. exports in third country markets) and local content subsidies (*e.g.*, subsidies contingent on the purchase or use of domestic rather than imported goods);

- Competition (*e.g.*, government-tolerated anticompetitive conduct of state-owned or private firms that restricts the sale or purchase of U.S. goods or services in the foreign country's markets or abuse of competition laws to inhibit trade; and fairness and due process concerns by companies involved in competition investigatory and enforcement proceedings in the country);

- State-owned enterprises (*e.g.*, actions by SOEs and by governments with respect to SOEs involved in the manufacture or production of non-agricultural goods or in the supply of services that constitute significant barriers to, or distortions of, U.S. exports of goods and services, U.S. investments, or U.S. electronic commerce, which may negatively affect U.S. firms and workers. These actions include subsidies and non-commercial advantages provided to and from SOEs; and practices with respect to SOEs that discriminate against U.S. goods or services,

or actions by SOEs that are inconsistent with commercial considerations in the purchase and sale of goods and services);

- Labor (*e.g.*, concerns with failures by a government to protect internationally recognized worker rights[2] or to eliminate discrimination in respect of employment or occupation, in cases where these failures influence trade flows or investment decisions in ways that constitute significant barriers to, or distortions of, U.S. exports of goods and services, U.S. investment, or U.S. electronic commerce, which may negatively affect U.S. firms and workers);

- Environment (*e.g.*, concerns with a government's levels of environmental protection, unsustainable stewardship of natural resources, and harmful environmental practices that constitute significant barriers to, or distortions of, U.S. exports of goods and services, U.S. investment, or U.S. electronic commerce, which may negatively affect U.S. firms or workers); and,

- Other barriers (*e.g.*, barriers or distortions that are not covered in any other category above or that encompass more than one category, such as bribery and corruption, or that affect a single sector).

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

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

## TRADE IMPACT OF FOREIGN BARRIERS

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

[2] Internationally recognized worker rights include the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and a prohibition on the worst forms of child labor, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

market imposing the measure, and in third country markets. In practice, such information often is not available.

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

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

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

To the extent possible, the NTE Report endeavors to present estimates of the impact on U.S. exports, U.S. foreign direct investment, or U.S. electronic commerce of specific foreign trade barriers and other trade distorting practices. In some cases, stakeholder valuations estimating the effects of barriers may be contained in the NTE Report. The methods for computing these valuations are sometimes uncertain. Hence, their inclusion in the NTE Report should not be construed as a U.S. Government endorsement of the estimates they reflect. Where government-to-government consultations related to specific foreign practices were proceeding at the time of this NTE Report's publication, estimates were excluded, in order to avoid prejudice to these consultations.

March 2023

# ALGERIA

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs and Taxes

In May 2020, Algeria issued a decree to exempt from customs duties and value-added taxes (VAT) medical devices, pharmaceutical products, and testing equipment imported to combat the COVID-19 pandemic.

*Tariffs*

Algeria is not a Member of the World Trade Organization (WTO), but is a WTO Observer. Goods imported into Algeria face a range of tariffs, from zero percent to 200 percent. Algeria's average Most-Favored-Nation (MFN) applied tariff rate was 19 percent in 2021 (latest data available). Algeria's average MFN applied tariff rate was 23.6 percent for agricultural products and 18.2 percent for non-agricultural products in 2021 (latest data available).

Goods facing the highest rates are those for which equivalents are manufactured in Algeria. Citing the need to encourage local production and ease pressure on the country's foreign exchange reserves, Algeria adopted in January 2019 and implemented in April 2019 temporary additional safeguard duties (DAPs) of 30 percent to 200 percent on a list of more than 1,000 manufactured and agricultural goods, with the 200 percent rate applied to ten tariff lines covering cement products under the Harmonized System heading 25.23. The items in Algeria's customs code that remain duty free are generally European Union (EU)-origin goods that are used in manufacturing and are exempt from tariffs under the 2006 EU–Algeria Association Agreement.

### Non-Tariff Barriers

*Import Bans and Import Restrictions*

Since January 2009, Algeria's Ministry of Health has restricted the import of a number of generic pharmaceutical products and medical devices. In 2015, the Ministry of Health published a list of 357 generic pharmaceutical products banned from importation. The list became invalidated when authority over pharmaceutical imports transferred from the Ministry of Health to the Ministry of Pharmaceutical Industry in 2022. Since 2007, Algeria has banned the importation of used medical equipment unless the government grants a special exception. Algeria has applied the regulation broadly to block the re-importation of machinery sent abroad for maintenance under warranty, even for equipment owned by state-run hospitals.

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

In February 2021, the Ministry of Commerce issued a schedule establishing a seasonal ban for individual agricultural products. The schedule adjusted a year-round restriction on almond imports to a seasonal ban covering June through August. In September 2021, Algeria restricted the import of animal products such as tuna, yogurt, ice cream, liquid egg yolks, lambswool, camel hair, corned beef, live bait for fishing, and non-food products such as baseball bats. In October 2021, Algeria restricted the import of additional products for which there is minimal demand and for agricultural products not elsewhere specified or indicated in Algeria's tariff schedule. At the time, Algeria did not specify whether the restrictions on these products are seasonal, and whether they extend beyond 2023, as is the case for import restrictions on almonds. Algeria justified these decisions as necessary to reduce the country's import bill and to combat fraud.

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

*Quantitative Restrictions*

In August 2020, Algeria released a new Book of Specifications concerning the automotive industry. The Book of Specifications covers automobiles, buses, trucks, construction equipment, and motorcycles. It establishes an import quota of up to 200,000 vehicles per year, with an annual cap of $2 billion. Due to customs duties, the VAT, and other taxes, vehicles cost more than double the market rates when purchased by individuals overseas and imported into Algeria. While the import quota on kits for assembly of passenger vehicles is set at zero, the regulation indicated that Algeria would set a new quota for automotive companies that receive authorization to engage in local assembly or manufacturing. As of December 2022, Algeria had not granted authorizations to import under the 2020 regime, and no new cars for sale in dealerships have been imported since the regime was announced. A provision in the October 2022 Complementary Finance Law permits those residing in Algeria to import used cars which are three years old or less, however purchasers are required to use their own foreign currency to do so.

In 2020, Algeria established a maximum annual import volume benchmark of four million metric tons of bread (common) wheat. The Algerian President announced in August 2021 that the state grains agency (OAIC) would be the country's exclusive wheat importer to counteract alleged "illicit practices" by private importers. In practice, the OAIC was already the sole buyer of wheat, reselling the commodity on the domestic market at subsidized prices. In 2022, the Algerian President announced that the OAIC will have the exclusive right to import pulses as well. However, Algeria has not codified the OAIC's role as the sole buyer of wheat and pulses.

*Customs Barriers and Trade Facilitation*

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

Storage fees at Algerian ports of entry are high, and the fees double if goods are stored for longer than 10 days.

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

*Local Content Requirements*

The 2020 Book of Specifications for the automotive industry increased domestic content requirements in vehicle production. Minimum domestic content integration rates for domestic assembly plants will be 35 percent in 2023, 40 percent in 2024, and 50 percent thereafter. Additionally, the Book of Specifications mandates that automotive importers be 100 percent Algerian-owned.

## SANITARY AND PHYTOSANITARY BARRIERS

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

Algeria maintains strict animal health certificates for animals and animal products, dairy and dairy products, as well as processed products of animal origin. In 2021, the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) submitted a letter requesting that Algeria accept the USDA 9060-5 export certificate for U.S. meat and poultry products. The USDA has not received a response. As of December 2022, U.S. and Algerian veterinary authorities were continuing to negotiate export certificates to allow importation of U.S. bovine semen, beef cattle, dairy breeding cattle, and beef and poultry meat and meat products.

## GOVERNMENT PROCUREMENT

Since August 2015, all ministries and state-owned enterprises (SOEs) are required to purchase domestically manufactured products whenever available. Procurement of foreign goods are permitted only with special ministerial authorization and if a locally made product cannot be identified. Algeria requires approval from the Council of Ministers for expenditures in foreign currency that exceed DZD 10 billion (approximately $72 million).

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

## INTELLECTUAL PROPERTY PROTECTION

Algeria remained on the Watch List in the 2022 Special 301 Report. Algeria has taken some positive steps to improve intellectual property (IP) protection and enforcement, including increasing coordination on IP enforcement and engaging in capacity building and training efforts. However, concerns remain, including the lack of an effective mechanism for the early resolution of potential pharmaceutical patent disputes, inadequate judicial remedies in cases of patent infringement, the lack of administrative opposition in Algeria's trademark system, and the need to increase enforcement efforts against counterfeiting and piracy. In addition, Algeria does not provide an effective system for protecting against the unfair commercial use or unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

## BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

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

Algeria imposes a maximum value per transaction of DZD 100,000 (approximately $720) on citizens' purchases of goods from outside the country using international credit cards. In addition, Algerian foreign exchange regulations prohibit the use of certain online payment processors to transfer money from one account to another.

## INVESTMENT BARRIERS

In 2020, Algeria lifted its longstanding requirement that Algerian individuals or entities own at least 51 percent of all projects involving foreign investments (known as the 51/49 rule). However, the 2021 Finance Law re-imposed the 51 percent requirement, with retroactive application to foreign companies already established in Algeria and owning more than 49 percent of operations in strategic sectors such as energy, mining, defense, transportation and infrastructure, and pharmaceuticals, as well as for activities involving raw materials and importers of goods for resale in Algeria. In July 2022, the Algerian Government enacted an investment law that called for the creation of Invest Algeria, a one-stop shop for prospective investors to register in-country.

## STATE-OWNED ENTERPRISES

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

# ANGOLA

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

Angola's average Most-Favored-Nation (MFN) applied tariff rate for all products was 10.9 percent in 2021 (latest data available). Angola's average MFN applied tariff rate was 21.6 percent for agricultural products and 9.1 percent for non-agricultural products in 2021 (latest data available). Angola has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 59.1 percent and average bound rates of 52.7 percent for agricultural products and 60.1 percent for non-agricultural products.

In response to the COVID-19 pandemic, as of March 27, 2020, the General Tax Administration of Angola allows all medicines and biosafety material to be imported duty free.

*Taxes*

The 2022 State Budget reduced the Industrial/Withholding Tax rate, which is levied on incidental services, from 15 percent to 6.5 percent. The reduction is only applicable for 2022 and subject to review for 2023. It also reduced the value-added tax (VAT) from a standard rate of 14 percent to 7 percent for certain food products, goods, and services, such as hotels.

### Non-Tariff Barriers

*Import Restrictions*

Presidential Decree No. 23/19 of January 2019 appears aimed to restrict the importation of certain products unless the importer can demonstrate that the product is not available domestically. The Decree currently includes more than 54 products, mainly agricultural goods, and applies to any imports that compete with goods produced in the Luanda-Bengo special economic zone. Impacted products include poultry, maize flour, and diapers. As of December 31, 2022, importers had observed minimal enforcement of the Decree and had not reported restrictions on obtaining import licenses; however, importers remain concerned that the Decree, if fully implemented, would have negative impacts on trade. In 2022, the United States continued to raise concerns about the Decree with Angola bilaterally and in the WTO Council for Trade in Goods, the WTO Committee on Market Access, and the WTO Committee on Agriculture.

## SANITARY AND PHYTOSANITARY BARRIERS

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

*Agricultural Biotechnology*

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

## GOVERNMENT PROCUREMENT

Despite revisions to increase transparency in the Public Procurement Law that entered into force on January 22, 2021, stronger implementation of the law to make government procurement more transparent remains important. Angolan civil society and business leaders note the government's continued regular use of direct public contract awards through tenders by pre-qualification, closed bidding or simplified contracting for a regular and select few companies without the observation of public tenders in various sectors.

Companies that have participated in recent public tenders described the processes as fair and transparent for bidders. In some instances, companies have had difficulty responding to all requirements described in tenders that were "unclear." In other instances, companies have complained of direct awards occurring after a tender was announced, particularly in the health sector.

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

## OTHER BARRIERS

### Bribery and Corruption

While levels of corruption and bribery have declined, corruption remains prevalent in Angola for reasons including an inadequately trained civil service, a highly centralized bureaucracy, a lack of funding to improve capacity, and a lack of uniform implementation of anticorruption laws.

The Criminal Law and Criminal Procedure Codes (Law No. 38/20 and Law No. 39/20) entered into force on February 9, 2021. Notable changes include corporate criminal liability, harsh penalties for corruption of public officials, criminalization of private corruption, and provisions for seizure of proceeds of a crime, among others. The law also contains provisions that criminalize bribery of national and foreign public officials; seek an appropriate balance between immunities and the ability to effectively investigate, prosecute, and adjudicate offences; enhance cooperation within local law enforcement authorities; and, designate a central anticorruption authority.

Enforcement of anticorruption laws remains poor. The United States and the international community have engaged in anticorruption initiatives to help Angola attain its anticorruption objectives. For instance, the

U.S. Department of State is funding the Financial Services Volunteer Corps (FSVC), a project that supports Angolan civil society and independent media to increase public awareness and support for anticorruption and transparency reform. FSVC is also implementing a U.S. Agency for International Development (USAID) regional program that provides technical assistance, training, and mentoring at key government institutions to improve public financial management, enhance oversight, and reduce fraud, waste, and abuse of state resources.

**Export Taxes**

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

**Foreign Exchange**

Angola's dependence on oil and gas production means that activity in the sector heavily influences the availability of foreign exchange. Foreign exchange availability has recently improved in major economic sectors but remains inadequate for individuals and small businesses.

**Business Licensing**

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

# ARAB LEAGUE

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

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

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

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

The U.S. Government's efforts to oppose the Arab League boycott include alerting appropriate officials in the boycotting countries to the presence of prohibited boycott requests and the adverse impact of those

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

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

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

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

**ALGERIA**: Algeria does not maintain diplomatic, cultural, or direct trade relations with Israel, although indirect trade reportedly takes place. The country has legislation in place that in general supports the Arab League boycott, but there are no specific provisions relating to the boycott and government enforcement of the primary aspect of the boycott is reportedly sporadic. Algeria appears not to enforce any element of the secondary or tertiary aspects of the boycott. However, regulations issued by individual government agencies have at times banned contact with Israeli companies and entities, effectively barring the entry of Israeli products.

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

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

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

of Health's procurement arm (Kimadia) was among the government entities that still issued boycott-related requests.

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

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

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

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

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

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

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

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

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

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

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

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

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

The situation in individual GCC member countries is as follows:

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

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

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

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

*Saudi Arabia*: Saudi Arabia, in recognition of the 1994 GCC decision, renounced enforcement of the secondary and tertiary boycott. Senior Saudi Government officials from relevant ministries have requested that U.S. officials keep them informed of any allegations that Saudi entities are seeking to enforce these aspects of the boycott. Saudi entities have expressed a willingness to substitute non-boycott-related language in commercial documents. In the years since 2018, Saudi Arabia has permitted direct flights from foreign countries to Israel to transit Saudi airspace.

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

# ARGENTINA

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

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

Argentina is a founding member of the Southern Common Market (MERCOSUR), formed in 1991, which also comprises Brazil, Paraguay, and Uruguay. MERCOSUR's Common External Tariff (CET) ranges from zero percent to 35.0 percent *ad valorem* and averages 12.5 percent. In July 2022, MERCOSUR countries agreed to a 10 percent reduction of the CET for over 80 percent of product lines. Any good imported into Argentina (not including free trade zones) is subject to the payment of the CET to Argentina's customs authority. If the product is then re-exported to another MERCOSUR country, the CET must be paid again to the second country. MERCOSUR approved a Common Customs Code (CCC) in 2010 and launched a plan to eliminate the double application of the CET within MERCOSUR in 2021. However, only Argentina has ratified the CCC, and it has not taken effect.

*Taxes*

Argentina maintains a variety of taxes on, and tax exemptions for, imported goods. On December 23, 2019, the Argentine Congress passed Public Emergency Law 27541, raising to 3 percent the rate of the statistical tax, a fee charged on goods imported for consumption. Temporary imports, inputs used to produce goods for export, and imported goods for scientific and technological research are exempted from this tax. Pursuant to Decree 901/2021, the 3 percent statistical tax rate was extended until December 31, 2024.

Argentina's tax collection processes burden imports by effectively requiring advance payment of income taxes. When goods are imported, Argentina collects a percentage of the value of imports as income tax withholding to be applied to the importer's income taxes. The advance value-added tax (VAT), ranging from 10 percent to 20 percent, is paid by the importer, unless the goods are for personal use. In addition, the importer is responsible for an income tax withholding of 6 percent to 11 percent of the value of the imported goods. Further, there is an additional advance VAT rate of 20 percent for imports of consumer goods and 10 percent for imports of capital goods. Although some of these taxes on importation are reconciled after importation, in practice that takes a significant amount of time. In Argentina's inflationary environment this advance payment system disproportionately burdens imports.

Argentina also uses its tax system to incentivize local production and use of local inputs. For example, Resolution 599-E/2016, pursuant to Law 27263, provides tax credits to automotive manufacturers for the purchase of locally-produced automotive parts and accessories incorporated into specific types of vehicles. The tax credits range from 4 percent to 15 percent of the value of the purchased parts. In another example, imports of used capital goods are subject to higher taxes if there is local production of those inputs.

**Non-Tariff Barriers**

*Import Bans*

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

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

*Import Restrictions*

Domestic legislation requires compliance with strict conditions on the entry of those used capital goods that are not prohibited from being imported, as follows: (1) used capital goods can only be imported directly by the end user; (2) overseas reconditioning of goods is allowed only if performed by the original manufacturer and third-party technical appraisals are not permitted; (3) local reconditioning of the good is subject to technical appraisal to be performed only by the state-run Institute of Industrial Technology, except for aircraft-related items; (4) imported used capital good cannot be transferred (sold or donated) for a period of four years; and, (5) except for a short list of products exempted by Decree 406/2019, and regardless of where the reconditioning takes place, the Argentine Customs Authority requires the presentation of a "Certificate of Import of Used Capital Goods" at the time of importation.

Resolution 909/1994 places restrictions on the importation of certain used goods for consumption, such as parts and components that are not used in the manufacture of other products. The current list imposes import tariffs or other restrictions on goods including electronic and recording equipment; railroad vehicles and other railroad parts; optic, photography, and filming equipment; tractors; buses; aircraft; and, ships.

Under the "Por una Argentina Inclusiva y Solidaria - PAIS" tax, goods and services billed in foreign currency or that involve international transportation by air, land (except to countries that border Argentina), or water, and sold in Argentina (through a physical or online point of sale) are subject to a 30 percent tax. This affects services supplied by travel and tourism agencies for international travel, as well as the importation of products from online retailers. Decree 99/2019 also sets a lower rate of eight percent for certain imported digital services that are already subject to the VAT. As of October 13, 2022, pursuant to General Resolution 5272/2022, some purchases also are subject to a personal asset tax equal to 25 percent of the price of the good or service. These taxes are cumulative, which means consumers in Argentina, in many cases, may pay at least 100 percent in taxes when purchasing foreign goods and services or any international travel service.

*Import Licensing*

Imports are subject to automatic or non-automatic licenses, and the non-automatic licenses require importers to submit detailed information electronically about the imported goods. Products deemed import-sensitive by the Argentine Government, including goods such as automobiles, paper and cardboard, iron and steel, nuclear reactors, electrical and construction materials and parts, toys, textiles and apparel, footwear, computers, cellular phones, printers, optical fiber, and luxury items such as yachts and golf clubs are subject to the non-automatic import licensing regime.

Since 2020, Argentina has increased the list of products subject to non-automatic licenses, applying to approximately 46 percent of total imported products, and reduced the period of validity for these licenses to just 90 days after approval. On October 17, 2022, Argentina launched a new import licensing and tracking system, the Sistema de Importaciones de la República Argentina (SIRA). The new system is intended to create a single electronic system where importers can follow each step of the import license approval process by the different agencies involved: the Trade Secretariat of the Ministry of Economy, Tax Revenue Agency (AFIP), the Customs Agency, and the Central Bank. Importers have between 60 to 365 days, depending on the product, to access the foreign exchange market to pay for imports after the imported merchandise arrives at an Argentine port. Importers report delays and rejections as the SIRA system is not fully in place, while restrictions to access the foreign exchange market constitute a substantial impediment. The United States has raised concerns with Argentina about non-automatic licensing and at the WTO Committee on Import Licensing in light of the WTO Agreement on Import Licensing Procedure's commitments, and will continue to monitor import licensing.

*Customs Barriers and Trade Facilitation*

Argentina continues to use reference prices for goods that originate in, or are imported from, specified countries for customs valuation purposes. If a good is imported and the invoice price is lower than the reference price, Argentina requires importers to obtain an authenticated invoice, without a basis under the Customs Valuation Agreement. Argentina publishes a list of reference prices and covered countries.

*Consularization*

Argentina imposes costly and time-consuming consularization requirements on import documentation, a practice at odds with the trend in customs practice. Shipments to Argentina require commercial invoices and packing lists to be legalized by the Argentine Consulate in the country of export. Consulates will only legalize a commercial document after it has been signed by a Chamber of Commerce that is recognized by the Consulate in its region. Further, Argentina requires certificates of origin that must be authenticated by an Argentine Embassy or Consulate or carry a U.S. Chamber of Commerce seal.

## SANITARY AND PHYTOSANITARY BARRIERS

*Live Cattle*

Argentina banned imports of U.S. cattle and beef products in 2002 due to purported concerns regarding bovine spongiform encephalopathy. Although the market reopened to U.S. beef in 2018, it remains closed to U.S. live cattle, pending continued technical level engagement between the United States and Argentina on a mutually agreeable sanitary certificate.

*Poultry*

Argentina does not allow imports of fresh, frozen, or chilled poultry, due to purported concerns over Highly Pathogenic Avian Influenza (HPAI) and virulent Newcastle Disease, and because Argentina does not recognize the U.S. sanitary inspection system as equivalent to Argentina's system. The United States continues to encourage Argentina to regionalize restrictions related to HPAI in the event of future outbreaks, as recommended by the World Organisation for Animal Health.

## INTELLECTUAL PROPERTY PROTECTION

Argentina remained on the Priority Watch List in the 2022 Special 301 Report. The situation for innovators in the pharmaceutical and agrochemical sectors presents significant challenges. First, the scope of patentable subject matter remains significantly restricted under Argentine law. Second, there is inadequate protection against unfair commercial use and unauthorized disclosure of undisclosed test and other data submitted to the Argentine Government in conjunction with its lengthy marketing approval process. The United States urges Argentina to ensure transparency and procedural fairness in the protection of geographical indications (GIs) and to ensure that the grant of GI protection does not deprive interested parties of the ability to use common names, particularly as Argentina proceeds with the European Union (EU)–Mercosur Trade Agreement. In addition, the backlog continues for patent applications for pharmaceuticals and biosimilar products, resulting in unreasonable delays for these products.

Enforcing IP rights in Argentina continues to prove challenging, as counterfeit and pirated goods remain widely available. For example, the physical markets of La Salada in Buenos Aires, one of the largest black markets for counterfeit and pirated goods in Argentina, resumed operation after being closed due to the COVID-19 pandemic, with police failing to take effective *ex officio* actions. Additionally, La Salada market started selling counterfeit products online during the pandemic, a practice which continues. Furthermore, the existing legislative regime and weak enforcement hinder the ability of rights holders, law enforcement, and prosecutors to halt, through legal action, the growth of illegal markets, both online and physical.

## SERVICES BARRIERS

Similar to goods imports, services are subject to restrictions on their ability to access the foreign exchange market and are subject to approvals from the Secretary of Trade (within the Ministry of Economy) and AFIP prior to receiving authorization to import.

### Audiovisual Services

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

### Express Delivery

Pursuant to Decree 221/2019, consumers are subject to annual limits on the tax-free allowance on imports. Consumers can purchase imported goods valued at up to $50 per month tax free, with an annual tax-free limit of $600. If the monthly purchase total exceeds $50, the consumer must pay a 50 percent tax on the value above the $50 threshold. The decree limits non-commercial courier shipments annually to a

cumulative value of $1,000 and a cumulative weight not greater than 50 kilograms, and no more than five shipments per person. Shipments within these limits are exempt from import licensing and other import requirements, subject to certain conditions.

### Insurance Services

Local insurance companies may place up to 75 percent of the ceded premium with foreign reinsurance companies, unless they have prior authorization from the insurance oversight agency to place more. Argentina requires that all investments and cash equivalents held by locally-registered insurance companies be located in Argentina.

### Telecommunications Services

In 2020, Argentina froze prices for a number of information and communication technology (ICT) services, including fixed and mobile telephone services, Internet access services, and pay television services. On August 21, 2020, Argentina amended the Information and Communications Technologies Law to classify these services as "essential and strategic public services" and therefore subject to additional regulation by the National Communications Agency (ENACOM), including rate regulation. ENACOM raised the regulated rate limit for these ICT services several times during 2022, but the rates established by ENACOM are still well below inflation, undermining competition and discouraging additional investment in this sector in Argentina.

## INVESTMENT BARRIERS

### Foreign Exchange and Capital Controls

Traders doing business in Argentina are subject to a series of decrees and norms regulating access to foreign exchange markets in order to mitigate its persistent macroeconomic challenges, including government debt obligations and high inflation. These restrictions make it difficult for U.S. exporters and investors to realize payments for their sales.

# AUSTRALIA

## TRADE AGREEMENTS

### The United States–Australia Free Trade Agreement

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

## SANITARY AND PHYTOSANITARY BARRIERS

### Animal Health

*Beef and Beef Products*

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

*Pork*

Pork and pork products are the third-leading U.S. agricultural export to Australia, valued at approximately $131.3 million in 2022. However, due to Australia's stated concerns about porcine reproductive and respiratory syndrome (PRRS) and post-weaning multi-systemic wasting syndrome (PMWS), imports of fresh/chilled pork and bone-in products from the United States are not permitted. The United States has requested that Australia remove all PRRS and PMWS-related restrictions and has provided scientific evidence to document the safety of U.S. pork products. Although the WOAH approved a new chapter outlining guidelines for PRRS in May 2017, Australia formally voted against the chapter and has requested additional scientific information on PRRS from the United States. In December 2017, the U.S. Department of Agriculture Animal and Plant Health Inspection Service sent a scientific review paper on PRRS to the Australian Government. The United States and Australia continue to discuss this issue, including during an FTA Sanitary and Phytosanitary (SPS) Committee Meeting in 2022, but this issue remains unresolved. Access to the Australian market for fresh/chilled/frozen pork, bone-in pork, and pork products remains a high priority for the United States.

*Poultry*

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

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

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

### Plant Health

*Apples and Pears*

Australia prohibits the importation of apples and pears from the United States based on concerns regarding several pests. In October 2009, Australia published a pest risk analysis for apples from the United States and identified three additional fungal pathogens of concern to Australian regulatory authorities. In December 2014, the United States provided information to Australia to support the U.S. systems approach to address pest risk issues. The Australian Government requested additional information. In November 2018, Australia announced it was commencing a new risk analysis for fresh apples from U.S. Pacific Northwest states. In October 2020, Australia published the draft risk analysis for a 90-day comment period. The United States provided comments in response to Australia's draft risk analysis for U.S. apples on January 13, 2021. On October 31, 2022, Australia published the final risk analysis for U.S. Pacific Northwest apples. Australia prohibits the importation of pears from the United States for phytosanitary issues, including restrictions due to fire blight.

## INTELLECTUAL PROPERTY PROTECTION

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

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

## SERVICES BARRIERS

### Audiovisual Services

Australia is considering imposing local content obligations on streaming video services. In November 2020, the Australian Government issued the Media Reform Green Paper to raise and consult on options to implement such requirements. Following this consultation process, the government released a Streaming

Services Reporting and Investment Scheme discussion paper that outlined a proposed regulatory scheme in which streaming services would be expected to invest at least five percent of their Australian revenues in commissioning new Australian content. This proposal was not enacted ahead of the May 2022 federal election. The new Labor government discontinued the Media Reform Green Paper process, and instead began consulting on a new National Cultural Policy to address local content requirements for streaming services. On January 30, 2023, the Government of Australia published the National Cultural Policy. The Policy recommends that the Australian Government introduce "requirements for Australian screen content on streaming platforms to ensure continued access to local stories." According to the Policy recommendation, these new requirements should be introduced by the third quarter of 2023 and be implemented no later than July 2024. The United States will continue to monitor this issue to ensure Australia's compliance with Australia's FTA obligations, which discipline measures that discriminate in favor of domestic content.

## BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

### Internet Services

*Mandatory Bargaining Code of Conduct*

On July 31, 2020, the Australian Competition and Consumer Commission (ACCC) released the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020 (Bargaining Code) for consultations. Then, on December 10, 2020, the Australian Government introduced an updated draft Bargaining Code for parliamentary consideration. On February 25, 2021, the Australian Parliament passed an amended version of the legislation. The amended legislation addressed several concerns identified by U.S. stakeholders.

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

No companies have been designated under the Code to date. The United States will continue to monitor this issue.

*Online Content*

On February 10, 2022, the Australian Government introduced the Social Media (Anti-Trolling) Bill 2022 to enable defamation cases to be prosecuted where defamatory material was posted anonymously on online platforms. The proposed legislation would have required foreign social media services with at least 250,000 Australian account-holders (or services specified in the legislative rules) to "nominate" an "entity" in Australia to be an agent of the provider and help with facilitating access to end-user information. The legislation would also require digital platforms and/or the nominated entity to enable the identification of

posters on their services where the posts originate in Australia. The legislation was reviewed by the Senate Legal and Constitutional Affairs Committee, which recommended that the parliament pass the legislation with three proposed revisions. The legislation lapsed with the dissolution of Australia's parliament for the May 2022 federal election and the new Labor government has not introduced new legislation covering this issue.

## INVESTMENT BARRIERS

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

# BAHRAIN

## TRADE AGREEMENTS

### The United States–Bahrain Free Trade Agreement

The United States–Bahrain Free Trade Agreement (FTA) entered into force on August 1, 2006. Under the FTA, as of January 1, 2015, Bahrain provides duty-free access to all U.S. exports. Officials from the United States and Bahrain meet regularly to review implementation and functioning of the FTA and to address outstanding issues.

## IMPORT POLICIES

*Taxes*

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

*Import Bans*

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

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Automobiles*

U.S. automakers have raised concerns over growing regulatory fragmentation in the GCC. While the Gulf Standardization Organization (GSO) is supposed to set standards for the entire GCC market, individual GCC Member States have instituted unique standards for automobiles that deviate from GCC automobile standards. Though Bahrain has not taken such steps, the United States will be monitoring this issue across GCC Member States going forward.

*Restrictions on Hazardous Substances – Electrical Goods*

In March 2018, GCC Member States notified the World Trade Organization (WTO) of a draft GSO technical regulation that would require pre-market testing by accredited labs for certain hazardous substances in electrical goods. The measure would also require each type of good to be registered annually and require sample products to be submitted prior to receiving approval for use in the GCC. The United States has raised concerns that the proposed regulatory requirements would have a significant negative impact on the imports of U.S. electrical and electronic equipment, especially as the third-party certification requirements differ from international best practices.

*Degradable Plastics*

In September 2018, Bahrain notified to the WTO the Technical Regulation on Degradable Plastics Products. The regulation phased out single-use plastic bags and banned the import of non-biodegradable plastic bags beginning in July 2019. In July 2020, the regulation banned polyethylene and polypropylene sheets.

*Plastic Water Bottles*

In July 2021, Bahrain's Ministry of Industry, Commerce and Tourism issued Resolution No. 7 banning the manufacture, import or circulation of plastic water bottles with volumes less than 200 milliliters. Water bottles manufactured for export are excluded. The resolution took effect on January 9, 2022.

*Energy Drinks*

In September 2021, Bahrain began to implement Executive Regulations for the Public Health Law on Energy Drinks. These regulations: (1) prohibit the sale of energy drinks to individuals under the age of 18 and require all locations selling such products to display a prominent notice of this prohibition; (2) prohibit the sale of such products in restaurants, cafeterias, educational facilities and health facilities; (3) require prior licensing in order to advertise such products through any form of media; and, (4) ban free samples of such products. In addition, manufacturers are required to include a warning label on energy drinks noting that the product is not suitable for: pregnant and nursing women; individuals allergic to caffeine or other ingredients contained in the product; individuals suffering from heart problems, high blood pressure or diabetes; athletes engaged in exercise; or, individuals under 18 years of age.

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

In January 2016, GCC Member States notified to the WTO a draft GSO technical regulation for energy drinks, which was revised in March 2022. The U.S. Government and private sector stakeholders raised concerns through bilateral and multilateral fora regarding the draft regulation. These concerns include the proposed marketing-based definition for energy drinks, and labeling requirements regarding recommended consumption. Industry stakeholders still report that caffeine-content limitations unduly target energy drinks in GCC Member States. In many cases, such limitations do not apply to other drink products that contain similar or even higher levels of caffeine, such as tea, brewed coffee and other ready-to-drink coffee products.

**Sanitary and Phytosanitary Barriers**

*Food Additives*

U.S. industry stakeholders have noted concerns that the 2021 GCC Technical Regulations applied to Additives Permitted for Use in Foodstuffs are not aligned with relevant standards for food additives from the Codex Alimentarius Commission (Codex), particularly with respect to additives such as curcumins and annatto that are widely used in cheese production, and may potentially disrupt trade in food products.

*Titanium Dioxide*

In September 2020, GCC Member States notified to the WTO a draft GSO technical regulation that would remove titanium dioxide from the list of approved food additives, in line with EU food additive regulations. Titanium dioxide is an adopted food additive that is included in the Codex General Standard for Food Additives (GSFA). As such, it may be used in specified foods under the conditions of good manufacturing practices as outlined in the Codex GSFA. The U.S. Department of Health and Human Services Food and Drug Administration continues to allow for the safe use of titanium dioxide as a color additive in foods, subject to certain restrictions, including that the quantity of titanium dioxide does not exceed one percent in weight of the food. The EU banned the use of titanium dioxide as a food additive on August 7, 2022, based on a risk classification that the European Court of Justice later ruled to be based on faulty scientific analysis. The EU is determining how to respond in light of the court's ruling. Following the EU move to ban the use of titanium dioxide in animal feed, in 2021 the Codex Committee on Food Additives agreed that titanium dioxide should be re-evaluated by the Joint FAO/WHO Expert Committee on Food Additives (JECFA). JECFA is set to meet and provide its findings in June 2023. The United States has requested that GCC Member States wait until this review has been completed before considering changes to their existing regulatory approval, given the lack of data demonstrating negative health effects from allowed uses of this food additive.

## GOVERNMENT PROCUREMENT

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

Bahrain is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since December 2008. However, the FTA contains disciplines on government procurement.

## INTELLECTUAL PROPERTY PROTECTION

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

## LABOR

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

## OTHER BARRIERS

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

# BANGLADESH

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

Bangladesh's import policies are outlined in the Import Policy Order (IPO) 2015-18 issued by the Ministry of Commerce. The IPO has two lists, the "List of Controlled Goods" and the "List of Prohibited Goods." The Bangladesh Ministry of Commerce issued the IPO for 2021-24 on April 26, 2022. It is valid until June 30, 2024.

### Tariffs and Taxes

*Tariffs*

Bangladesh's average Most-Favored-Nation (MFN) applied tariff rate was 14 percent in 2021 (latest data available). Bangladesh's average MFN applied tariff rate was 17.6 percent for agricultural products and 13.4 percent for non-agricultural products in 2021 (latest data available). Bangladesh has bound 17.9 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 156.3 percent.

*Taxes*

Other charges applicable to imports are an advance income tax of 5 percent, a value-added tax (VAT) ranging from zero percent to 15 percent, with exemptions for certain input materials, and a supplementary duty of zero percent to 500 percent, which applies to new vehicles with large engines. A VAT and supplementary duties are also charged on certain domestically produced goods. On July 1, 2019, Bangladesh implemented a new VAT law to simplify VAT rates to four possible rates (5.0 percent, 7.5 percent, 10.0 percent, and 15.0 percent).

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

### Non-Tariff Barriers

*Customs Barriers and Trade Facilitation*

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

## SANITARY AND PHYTOSANITARY BARRIERS

### Fumigation of U.S. Origin Cotton

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

Technical experts from the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) and the U.S. Cotton Council have been consistently engaging with the Bangladeshi Ministry of Agriculture to remove the fumigation requirement for U.S. baled cotton. The issue was also raised at the High-Level Economic Dialogue in June 2022 and the meeting of the United States–Bangladesh Trade and Investment Cooperation Forum Agreement Council in December 2022. The United States continues to press Bangladesh to eliminate the unnecessary fumigation requirement for U.S. cotton. In 2022, Bangladesh was the seventh largest export market for U.S. cotton, with exports valued at approximately $477 million.

## GOVERNMENT PROCUREMENT

Government procurement is primarily undertaken through public tenders under the Public Procurement Act of 2006 and conducted by the Central Procurement Technical Unit. Bangladesh publicly subscribes to principles of international competitive bidding; however, charges of corruption are very common. Bangladesh launched a national electronic government procurement portal, but U.S. companies have raised concerns about the use of outdated technical specifications, the structuring of specifications to favor preferred bidders, and a lack of overall transparency in public tenders. Several U.S. companies have claimed that their foreign competitors often use their local partners to influence the procurement process and to block awards to otherwise competitive U.S. company bids. U.S. companies have reported instances of alleged bid rigging in government tenders in Bangladesh. U.S. companies have also alleged the use of bribery, anticompetitive practices, and a lack of transparency in the bidding process, all of which is a disadvantage to U.S. companies bidding on government tenders.

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

## INTELLECTUAL PROPERTY PROTECTION

Bangladesh continues to face many challenges with respect to adequate and effective intellectual property (IP) protection and enforcement. Bangladesh has undertaken several legislative reforms related to IP in recent years, including a new patent law passed in April 2022, for which Bangladesh is currently drafting implementing rules. However, it remains to be seen whether these changes will result in concrete benefits for innovators and creators.

IP protection and enforcement are not robust, and counterfeit and pirated goods are readily available. A number of U.S. firms, including in the pharmaceutical, consumer goods, apparel, and software industries, have reported violations of their IP in Bangladesh. Stakeholders also report a growing trend of Bangladesh serving as a source country for counterfeits distributed globally and note that police are unlikely to initiate

independent investigations of counterfeit goods distributors. In addition, right holders have raised concerns about the fairness of court decisions in IP cases.

Better coordination among enforcement authorities and other government institutions, such as Customs, the Office of the Attorney General, the Copyright Office, the Bangladesh Investment Development Authority, and the Department of Patents, Designs, and Trademarks, is needed to strengthen Bangladesh's IP regime. The U.S. Department of Commerce Patent and Trademark Office and other U.S. Government agencies continue to provide technical assistance to Bangladesh to address these challenges and help improve the country's IP regime.

## SERVICES BARRIERS

### Insurance Services

U.S. companies have raised concerns that Bangladesh Bank is not permitting the marketing and signing of life insurance products via commercial banks. In 2020, Bangladesh Bank formed a committee to assess the implementation of new rules to allow insurance distribution. In May 2022, Bangladesh Bank finalized implementation guidelines which, among other things, do not allow banks to sign agreements with more than three life insurance and three non-life assurance companies at the same time and require banks to establish a separate, dedicated department or wing to procure insurance business. The guidelines were submitted to the Ministry of Finance for approval. However, the insurance regulator, the Insurance Development & Regulatory Authority (IRDA), reportedly still needs to formulate and approve implementation procedures enabling insurers to sell insurance products through banking channels. The IRDA continues to work with the Financial Institution Division of the Finance Ministry on this implementation.

## BARRIERS TO DIGITAL TRADE

The Information and Communication Technology Act of 2006, amended in 2013, authorizes the Government of Bangladesh to access any computer system for the purpose of obtaining any information or data, and to intercept information transmitted through any computer resource. Under this law, Bangladesh may also prohibit the transmission of any data or voice call and censor online communications. The Bangladesh Telecommunications Regulatory Commission (BTRC) ordered mobile operators to limit data transmissions for political reasons on several occasions in 2019 and in 2020 ahead of politically sensitive events, including local and national-level elections. The BTRC ordered mobile operators to block all services except for voice calls in the Rohingya refugee camps in Cox's Bazar from September 2019 until August 2020.

The Bangladesh Road Transport Authority's Ride-Sharing Service Guidelines have included requirements that app-based transportation service providers maintain data servers within Bangladesh since March 2018.

The Department of Information and Communication Technology released, in July 2022, the revised draft Data Protection Act, 2022 (DPA). In particular, the draft law applies to the collection, processing, using, and sharing of data, or otherwise processed data of Bangladeshi citizens. The DPA imposes criminal liability and applies to Bangladeshi citizens residing outside of Bangladesh, raising the potential of conflict of law situations and may restrict trusted cross border data flows. In addition, stakeholders, as well as the U.S. Government, have raised concerns over the DPA because it is overly broad in scope and application.

In February 2022, the Bangladesh Telecommunication Regulatory Commission published the Regulation for Digital, Social Media and Over the Top (OTT) Platforms, 2021. The regulations were presented in their final form to a subdivision of the Supreme Court of Bangladesh on October 19, 2022. The regulations are a content governance framework for digital, social media and media platforms operating in the country. It

seeks to introduce traceability within end-to-end encrypted services. Industry and civil society stakeholders have expressed concerns that the regulations will grant the government broad-sweeping powers to dictate online content with the threat of criminal liability for firms and employees deemed noncompliant.

## SUBSIDIES

Bangladesh maintains a range of agricultural subsidies but has not submitted an agricultural subsidies notification to the WTO Committee on Agriculture since 2011. These subsidies are provided as export cash incentives for a variety of agricultural products including vegetables, fruits, and processed agricultural products. Processed agricultural products include: potatoes, rice, tea, and jute products; halal meat products; coconut coir; seeds of horticultural products; live crabs; frozen shrimp; prawns; and, fish products. Subsidies are also given to keep the price of production inputs within the purchasing capacity of producers. Bangladesh provides non-product-specific support through subsidized fertilizers, diesel, electricity, and agricultural machinery. The subsidized fertilizer is distributed through a controlled channel, which keeps prices reasonably stable.

Bangladesh has never submitted a subsidies notification to the WTO Committee on Subsidies and Countervailing Measures. According to publicly available information from the Bangladesh Investment and Development Authority, industries exporting more than 80 percent of their goods, regardless of their locations (*i.e.*, within or outside of an export processing zone), can be exempted from income tax for 50 percent of their export earnings (provided that the industry is not already paying income tax at a reduced rate). Furthermore, exporters in certain sectors may be eligible for additional benefits in the form of a subsidy or cash incentive based on certain conditions. Other publicly available information indicates that 42 sectors receive cash incentives for exporting ranging from 1 percent to 20 percent of the export value on the condition that the product exported contains at least 30 percent domestic value added.

## INVESTMENT BARRIERS

Repatriation of profits and external payments are allowed, but U.S. and other international investors have raised concerns that the procedures and requirements for outbound transfers from Bangladesh remain cumbersome, lack transparency, and include significant delays for applications to repatriate profits, dividends, and other capital. Despite recent Bangladesh Bank efforts intended to ease requirements for outbound transfers, U.S. companies report that agency-level regulators continue to present significant obstacles to securing required approvals for remittances in a timely manner, which are required before companies can seek central bank clearance.

## LABOR

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

## OTHER BARRIERS

### Corruption

Corruption is a pervasive and longstanding problem in Bangladesh, and anticorruption legislation is inadequately enforced. The Code of Criminal Procedure, the Prevention of Corruption Act, the Penal Code, and the Money Laundering Prevention Act criminalize attempted corruption, extortion, active and passive

bribery, bribery of foreign public officials, money laundering, and using public resources or confidential state information for private gain. However, bribery and extortion in commercial dealings are common features of business despite the illegality of facilitation payments and gifts. U.S. companies have complained about long delays in obtaining approval of licenses and bids as Bangladeshi Government officials seek bribes.

There have been continuous efforts to water down government procurement rules and proposals to curb the independence of the Anti-Corruption Commission (ACC), the main institutional anticorruption watchdog. The Sarkari Chakori Ain Bill (Government Job Act), enacted in October 2018, requires the ACC to seek permission of the authorities concerned before arresting any government official and limits the ability of the ACC in investigating corruption allegations against government officials. While the ACC has increased pursuit of cases against lower-level government officials and some higher-level officials, there remains a large backlog of cases.

# BOLIVIA

## IMPORT POLICIES

### Tariffs

Bolivia's average Most-Favored-Nation (MFN) applied tariff rate was 11.8 percent in 2021 (latest data available). Bolivia's average MFN applied tariff rate for agricultural products was 13.2 percent and 11.6 percent for non-agricultural products in 2021 (latest data available). Bolivia has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 40 percent.

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

### Non-Tariff Barriers

*Import Bans*

In 2022, import prohibitions applied to 33 tariff lines. Prohibited items included: radioactive residues; halogenated derivatives of hydrocarbons; arms, ammunition, and explosives; used clothing; and, some types of vehicles and motor vehicles (in particular, vehicles using liquefied gas, used motor vehicles more than one year old, motor vehicles more than three years old used for the transport of more than ten persons, and special-purpose motor vehicles more than five years old).

*Customs Barriers and Trade Facilitation*

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

## SANITARY AND PHYTOSANITARY BARRIERS

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

There is great discretion and varied criteria used by SENASAG inspectors when evaluating food health and safety standards and reviewing supporting importation documents. A lack of transparency in the institution increases the uncertainty about whether products entering Bolivia will be examined using consistent and uniform criteria. Bolivia's facility registration requirements for animal products (beef, pork, poultry, dairy, genetic material, and animal by-products) are onerous and SENASAG applies these requirements in an

inconsistent and discretionary manner. These practices have limited the ability for several U.S. agricultural exporters to gain market access to Bolivia, despite demand for these products.

## GOVERNMENT PROCUREMENT

The Buy Bolivian (Compro Boliviano) program supports domestic production by giving preference margins to domestic producers or suppliers in government procurement. The United States is monitoring the tendering process.

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

As a general matter, the tendering process is nontransparent and acts as a barrier to investment. Government requirements and the details of the tender are not always defined, and procurement notices are not always made public. For example, none of the government-owned strategic sector companies, including the state-owned oil and gas company, Yacimientos Petrolíferos Fiscales Bolivianos (YPFB); the state-owned electricity company, Empresa Nacional de Electricidad (ENDE); and, the state lithium company, Yacimientos de Litio Bolivianos (YLB), are required to publish tenders through the official procurement website, Sistema de Contrataciones Estatales (SICOES). U.S. stakeholders have raised concerns that these state-owned companies are not required to follow the procedures established in the national procurement law. One U.S. company noted a Bolivian Government tender was prepared in such a way that only one specific company would be able to compete.

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

## INTELLECTUAL PROPERTY PROTECTION

Bolivia remained on the Watch List in the 2022 Special 301 Report. The report noted that significant challenges continue with respect to adequate and effective intellectual property (IP) protection and enforcement. While certain Bolivian laws provide for the protection of copyrights, patents, and trademarks, significant concerns remain about trade secret protection. Significant challenges also persist with respect to widespread piracy and counterfeiting. The Special 301 Report again encouraged Bolivia to improve its weak protection and enforcement of IP. Bolivia's IP agency, Servicio Nacional de Propiedad Intelectual (SENAPI), signed a memorandum of understanding (MOU) with the United States Patent and Trademark Office in 2020 to help address Bolivia's challenges. However, the Bolivian administration that took office at the end of 2020 does not recognize the MOU.

## STATE-OWNED ENTERPRISES

In an effort to control key sectors of the economy, the Bolivian Government obtained (through legally required contract renegotiations) majority ownership in a number of companies in the hydrocarbons, electricity, mining, and telecommunications sectors. Bolivia has also created dozens of new public companies in "strategic" sectors such as food production, industrialization of natural resources, air travel, banking, and mining. U.S. stakeholders have expressed concern that these state-owned enterprises engage in unfair subsidized competition that constitutes a significant barrier to investment.

In August 2022, the Bolivian Government created the state-owned Bolivian Industry for Ecological Oils to promote the production of biodiesel and pharmaceuticals with the aim of reducing fuel imports. The government owns the second-largest bank in Bolivia, Union Bank, which is competitive with U.S. banking providers. Other state-owned companies include: the Sugar Cane Company of San Buena Aventura; Bolivia's Industrialization Company of Gas and Oil; computer technology company QUIPUS; dairy processing company Lácteosbol; recycled paper company PAPELBOL; Brazil nut export company Empresa Boliviana de Alimentos; Bolivian national airline Boliviana de Aviación, the main operator in Bolivia; oil and gas company YPFB; electricity company ENDE; and, lithium company YLB. The United States is monitoring these companies for possible impacts on U.S. exports of goods and services.

The Bolivian Government grants ownership rights and controls the exploitation, exploration, and industrialization of natural resources through joint ventures between government entities and government-owned companies with public companies, communities, and private companies. No concessions or contracts may transfer ownership of hydrocarbon deposits to private or other interests.

# BRAZIL

## TRADE AGREEMENTS

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

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

On November 17, 2021, the Brazilian Congress ratified the 2020 U.S.–Brazil Protocol Regarding Trade Rules and Transparency, and it entered into force on February 2, 2022. The Protocol updated the ATEC with state-of-the-art provisions on anti-corruption, good regulatory practices, and trade facilitation and customs administration. Implementation of the Protocol will foster a more equitable and transparent economic environment, reduce red tape, and improve regulatory processes, as well as serve as a foundation for future bilateral engagement.

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

Brazil's average Most-Favored-Nation (MFN) applied tariff rate was 13.3 percent in 2021 (latest data available). Brazil's average MFN applied tariff rate was 10.1 percent for agricultural products and 13.8 percent for non-agricultural products in 2021 (latest data available). Brazil has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 31.4 percent. Brazil's maximum bound tariff rate for non-agricultural products is 35 percent, while its maximum bound tariff rate for most agricultural products is 55 percent.

Brazil is a founding member of the Southern Common Market (MERCOSUR), formed in 1991, which also includes Argentina, Paraguay, and Uruguay. MERCOSUR's Common External Tariff (CET) ranges from zero percent to 35.0 percent *ad valorem* and averages 12.5 percent. In July 2022, MERCOSUR countries agreed to a 10 percent reduction of the CET for over 80 percent of product lines. Brazil implemented an additional 10 percent tariff reduction in March 2022, which is set to expire in December 2023.

Any good imported into Brazil (not including from free trade zones) is subject to payment of the CET to Brazil's customs authority. If the product is then re-exported to another MERCOSUR country, the CET must be paid again to the second country. MERCOSUR approved a Common Customs Code (CCC) in 2010 and launched a plan to eliminate the double application of the CET within MERCOSUR in 2021. However, only Argentina has ratified the CCC and it has not taken effect. Although the Brazilian Congress approved the agreement in 2018, it has not been promulgated by the executive branch, which is necessary for ratification.

Brazil imposes relatively high tariffs on imports across a wide range of sectors, including automobiles, automotive parts, information technology and electronics, chemicals, plastics, industrial machinery, steel, and textiles and apparel. In addition, Brazil's bound rates are often much higher than its applied rates, and U.S. exporters face significant uncertainty in the Brazilian market because the government frequently increases and decreases tariffs within the flexibilities of MERCOSUR. The lack of predictability with regard to tariff rates makes it difficult for U.S. exporters to forecast the costs of doing business in Brazil.

*Ethanol Tariff-Rate Quota*

Between 2011 and 2017, bilateral trade of ethanol between the United States and Brazil, the world's two largest producers and consumers of ethanol, was virtually duty free. Ethanol imports into the United States enter at the MFN rate of 1.9 percent or 2.5 percent, depending on the Harmonized System code, while imports into Brazil entered duty free. However, between September 2017 and January 2022, Brazil imposed first a tariff-rate quota (TRQ) and then the MERCOSUR common external tariff of 20 percent on all imports of ethanol, the vast majority of which is supplied by the United States. Although the tariff was below Brazil's WTO bound tariff rate of 35 percent, the TRQ and common external tariff have drastically reduced previously robust bilateral trade of ethanol. Brazil temporarily suspended the tariff effective March 23, 2022, but that suspension expired on January 31, 2023, when the tariff rose to 16 percent. The tariff will return to 18 percent in 2024. On average, ethanol makes up just under one third of U.S. agricultural exports to Brazil, and Brazil historically represents the second largest market for U.S. ethanol.

*Taxes*

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

**Non-Tariff Barriers**

*Import Bans*

Brazil restricts the entry of certain types of remanufactured goods (*e.g.*, earthmoving equipment, automotive parts, and medical equipment). Brazil only allows the importation of such goods if an importer can provide evidence that the goods are not or cannot be produced domestically, or if they meet certain other limited exceptions.

With some exceptions, Brazil generally prohibits imports of used consumer goods, including automobiles, clothing, tires, medical equipment, and information and communication technology (ICT) products.

*Import Licensing*

Brazil has both automatic and non-automatic import licensing requirements. Brazil's non-automatic import licensing system covers imports of products that require authorization from specific ministries or agencies, such as agricultural commodities and beverages (Ministry of Agriculture, Livestock, and Supply – MAPA), pharmaceuticals (National Sanitary Regulatory Agency), and arms and munitions (Ministry of National Defense). A list of products subject to non-automatic import licensing procedures is available on the Secretariat of Foreign Trade's computerized documentation system, but specific information related to non-automatic import licensing requirements and explanations for rejections of non-automatic import license applications are lacking. The lack of transparency surrounding these procedures creates additional burdens for U.S. exporters. U.S. exporters of footwear and apparel and in the automotive sector have expressed concerns about these non-automatic licensing requirements. For automobiles, delays in issuing non-automatic import licenses negatively affect exports of U.S. automobile and automotive parts to Brazil.

*Customs Barriers and Trade Facilitation*

U.S. companies continue to complain of burdensome and inconsistent documentation requirements for the importation of certain types of goods, such as heavy equipment, that apply even if imports are on a temporary basis and are destined for use in other countries.

In April 2022, the Brazilian Government reduced the merchant marine tax on ocean freight from 25 percent to 8 percent. Despite this reduction, the taxation plus port handling charges at Brazilian ports put U.S. products at a competitive disadvantage vis-à-vis MERCOSUR products.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Wine Regulations*

Brazil requires duplicative documentation for imports of wine. Technical Regulation No. 75 of December 31, 2019, requires both a certificate of analysis and an import inspection pre-certification report generated by a Brazilian lab upon importation. The United States has raised these issues with Brazil on the margins of WTO Committee on Technical Barriers to Trade meetings and during bilateral engagements.

*Telecommunications Products*

Brazil's telecommunications agency (ANATEL) issued a normative act in July 2021 (No. 4521/2021) establishing approval requirements as a prerequisite for importing telecommunications products for usage and sale, with exceptions for products entering the country for demonstration, self-use, scientific purposes, or manufacturing of exports. Approval must be obtained prior to the product's entry into the country. This requirement entered into force in December 2021.

*Cell Phone Charging Regulation*

In July 2022, Brazil proposed an update to its technical requirements for cell phone charging, which prescribe that all new mobile phones must be equipped with USB type-C charging cables and ports as of July 1, 2024. This is instead of selecting a design-based approach, which would allow flexibility and provide space for innovations and the development of international standards that can improve energy efficiency for charging devices. The United States raised this issue in a bilateral meeting during the November 2022 WTO TBT Committee.

### Sanitary and Phytosanitary Barriers

*Pork*

In a Joint Statement issued by the White House on March 19, 2019, the United States and Brazil agreed to establish risk and science-based conditions to allow for the importation of U.S. pork into Brazil. However, U.S. fresh, frozen, and further processed pork products remain ineligible due to issues related to regionalization of the control of certain animal diseases. Discussions between the U.S. Department of Agriculture Animal and Plant Health Inspection Service and MAPA are ongoing but have yet to establish access for U.S. pork exports to Brazil.

## GOVERNMENT PROCUREMENT

Although Brazil has taken steps to make its procurement market more transparent and is seeking to accede to the WTO Government Procurement Agreement (GPA), restrictions remain. For example, Brazilian state enterprises may only subcontract services to a foreign firm if domestic expertise is unavailable, and foreign firms may only bid to provide technical services if there are no qualified Brazilian firms. Brazil also grants procurement preference based on meeting economic stimulus requirements, such as generating employment or contributing to technological development, and maintains local content requirements for some sectors (*e.g.*, oil and gas).

Brazil is not a Party to the WTO Government Procurement Agreement, but has been an observer to the WTO Committee on Government Procurement since October 2017. On May 18, 2020, Brazil applied for accession to the GPA.

## INTELLECTUAL PROPERTY PROTECTION

Brazil remained on the Watch List in the 2022 Special 301 Report. Despite improvements in recent years, as outlined in that report, enforcement challenges continue, including the absence of deterrent-level penalties and high levels of counterfeiting and piracy online and in physical markets. The United States identified the Rua 25 de Março area in São Paulo in the 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List) for selling counterfeit and pirated goods. Deterrent-level penalties and increased emphasis on enforcement at the tri-border region between Argentina, Brazil, and Paraguay are critical to make sustained progress on these intellectual property concerns. Other concerns include the pendency of patent applications and the impact on the effective patent term. Also, while Brazilian law and regulations provide for protection against unfair commercial use of undisclosed test results and other data generated to obtain marketing approval for veterinary and agricultural chemical products, similar protection is not provided for pharmaceutical products for human use. The United States urges Brazil to ensure transparency and procedural fairness in the protection of geographical indications (GIs) and to ensure that the grant of GI protection does not deprive interested parties of the ability to use common names, particularly as Brazil proceeds with the European Union (EU)–Mercosur Trade Agreement.

## SERVICES BARRIERS

### Audiovisual Services

In audiovisual services, Brazil imposes several taxes on foreign products that it does not apply equally to domestic products, and it also applies local content requirements.

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

Remittances to foreign producers of audiovisual works are subject to a 25 percent income withholding tax. As an alternative to paying the full tax, producers can elect to invest 70 percent of the tax value in local independent productions. In addition, local distributors of foreign films are subject to a tax equal to 11 percent of remittances to the foreign producer or, alternatively, the distributor may invest an amount equal

to 3 percent of the total remittances in local independent productions. This levy is also assessed on foreign-produced video and audio advertising.

Law 12.485 of 2011 imposes local content quotas on subscription television services by requiring every channel (both satellite and cable) to air at least three and a half hours per week of Brazilian programming during prime time, and by requiring that one-third of all channels included in any television package be Brazilian. In addition, the law delegates significant programming and advertising regulatory authority to the national film industry development agency, which raises concerns about the impartiality of regulatory decisions.

Brazil also maintains domestic film quotas for theatrical screening and home video distribution.

Brazil's pay TV law bans cross-ownership between distributors and content producers in Brazil's paid-television sector. The law's restrictions, which have been subject to litigation, exclude firms from providing both services to the Brazilian market.

**Express Delivery**

U.S. express delivery services face significant limitations in Brazil. The Brazilian Government charges a flat 60 percent duty for all express shipments imported through the Simplified Customs Clearance process. The Simplified Customs Clearance process limits commercial shipments to $100,000 per importer per year. Moreover, Brazilian Customs has established express delivery maximum per-shipment value limits of $10,000 for exports and $3,000 for imports.

**Financial Services**

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

**Telecommunications Services**

*Satellites*

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

*Roaming*

In 2012, ANATEL ruled that "value-added services" may only be provided by locally licensed carriers using local subscriber identity module cards (SIMs). This ANATEL interpretation restricts permanent roaming options for value-added services such as international machine-to-machine (M2M) and Internet of Things (IoT) providers, thus requiring development of devices solely for the Brazilian market, and requiring service infrastructure in Brazil.

## BARRIERS TO DIGITAL TRADE

### Data Localization Requirements

Brazil's General Law for the Protection of Personal Data (LGPD) took effect on September 18, 2020. The LGPD includes provisions concerning restrictions on the transfer of personal data outside of Brazil that will be implemented after promulgation of regulations required for international transfers of personal data. Restrictions on the flow of data have a significant effect on the conditions for the cross-border supply of numerous services and for enabling the functionality embedded in smart devices. The United States has encouraged Brazil to work closely with companies and organizations affected by the LGPD to resolve implementation and enforcement issues in a reasonable and consistent manner.

# BRUNEI DARUSSALAM

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs

Brunei's average Most-Favored-Nation (MFN) applied tariff rate was 0.3 percent in 2021 (latest data available). Brunei's average MFN applied tariff rate was zero percent for agricultural products and 0.3 percent for non-agricultural products in 2021 (latest data available). Brunei has bound 95.5 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 25.4 percent. Brunei's highest WTO bound tariff rate for non-tobacco products is 50 percent.

### Non-Tariff Barriers

*Customs Barriers and Trade Facilitation*

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

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

## TECHNICAL BARRIERS TO TRADE

*Halal Standards*

Most food sold in Brunei must be certified as halal. However, there is a small market for non-halal foods, which must be sold in designated rooms in grocery stores separated at all times from other products or at restaurants that are specified as non-halal. The Halal Certificate and Halal Label Order Amendment, enacted in May 2017, require all businesses that produce, import, distribute, or serve food and beverages to obtain a halal certificate from the Islamic Religious Council of Brunei (MUIB), renewed annually. MUIB administers Brunei's halal standards, which are among the most stringent in the world.

Under Brunei's Halal Meat Act, halal meat (including beef, mutton, lamb, and chicken) can be imported only by a person holding a halal import permit issued by MUIB, and an export permit issued by the

exporting country. Prior to export, Bruneian government inspectors must travel to slaughter facilities in the home country of the exporter to inspect the slaughter and processing operations. The Bruneian Government maintains a list of the foreign and local slaughtering centers (abattoirs) that have been inspected and declared fit for supplying meat that can be certified as halal. None of the 40 foreign slaughterhouses currently approved by MUIB is located in the United States.

## GOVERNMENT PROCUREMENT

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

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

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

## INTELLECTUAL PROPERTY PROTECTION

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

## BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Although Brunei enjoys among the highest Internet penetration in Southeast Asia, the digital trade and electronic commerce industry is still in its early development stage, and the Bruneian Government has only started to develop relevant policies.

There is no data protection law in Brunei. However, the Authority for Info-communications Technology Industry of Brunei Darussalam (AITI), which is functioning as an interim office that focuses on data issues, drafted a law for the protection of individuals' personal data, which will apply to the private sector in Brunei, covering both commercial and non-commercial organizations. As of December 2022, this personal data protection law was awaiting approval by relevant government authorities, and is expected to come into force in 2023.

Electronic commerce payment solutions are limited to credit cards or online inter-bank transfers. International payment gateways are not available. The Brunei Government is working to establish a digital payment gateway within Brunei to ease digital payments domestically and facilitate international transactions.

## OTHER BARRIERS

### Localization Requirements

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

### Land Ownership Restrictions

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

### Residency Requirement

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

### Transparency

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

# CAMBODIA

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

Cambodia's average Most-Favored-Nation (MFN) applied tariff rate was 10.2 percent in 2021 (latest data available). Cambodia's average MFN applied tariff rate was 12.6 percent for agricultural products and 9.8 percent for non-agricultural products in 2021 (latest data available). Cambodia has bound 100 percent of its tariff lines in the World Trade Organization (WTO) with an average WTO bound tariff rate of 19.3 percent. Cambodia's highest applied tariff rate is 35 percent, which is imposed on several product categories, including a wide variety of prepared food products, bottled and canned beverages, cigars, table salt, paints and varnishes, cosmetic and skin care products, glass and glassware, electrical appliances, cars, furniture, video games, and gambling equipment.

### Non-Tariff Barriers

*Customs Barriers and Trade Facilitation*

As of February 2019, the General Department of Customs and Excise (GDCE) is the only institution authorized to carry out the inspection of goods at Cambodia's entry points.

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

## GOVERNMENT PROCUREMENT

Government procurement is often not transparent, and the Cambodian Government frequently provides short response times to public announcements of tenders, which are posted on the Ministry of Economy and Finance's website. For construction projects, only bidders registered with the Ministry are permitted to participate in tenders.

Irregularities in the government procurement process are common despite a strict legal requirement for audits and inspections. Despite allegations of malfeasance at several ministries, the Cambodian Government has taken little action to investigate irregularities. In February 2018, the government issued a

new regulation on procedures to resolve complaints about irregularities in government procurement. The regulation covers all procurement conflicts except those already being addressed through arbitration, those involving military secrets, and concession projects that are regulated separately. In November 2021, a new Law on Public and Private Partnerships was enacted to replace the 2007 Law on Concessions, aiming to enhance the management and implementation of public infrastructure projects in Cambodia. U.S. stakeholders have not observed any noticeable changes to government procurement processes.

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

## INTELLECTUAL PROPERTY PROTECTION

Despite efforts to raise intellectual property (IP) awareness, the sale of counterfeit and pirated goods remains commonplace in Cambodian markets. Tuol Tompoung (Russian) Market in Phnom Penh is included in the 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List). The rates of signal and cable piracy also remain high and online sites purveying pirated music, films, electronic books, software, and television shows remain popular. In addition, sales of legitimate films have been negatively affected due to the popularity of illegal cinemas that show pirated material.

Various Cambodian authorities work on IP-related issues, including the Ministry of the Interior's Economic Crime Police unit, the GDCE, the Cambodia Import-Export Inspection and Fraud Repression Directorate General, the National Committee for Intellectual Property Rights, the Institute of Standards of Cambodia, the Ministry of Culture and Fine Arts, and the Ministry of Commerce. Some of these disparate institutions have overlapping responsibilities with respect to IP-related issues. To combat counterfeiting, the Cambodia Counter Counterfeit Committee, which is under the Ministry of the Interior, serves as an umbrella agency for 14 government entities. Draft legislation that would address the protection of trade secrets has been under review at the Ministry of Commerce, but has not been passed.

## BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Cambodia passed an electronic commerce law in November 2019, which was fully implemented in May 2020. The law governs the conduct of electronic commerce within Cambodia and from overseas. Cambodia's National Assembly passed a sub-decree in February 2021 to establish a National Internet Gateway that would require internet providers to route all online traffic through a single node regulated by a government-appointed operator. Cambodia's implementation of the National Internet Gateway has been delayed but not cancelled. Both the private sector and human rights organizations continue to express concerns over the effect the National Internet Gateway will have on internet freedom in Cambodia. Separate laws governing cybersecurity, cybercrime, and data privacy are in draft form.

## INVESTMENT BARRIERS

Cambodia's constitution restricts foreign ownership of land. A 2010 law allows foreign ownership of property above the ground floor of a structure, but stipulates that no more than 70 percent of a building can be foreign-owned, and that foreigners cannot own property within 30 kilometers of the national border. For land owned by foreign investors, the land title must be held by one or more Cambodian citizens or entities.

While Cambodia has made significant progress in formalizing its tax regime and increasing tax revenues, reports suggest that the General Department of Taxation's (GDT) methods can hit some companies with unexplained tax bills and lack of due process given that the GDT freezes assets for failure to pay purported back taxes. Additional concerns range from surprise tax audits to a lack of industry consultation when implementing new tax codes.

## OTHER BARRIERS

### Bribery and Corruption

Both foreign and local businesses have identified corruption in Cambodia as a major obstacle to business and a deterrent to investment, with Cambodia's judiciary viewed as one of the country's most corrupt institutions. In 2010, Cambodia adopted anticorruption legislation and established a national Anti-Corruption Unit (ACU) to undertake investigations, implement law enforcement measures, and conduct public outreach. Enforcement, however, remains inconsistent. The Chair and Vice Chair are chosen by the Prime Minister, and the remaining officials are appointed by various government entities, which raises possible concerns about the independence of the ACU.

Cambodia began publishing official fees for public services at the end of 2012 in an effort to combat "facilitation payments," but this exercise has yet to be completed. Public service fees of some Ministries are not yet available on their official websites. In September 2021, Cambodia rolled out the second phase of an online business registration platform via a single portal aimed to eliminate the need for cash payments and reduce overall fees. However, the portal does not include all Ministries, and the integration of more agencies is planned for the upcoming third phase. As of December 31, 2022, no date or list of agencies had been specified for the third phase. U.S. businesses have noted that signing an anticorruption memorandum of understanding with the ACU has helped them avoid paying "facilitation payments." However, they have noted that obtaining licenses and permits may entail red tape.

# CANADA

## TRADE AGREEMENTS

### The United States–Mexico–Canada Agreement

The United States–Mexico–Canada Agreement (USMCA) entered into force on July 1, 2020. The USMCA maintains the zero tariffs that were in place among the three countries under the North American Free Trade Agreement (NAFTA), while also modernizing the agreement to include: strong, enforceable labor and environmental obligations, ground-breaking provisions to combat non-market practices, and provisions covering digital trade and small and medium-sized enterprises (SMEs).

## IMPORT POLICIES

### Non-Tariff Barriers

*Agricultural Supply Management*

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

The USMCA expands market access opportunities for dairy products through new TRQs exclusively for U.S. products. Canada has also opened new TRQs for U.S. chicken and U.S. eggs and egg products. In addition, Canada expanded access for U.S. turkey. Canada and the United States also agreed to strong rules to ensure TRQs are administered fairly and transparently to help ensure exporters benefit from the full market access negotiated in the USMCA.

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

The United States rejects the changes Canada has made as a basis to resolve the dispute because Canada remains out of compliance with its USMCA obligations. On May 25, 2022, the United States, for the second time, requested dispute settlement consultations with Canada under the USMCA to address Canadian allocation measures that: impose new conditions on the allocation and use of the TRQs; and prohibit eligible applicants, including retailers, food service operators, and other types of importers, from accessing TRQ allocations. On December 20, 2022, the United States requested new dispute settlement consultations, expanding its challenge of Canada's dairy TRQ allocation measures to include: Canada's use of a market-share approach for determining TRQ allocations, which applies different criteria for different segments of applicants; and, Canada's failure to allow importers the opportunity to fully utilize TRQ quantities.

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

*Milk Classes*

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

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

*Ministerial Exemptions*

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

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

*Personal Duty Exemption*

Canada's personal duty exemption for residents who bring back goods from trips outside of its borders is considerably more limited than the U.S. personal duty exemption. U.S. residents returning from abroad are entitled to an $800 duty-free exemption after 48 hours abroad and $200 for trips under 48 hours. Canadians who spend more than 24 hours outside of Canada can bring back C$200 (approximately $160) worth of goods duty free, or C$800 (approximately $640) for trips over 48 hours. U.S. retailers have raised concerns about the effect of this policy on purchases by Canadians on short trips to the United States.

*Wine, Beer, and Spirits*

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

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Compositional Standards for Cheese*

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

### Sanitary and Phytosanitary Barriers

*Restrictions on U.S. Seeds Exports*

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

## INTELLECTUAL PROPERTY PROTECTION

Canada remained on the Watch List in the 2022 Special 301 Report. Canada's commitments under the USMCA are designed to significantly improve Canada's intellectual property (IP) environment, addressing areas of longstanding concern, including enforcement against counterfeits, inspection of goods in-transit, transparency with respect to new geographical indications (GIs), and application of full national treatment for copyright. With respect to GIs, the United States remains highly concerned about countries negotiating product-specific IP outcomes as a condition of market access from the European Union, and reiterates the importance of each individual IP right being independently evaluated on its individual merits. Because shortfalls in protection and enforcement of IP constitute a barrier to exports and investment, these issues are a continuing priority in bilateral trade relations with Canada. Poor enforcement with respect to

counterfeit or pirated goods at the border and within Canada remains a concern. The United States identified Pacific Mall in Toronto in the 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List) for selling pirated and counterfeit goods.

## SERVICES BARRIERS

### Audiovisual Services

For cable television and direct-to-home broadcast services, more than 50 percent of the channels received by subscribers must be Canadian channels. Non-Canadian channels must be pre-approved ("listed") by the Canadian Radio-television and Telecommunications Commission (CRTC). Alternatively, non-Canadian channels can become Canadian by ceding majority equity control to a Canadian partner, as some U.S. channels have done. Foreign channels are prohibited from owning video distribution infrastructure in Canada.

The United States continues to raise concerns with Canada about its implementation of USMCA commitments to allow for the cross-border supply of U.S. home-shopping programming.

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

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

*Digital Media*

Canada continues to consider legislative proposals that appear to target U.S. online information and streaming platforms for revenue generation and that would compel such platforms to adjust the user experience in order to promote content owned by Canadian entities. The United States will closely monitor the USMCA implications of new measures.

## BARRIERS TO DIGITAL TRADE

### Data Localization

The Province of Quebec adopted a law in September 2021 that amends its data protection regime. Under the new law, the transfer of personal data outside of Quebec is limited to jurisdictions with data protection regimes deemed "adequate" by the Quebec Government. The law brought into force new provisions to protect personal information in September 2022. Several other provisions, including those pertaining to data transfer, are scheduled to come into force over the next two years. The United States will monitor the implementation of this provincial law and any other proposed measures on the cross-border transfer of data.

### Digital Services Taxation

On December 14, 2021, the Canadian Government published draft legislation for a digital services tax (DST). Canada's proposed DST would be effective January 1, 2024 and retroactive to January 1, 2022.

The Canadian Government reemphasized its plans to advance this measure in its Fall Economic Statement on November 3, 2022. Canada has taken these steps despite joining the October 8, 2021, OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy, which called for all Parties to commit not to introduce DSTs in the future. As the United States noted in comments to Canada, most DSTs have been designed in ways that discriminate against U.S. companies, as they single out U.S. firms for taxation while effectively excluding national firms engaged in similar lines of business. Further, Canada's proposed DST would create the possibility of significant retroactive tax liabilities with immediate consequences for U.S. companies. The United States has expressed serious concerns that Canada continues to pursue a unilateral DST.

# CHILE

## TRADE AGREEMENTS

### The United States–Chile Free Trade Agreement

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

## IMPORT POLICIES

### Non-Tariff Barriers

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

## SANITARY AND PHYTOSANITARY BARRIERS

### Sanitary and Phytosanitary Barriers

*Import Bans – Salmonid Products*

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

*Market Expansion for U.S. Blueberries*

The United States has long pursued access for fresh U.S. blueberries to the Chilean market. In 2021, Chile granted market access for blueberries from the states of California, Oregon, and Washington. U.S. officials continues to press Chilean officials to expand market access for the remaining states, particularly given the potential of the market during the counter-season.

## INTELLECTUAL PROPERTY PROTECTION

Chile remained on the Priority Watch List in the 2022 Special 301 Report. The United States remains concerned about the adequacy and effectiveness of the protection and enforcement of intellectual property (IP) rights in Chile and about the implementation of certain IP obligations under the FTA. Longstanding concerns remain about the lack of effective remedies to address the unlawful circumvention of technological protection measures, failure to ratify the 1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV 1991), and an ineffective Internet service provider liability regime that has failed to promote effective and expeditious action against online piracy. The United States

also continues to urge Chile to address certain aspects of its FTA commitments on satellite piracy. In addition, pharmaceutical stakeholders continue to raise concerns over the efficacy of Chile's system for resolving patent issues expeditiously in connection with applications to market pharmaceutical products and over the provision of adequate protection against unfair commercial use, as well as unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval. The United States also encourages Chile to provide transparency and procedural fairness to all interested parties in connection with potential recognition or protection of geographical indications, including in connection with trade agreement negotiations.

## SERVICES BARRIERS

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

Since July 2020, the Chilean Congress has approved three pension withdrawals and one advanced annuity withdrawal. U.S. pension companies are concerned about the effect of these withdrawals, particularly advanced annuity withdrawals.

# CHINA

## TRADE AGREEMENTS

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

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

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

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

## STATE-LED, NON-MARKET TRADE REGIME

### Industrial Plans

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

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

indigenous innovation, the common, overriding aim is to replace foreign technologies, products and services with Chinese technologies, products and services in the China market through any means possible so as to enable Chinese companies to dominate international markets.

Made in China 2025, which represents the first 10 years of a 30-year strategy known as the "Strong Manufacturing Nation Strategy," seeks to build up Chinese companies in the 10 targeted, strategic sectors at the expense of, and to the detriment of, foreign companies and their technologies, products and services through a multi-step process over 10 years. The initial goal of Made in China 2025 is to ensure, through various means, that Chinese companies develop, extract or acquire their own technology, intellectual property and know-how and their own brands. The next goal of Made in China 2025 is to substitute domestic technologies, products and services for foreign technologies, products and services in the China market. The final goal of Made in China 2025 is to capture much larger worldwide market shares in the 10 targeted, strategic sectors.

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

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

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

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

an earlier initiative from which Made in China 2025 evolved. Among other things, the guiding opinion called for the support and creation of industrial clusters for strategic emerging industries, along with the use of various types of government support and funding. The guiding opinion specifically encouraged provincial and local governments to support industries such as advanced information technology, NEVs and biopharmaceuticals.

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

**Technology Transfer**

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

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

Since the entry into force of the Phase One Agreement in February 2020, the United States has continually engaged with the U.S. business community, which has expressed concern about China's informal, unwritten

actions that force or pressure U.S. companies to transfer their technology to Chinese entities, including as a condition for obtaining market access. The United States has engaged China as issues arise and will continue to monitor developments closely.

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

China's average Most-Favored-Nation (MFN) applied tariff rate was 7.5 percent in 2021 (latest data available). China's average MFN applied tariff rate was 13.8 percent for agricultural products and 6.5 percent for non-agricultural products in 2021 (latest data available). China has bound 100 percent of its tariff lines in the WTO, with a simple average WTO bound tariff rate of 10.0 percent.

In April 2018, China imposed tariffs ranging from 15 percent to 25 percent on a range of agricultural, steel, and aluminum products imported from the United States in retaliation against the U.S. decision to adjust U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. The U.S. decision was based on a determination that the quantity and circumstances of U.S. imports of steel and aluminum products—including the circumstances of severe excess capacity and resulting overproduction emanating from China—threaten to impair U.S. national security. In July 2018, the United States launched a dispute settlement proceeding against China in the WTO pertaining to China's retaliatory tariffs. A WTO panel is expected to issue its decision in the middle of 2023. The United States will continue to take all necessary action to protect U.S. interests in the face of this type of retaliation.

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

*Tariff-Rate Quota Administration for Agricultural Commodities*

Market access promised through the tariff-rate quota (TRQ) system set up pursuant to China's WTO accession agreement has yet to be fully realized as of December 2022. Due to China's poorly defined criteria for applicants, unclear procedures for distributing TRQ allocations and failure to announce quota allocation and reallocation results, traders are unsure of available import opportunities and producers worldwide have reduced market access opportunities. As a result, China's TRQs for wheat, corn and rice seldom fill even when they are oversubscribed. For example, from 2020 to 2022, China's corn imports significantly exceeded TRQ levels, but the TRQ issuance, application and allocation processes lacked transparency, and large state-owned enterprises in China appear to have been the only beneficiaries of the increased imports.

In December 2016, the United States launched a WTO case challenging China's administration of TRQs for wheat, corn and rice. Consultations took place in February 2017. A WTO panel was established to hear the case at the United States' request in September 2017, and 17 other WTO Members joined as third parties. The panel issued its decision in April 2019, ruling that China's administration of tariff-rate quotas for wheat, corn and rice was WTO-inconsistent. In July 2021, the United States submitted a request for authorization to suspend concessions and other obligations pursuant to Article 22 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) on the ground that China had failed to bring its measures into compliance with its WTO obligations. After China objected to this request, the matter was referred to arbitration in accordance with Article 22 of the DSU. The arbitration is currently

suspended, and the United States continues to closely monitor China's ongoing administration of the tariff-rate quotas for wheat, corn and rice.

As part of the Phase One Agreement, China agreed that, from December 31, 2019, its administration of TRQs for wheat, corn and rice would conform to its WTO obligations. In addition, China agreed to make specific improvements to its administration of the wheat, corn and rice TRQs, including with regard to the allocation methodology, and to the treatment of non-state trading quota applicants. China also committed to greater transparency. To date, however, China has not demonstrated full implementation of these commitments.

*Taxes*

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

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Food Safety Law

China's ongoing implementation of its 2015 Food Safety Law has led to the introduction of myriad new measures. These measures include exporter facility and product registration requirements for almost all food and agricultural products. Overall, China's notification of these measures to the WTO Committee on Technical Barriers to Trade (TBT Committee) and the WTO Committee on Sanitary and Phytosanitary Measures (SPS Committee) has been uneven.

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

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

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

According to China's customs authorities, by July 1, 2023, certain foreign food producers will be required to upload additional detailed manufacturing information to China's online facility registration portal, and

foreign regulatory authorities will be required to review and certify the uploaded information. These tasks are fundamentally beyond the traditional roles of regulatory authorities. If implemented, these new requirements will impose even greater burdens on food manufacturers and food safety regulatory authorities in exporting countries and will therefore pose a new threat to food trade with China.

In the Phase One Agreement, China committed that it would not implement food safety regulations that are not science- or risk-based and that it would only apply food safety regulations to the extent necessary to protect human life or health. China also agreed to certain procedures for registering U.S. facilities that produce various food and agricultural products. Despite repeated U.S. requests, China has not clarified the relationship between the facility registration procedures set forth in the Phase One Agreement and the requirements of Decrees 248 and 249.

**Technical Barriers to Trade**

*Standards*

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

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

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

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

Notably, U.S. concerns about China's standards regime are not limited to the implications for U.S. companies' access to China's market. China's ongoing efforts to develop unique national standards aims

eventually to serve the interests of Chinese companies seeking to compete globally, as the Chinese Government's vision is to use the power of its large domestic market to influence the development of international standards. The United States remains very concerned about China's policies with regard to standards and has expressed, and will continue to express, concerns to China bilaterally and multilaterally as China continues to develop and issue implementing measures for its revised Standardization Law.

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

The October 2021 Outline for the Development of National Standardization is partly based on an initiative that China announced in 2019, known as China Standards 2035. A lack of transparency with regard to the initiative's findings is troubling, particularly given longstanding global concerns about inadequate foreign participation in China's standards-setting processes, China's use of standards that differ from international standards without basis, and certain licensing practices in China's standards-setting processes.

*Cosmetics*

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

The CSAR implementing measures contain provisions that would require companies to disclose full product formulations, ingredient suppliers, manufacturing methods, claims and safety data to both NMPA and local agents in China when products are registered or notified. In addition, these measures require companies to publish claims abstracts that may contain trade secrets and confidential business information on NMPA's website. The United States has expressed concern to China that its regulators are applying the same approach to general and special cosmetics as is used with drugs and medical devices, despite the generally lower risk in cosmetics. China's filing and registration requirements for cosmetics also significantly diverge from those in other major markets and do not align with international standards, making compliance very burdensome for importers.

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

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

internationally recognized laboratories outside of China, as well as other means used by foreign regulators and industries to assess the conformity of product and ingredient safety and performance claims.

The United States also questions China's assertion that its cosmetics good manufacturing practices (GMP) requirements provide equal treatment for imported and domestic general and special cosmetics. If the government of a cosmetics importer does not issue GMP or manufacturing export certificates, the only means that China provides to establish conformity with China's GMP for general cosmetics is animal testing. The United States and other WTO Members have made repeated requests that China consider the many alternative means available to establish GMP conformity, including utilizing second party or third-party certificates based upon the ISO 22716 Cosmetics GMP Guidelines. China also provides no means for exemptions regarding GMP for imported special cosmetics.

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

**Sanitary and Phytosanitary Barriers**

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

*Agricultural Biotechnology Approvals*

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

For many years, biotechnology product approvals by China's regulatory authorities mainly materialized only after high-level political intervention. In the Phase One Agreement, the United States was able to secure China's commitment to implement a transparent, predictable, efficient and science- and risk-based system for the review of products of agricultural biotechnology. The agreement also called for China to improve its regulatory authorization process for agricultural biotechnology products, including by completing reviews of products for use as animal feed or further processing within an average of no more than 24 months and by improving the transparency of its review process. China also agreed to work with importers and the U.S. Government to address situations involving low-level presence of genetically engineered (GE) materials in shipments. In addition, China agreed to establish a regulatory approval process for all food ingredients derived from genetically modified microorganisms (GMMs), rather than continue to restrict market access to GMM-derived enzymes only.

In 2021, China held two meetings of the National Biosafety Committee (NBC), the body responsible for biosafety approval of GE products. In total, China issued new biosafety certificates for only two GE products for import, both of which were cotton products. China also renewed existing biosafety certificates

that were due to expire for 32 GE products for import. In 2022, China held an NBC meeting in March that led only to one new biosafety certificate for a product for import, a soybean product, while renewing existing certificates for 10 GE products for import. The NBC also held a meeting in December resulting in the issuance of new biosafety certificates for eight products for import: three cotton products, two alfalfa products, two sugarcane products, and one canola product. All of the applications had been pending for well over 24 months, including three for more than 10 years and two others for more than five years.

Meanwhile, since 2021, China has issued numerous approvals and renewals for Chinese developers. China has issued approximately 165 new biosafety certificates for products intended for domestic cultivation, including 126 new GE cotton products, eight new GE corn products and two new GE soybean product.

China's approach to agricultural biotechnology remains among the most significant commitments under the Phase One Agreement for which China has not demonstrated full implementation. There remains a significant lack of transparency regarding the procedures for convening meetings of the NBC, including regarding dates and agenda items for these meetings, and the process for notifying applicants of outcomes and for soliciting additional information to support product applications. While the NBC is required to meet at least two times each year, the meetings are not held pursuant to a regular schedule, and information about the meetings is not widely shared with the public in a transparent and predictable manner. In addition, in conducting its approval process, China continues to ask for information that is not relevant to a product's intended use or information that applicants have previously provided. For this and other reasons, China has not reduced the average time for its approval process for agricultural biotechnology products for feed or further processing to no more than 24 months, as it had committed to do, even when taking into account the approvals issued following the December 2022 NBC meeting.

*Poultry*

Starting in February 2022, the United States notified China of detections of high pathogenicity avian influenza (HPAI) in multiple U.S. states. In the ensuing months, several states recovered from these detections consistent with World Organisation for Animal Health (WOAH) guidelines, and they were deemed HPAI-free by the United States. The United States submitted reports to China for these states and requested approval to resume exporting poultry from these states to China. China has yet to confirm the restoration of market access.

In the Phase One Agreement, China agreed to maintain measures consistent with the WOAH guidelines for future outbreaks of avian influenza. China also agreed to sign a regionalization protocol within 30 days of entry into force of the agreement, which it did, to help avoid unwarranted nationwide animal disease restrictions in the future. This protocol requires that China resume acceptance of poultry imports from states with HPAI detections within five days of receiving a U.S. report that the states are HPAI-free.

*Beef*

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

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

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

*Pork*

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

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

## GOVERNMENT PROCUREMENT

In its WTO accession agreement, China made a commitment to accede to the WTO Agreement on Government Procurement (GPA) and to open up its vast government procurement market to the United States and other GPA Parties. More than two decades later, this commitment remains unfulfilled, while China's government procurement has continued to grow exponentially. Indeed, government procurement at the central level of government alone now exceeds $500 billion, even without considering procurement by state-owned enterprises.

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

China's current government procurement regime is governed by two important laws. The Government Procurement Law, administered by the Ministry of Finance, governs purchasing activities conducted with

fiscal funds by state organs and other organizations at all levels of government in China, but does not apply to procurements by state-owned enterprises. The Tendering and Bidding Law falls under the jurisdiction of National Development and Reform Commission (NDRC) and imposes uniform tendering and bidding procedures for certain classes of procurement projects in China, notably construction and works projects, without regard for the type of entity (e.g., a government agency or a state-owned enterprise) that conducts the procurement. Both laws cover important procurements that GPA Parties would consider to be government procurement eligible for coverage under the GPA.

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

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

## INTELLECTUAL PROPERTY PROTECTION

### Overview

After its accession to the WTO, China undertook a wide-ranging revision of its framework of laws and regulations aimed at protecting the intellectual property rights of domestic and foreign right holders, as required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). Despite various plans and directives issued by the State Council, inadequacies in China's intellectual property protection and enforcement regime continue to present serious barriers to U.S. exports and investment. As a result, China was again placed on the Priority Watch List in USTR's 2022 Special 301 Report. In addition, in February 2023, USTR announced the results of its 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List), which identifies online and physical markets that exemplify key challenges in the global struggle against piracy and counterfeiting and explains the harm not only to U.S. businesses, but also to U.S. workers. Several markets in China were among those named as notorious markets.

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

China has published a number of draft measures for comment and issued some final measures relating to implementation of the intellectual property chapter of the Phase One Agreement. Notably, China amended the Patent Law, the Copyright Law, and the Criminal Law. China has also reported increased enforcement actions against counterfeit medicines and increased customs actions against pirated and counterfeit goods.

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

**Trade Secrets**

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

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

At the November 2016 Joint Commission on Commerce and Trade (JCCT) meeting, China claimed that it was strengthening its trade secrets regime and bolstering several areas of importance, including the availability of evidence preservation orders and damages based on market value as well as the issuance of a judicial interpretation on preliminary injunctions and other matters. In 2016 and 2017, China circulated proposed revisions to the Anti-unfair Competition Law for public comment. China issued the revised law in November 2017, effective January 2018. Despite improvements in the protection of trade secrets relative to prior law, the final measure reflects a number of missed opportunities for the promotion of effective trade secrets protection. China subsequently amended the Anti-unfair Competition Law, the Foreign Investment Law and the Administrative Licensing Law, but the amendments still do not fully address critical shortcomings in the scope of protections and obstacles to enforcement. In 2022, China published additional draft amendments to the Anti-Unfair Competition Law, but they contain few changes to the law's trade secrets provisions.

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

of undisclosed information, trade secrets and confidential business information submitted to the government.

In 2020, China published various measures relating to civil, criminal and administrative enforcement of trade secrets. In September 2020, the Supreme People's Court issued the Provisions on Several Issues Concerning the Application of Law in Civil Cases of Trade Secret Infringement and the Interpretation III on Several Issues Concerning the Application of Law in Handling Criminal Cases of Infringement of Intellectual Property Rights. In September 2020, the Supreme People's Procuratorate (SPP) and the Ministry of Public Security (MPS) also issued the Decision on Amendment of Docketing for Prosecution of Criminal Trade Secrets Infringement Cases Standards. These measures relate to issues such as the scope of liability for trade secret misappropriation, prohibited acts of trade secret theft, preliminary injunctions and thresholds for initiations of criminal investigations for trade secret theft. In December 2020, the National People's Congress passed amendments to the Criminal Law that included changes to the thresholds for criminal investigation and prosecution and the scope of criminal acts of trade secret theft. The Criminal Law amendments require revisions to certain previously issued judicial interpretations and prosecution standards. However, two years after the passage of the Criminal Law amendments, these other measures remain unchanged, and implementation of the Criminal Law amendments therefore remains incomplete. The United States will continue to monitor the effectiveness of all of these measures.

**Bad Faith Trademark Registration**

The continuing registration of trademarks in bad faith in China remains a significant concern. For example, so-called "trademark squatters" have attempted to take advantage of the fact that a genuine trademark owner has not yet registered its trademark in China by registering that trademark and then trying to sell it to the genuine trademark owner. Bad faith trademark registration also occurs when trademarks intending to deceive or confuse consumers are registered.

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

**Online Infringement**

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

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

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

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

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

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

**Counterfeit Goods**

Counterfeiting in China remains widespread and affects a wide range of goods. In April 2019, China amended its Trademark Law, effective November 2019, to require civil courts to order the destruction of counterfeit goods, but these amendments still do not provide the full scope of civil remedies for right holders. One of many areas of particular U.S. concern involves medications. Despite years of sustained engagement by the United States, China still needs to improve its regulation of the manufacture of active pharmaceutical ingredients to prevent their use in counterfeit and substandard medications. At the July 2014 United States–China Strategic and Economic Dialogue (S&ED) meeting, China committed to develop and seriously consider amendments to the Drug Administration Law that will require regulatory control of the manufacturers of bulk chemicals that can be used as active pharmaceutical ingredients. At the June 2015 S&ED meeting, China further committed to publish revisions to the Drug Administration Law in draft

form for public comment and to consider the views of the United States and other relevant stakeholders. In October 2017, China published limited draft revisions to the Drug Administration Law and stated that future proposed revisions to the remainder of this law would be forthcoming. Although the final Drug Administration Law, issued in August 2019, requires pharmaceuticals products and active pharmaceutical ingredients to meet manufacturing standards, it remains unclear how these requirements will be implemented or enforced.

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

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

**Indigenous Innovation**

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

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

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

governments to "further clean up related measures linking indigenous innovation policy to the provision of government procurement preference."

Over the years, the underlying thrust of China's indigenous innovation policies has remained unchanged, as China's leadership has continued to emphasize the necessity of advancing indigenous innovation capabilities. Through plans such as the 14th Five-Year Plan for the Protection and Utilization of National Intellectual Property Rights, China has continued to implement discriminatory policies encouraging "indigenous intellectual property rights" and "core technologies" that are owned or developed in China. Accordingly, USTR has been using mechanisms like a Section 301 investigation to seek to address, among other things, China's use of indigenous innovation policies to force or pressure foreigners to own or develop their intellectual property in China.

## SERVICES BARRIERS

### Overview

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

In 2022, numerous challenges persisted in a number of services sectors. As in past years, Chinese regulators continued to use discriminatory regulatory processes, informal bans on entry and expansion, case-by-case approvals in some services sectors, overly burdensome licensing and operating requirements, and other means to frustrate the efforts of U.S. suppliers of services to achieve their full market potential in China. These policies and practices affect U.S. service suppliers across a wide range of sectors, including cloud computing, telecommunications, film production and distribution, online video and entertainment services, express delivery and legal services. In addition, China's Cybersecurity Law and related implementing measures include mandates to purchase domestic information and communication technology (ICT) products and services, while China's Cybersecurity Law, Data Security Law and Personal Information Protection Law and related implementing measures include excessive restrictions on cross-border data flows, and requirements to store and process data locally. These types of data measures undermine U.S. services suppliers' ability to take advantage of market access opportunities in China by prohibiting or severely restricting cross-border transfers of information that are routine in the ordinary course of business and are fundamental to any business activity. China also has failed to fully address U.S. concerns in areas that have been the subject of WTO dispute settlement, including electronic payment services and theatrical film importation and distribution.

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

### Banking Services

Although China has opened its banking sector to foreign competition in the form of wholly foreign-owned banks, China has maintained restrictions on market access in other ways that have kept foreign banks from

establishing, expanding and obtaining significant market share in China. Recently, however, China has taken some steps to ease or remove market access restrictions.

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

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

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

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

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

**Insurance Services**

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

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

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

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

**Electronic Payment Services**

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

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

In the Phase One Agreement, China committed to ensure that PBOC operates an improved and timely licensing process for U.S. suppliers of electronic payment services so as to facilitate their access to China's market.

In June 2020, four months after the entry into force of the Phase One Agreement, American Express became the first foreign supplier of electronic payment services to secure a license to operate in China's market. Meanwhile, the United States continues to closely monitor developments as applications from two other U.S. suppliers, Visa and MasterCard, are progressing slowly through PBOC's licensing process.

**Internet-Enabled Payment Services**

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

along with a license to supply payment services. The United States will continue to closely monitor developments in this area.

**Telecommunications Services**

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

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

**Internet Regulatory Regime**

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

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

**Voice over Internet Protocol Services**

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

**Cloud Computing Services**

Especially troubling is China's treatment of foreign companies seeking to participate in the development of cloud computing services, including computer data processing and storage services and software

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

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

**Audio-Visual and Related Services**

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

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

**Theatrical Films**

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

In 2017, in accordance with the terms of the MOU, the two sides began discussions regarding the provision of further meaningful compensation to the United States in an updated MOU. These discussions continued until March 2018, before stalling when China embarked on a major government reorganization that

involved significant changes for China's Film Bureau. Discussions resumed in 2019 as part of the broader U.S.–China trade negotiations that began following a meeting between the two countries' Presidents on the margins of the Group of 20 Heads of State and Government Summit in Buenos Aires in December 2018. To date, no agreement has been reached on the further meaningful compensation that China owes to the United States. The United States will continue pressing China to fulfill its obligations.

### Online Video and Entertainment Services

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

### Legal Services

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

### Express Delivery Services

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

## BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

### Data Restrictions

In 2022, China continued to build out its expansive regulation of the collection, storage, processing and sharing of data. China's Data Security Law entered into force in September 2021, and China's Personal Information Protection Law entered into force in November 2021. These laws operate together with the Cybersecurity Law, which took effect in June 2017, the National Security Law, which has been in effect since 2015, and various implementing measures, including the Security Assessment Measures for Outbound Transfers of Data, which took effect in September 2022, to prohibit or severely restrict cross-border transfers of "important data," a broadly and vaguely defined term, and, in certain cases, personal information collected by companies through their operations in China. These laws and implementing

measures also impose local data storage and processing requirements on companies operating in China that collect "important data" and, in certain cases, personal information. Cross-border transfers of data are routine in the ordinary course of business and are fundamental to any business activity. Given the wide range of businesses and business activities that are dependent on cross-border transfers of data and flexible access to global computing facilities, these developments continue to generate serious concerns in the United States and many other countries.

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

Implementing measures for China's Cybersecurity Law remain a continued source of serious concern for U.S. companies since the law's enactment in 2016. Of particular concern are the Measures for Cybersecurity Review, first issued in 2016 and later updated in 2020 and 2021. This measure implements one element of the cybersecurity regime created by the Cybersecurity Law. Specifically, the measure puts in place a review process to regulate the purchase of ICT products and services by critical information infrastructure operators and online platform operators in China. The review process is to consider, among other things, potential national security risks related to interruption of service, data leakage and reliability of supply chains. In addition, in September 2022, China published a draft revision of the Cybersecurity Law with a 15-day public comment period. The draft revision would introduce penalties on operators of critical information infrastructure who use products or services that have not undergone the required security review, and it would also raise fines for certain violations of the Cybersecurity Law.

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

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

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

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

In 2015, the United States, in concert with other governments and stakeholders around the world, raised serious concerns about China's "secure and controllable" regime at the highest levels of government within

China. During a state visit in September 2015 in Washington, D.C., the U.S. and Chinese Presidents committed to a set of principles for trade in information technologies. The issue also was raised in connection with the June 2015 S&ED meeting and the November 2015 JCCT meeting, with China making a series of additional important commitments with regard to technology policy. China reiterated many of these commitments at the November 2016 JCCT meeting, where it affirmed that its "secure and controllable" policies are not to unnecessarily limit or prevent commercial sales opportunities for foreign ICT suppliers or unnecessarily impose nationality-based conditions and restrictions on commercial ICT purchases, sales or uses. China also agreed that it would notify relevant technical regulations to the WTO TBT Committee.

Again, however, China has not honored its promises. The numerous draft and final implementation measures issued by China from 2017 through 2022 in the area of cybersecurity raise serious questions about China's approach to cybersecurity regulation. China's measures do not appear to be in line with the non-discriminatory, non-trade restrictive approach to which China has committed, and global stakeholders have grown even more concerned about the implications of China's ICT security measures across the many economic sectors that employ digital technologies. Accordingly, throughout the past year, the United States conveyed its serious concerns about China's approach to cybersecurity regulation through bilateral engagement and multilateral engagement, including at WTO committee and council meetings, in an effort to persuade China to revise its policies in this area in light of its WTO obligations and bilateral commitments. These efforts are currently ongoing.

### Encryption

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

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

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

## INVESTMENT BARRIERS

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

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

China's Foreign Investment Law, implementing regulations and other related measures suggest that China is pursuing the objective of replacing its case-by-case administrative approval system for a broad range of investments with a system that would only be applied to "restricted" sectors. However, it currently remains unclear whether China is fully achieving that objective in practice. Moreover, even for sectors that have been liberalized, the potential for discriminatory licensing requirements or the discriminatory application of licensing processes could make it difficult to achieve meaningful market access. In addition, the potential for a new and overly broad national security review mechanism, and the increasingly adverse impact of China's Cybersecurity Law, Data Security Law and Personal Information Protection Law and related implementing measures, including ones that unduly restrict cross-border data flows and impose data localization requirements, have serious negative implications for foreign investors and investments. Foreign companies also continue to report that Chinese Government officials may condition investment approval on a requirement that a foreign company transfer technology, conduct R&D in China, satisfy performance requirements relating to exportation or the use of local content or make valuable, deal-specific commercial concessions.

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

## SUBSIDIES

### Industrial Subsidies

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

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

The United States began working with the EU and Japan in 2018 to identify further effective action and potential rules that could address problematic subsidies practices not currently covered by existing obligations. In January 2020, the trade ministers of the United States, the EU, and Japan issued a statement

agreeing to strengthen the WTO subsidy rules by: (1) prohibiting certain egregious types of subsidies; (2) requiring the subsidizing country to demonstrate for other distortive subsidy types that the subsidy provided did not cause adverse effects; (3) building upon the existing "serious prejudice" rules; (4) putting some teeth into the notification rules; and, (5) developing a new definition of what constitutes a "public body." In November 2021, the trade ministers of the United States, the EU and Japan renewed their commitment to work together, including with regard to the identification of areas where further work is needed to develop new tools and other measures to address non-market policies and practices. Since then, the United States, the EU, and Japan have also been working together at the staff level to uncover China's subsidies practices in specific sectors, such as the semiconductors sector.

**Agricultural Domestic Support**

For several years, China has been significantly increasing domestic subsidies and other support measures for its agricultural sector. China maintains direct payment programs, minimum support prices for basic commodities and input subsidies. China has implemented a cotton reserve system, based on minimum purchase prices, and cotton target price programs. In 2016, China established subsidies for starch and ethanol producers to incentivize the purchase of domestic corn, resulting in higher volumes of exports of processed corn products from China in 2017 and 2018. In addition, in 2022, China began encouraging soybean production through various support programs, such as through increased subsidies for crop rotations, awards to counties with high oilseed production, incentives to promote the intercropping of corn and soybeans, and subsidies for "demonstration farming" of soybeans on alkali and saline-affected soil.

China submitted a notification concerning domestic support measures to the WTO in May 2015, but it only provided information up to 2010. In December 2018, China notified domestic support measures for the period 2011-2016. This notification showed that China had exceeded its *de minimis* level of domestic support for soybeans (in 2012, 2014 and 2015), cotton (from 2011 to 2016), corn (from 2013 to 2016), rapeseed (from 2011 to 2013) and sugar (2012). The situation was likely even worse, as the methodologies used by China to calculate domestic support levels result in underestimates. Moreover, the support programs notified by China seemingly failed to account for support given at the sub-national level by provincial and local governments and, possibly, support administered through state-owned enterprises. Most recently, on December 14, 2022, China notified domestic support levels for 2017 through 2020 and agricultural export subsidy measures for 2020 and 2021. These notifications continue to generate concerns about China's support measures.

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

**Fisheries Subsidies**

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

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

In addition, the United States has long been an active and constructive participant in the WTO fisheries subsidies negotiations, pressing for a meaningful outcome to prohibit the most harmful types of fisheries subsidies. The United States and various like-minded WTO Members have put forward several proposals designed to achieve an ambitious outcome for those negotiations. Notably, in June 2022, WTO Members adopted the text of the WTO Agreement on Fisheries Subsidies, which includes several important disciplines, including prohibitions on subsidies to vessels or operators engaged in IUU fishing, subsidies to fishing regarding stocks that are overfished and subsidies to fishing on the unregulated high seas. This agreement also contains robust transparency provisions to strengthen WTO Members' subsidy notifications and to enable effective monitoring of WTO Members' implementation of their obligations. The agreement will enter into force when it has been accepted by two-thirds of WTO Members.

Going forward, the United States will continue to investigate the full extent of China's fisheries subsidies and will continue to press China to fully comply with its relevant WTO subsidy obligations. The United States also will urge WTO Members to support additional, ambitious disciplines on harmful fisheries subsidies as part of the further WTO negotiations on fisheries subsidies.

**Excess Capacity**

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

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

From 2000 to 2021, China accounted for 71 percent of global steelmaking capacity growth, an increase well in excess of the increase in global and Chinese demand over the same period. Currently, China's capacity represents about one-half of global capacity and more than twice the combined steelmaking capacity of the EU, Japan, the United States and Brazil.

At the same time, China's steel production is continually reaching new highs, eclipsing demand. In 2020, China's steel production climbed above one billion metric tons for the first time, reaching 1,065 million metric tons, a seven percent increase from 2019, and remained high at 1,033 million metric tons in 2021, despite a significant contraction in domestic steel demand. This sustained ballooning of greenhouse gas (GHG) emissions-intensive steel production, combined with weakening economic growth and a slowdown in the Chinese construction sector, has flooded the global market with excess steel supply at a time when the steel sector outside of China is still recovering from the severe demand shock brought on by the COVID-19 pandemic and the ongoing effects of Russia's war of aggression against Ukraine. In 2021, China exported more steel than the world's second and third largest steel producers, India and Japan, combined. Today, China remains by far the world's largest exporter of steel.

Similarly, primary aluminum production capacity in China increased by more than 1,400 percent between 2000 and 2021, with China accounting for more than 80 percent of global capacity growth during that period. Much of this capacity addition has been built with government support, has taken place during periods of decline in global aluminum prices and relies on GHG emissions-intensive sources of electricity. China's primary aluminum capacity now accounts for more than 57 percent of global capacity and is more than double the capacity of the next ten aluminum-producing countries combined. As in the steel sector, China's aluminum production has also ballooned in recent years, as China's aluminum production has continued to increase despite global demand shocks. China's capacity and production continue to contribute to major imbalances and price distortions in global markets, harming U.S. aluminum producers and workers.

Excess capacity in China hurts various U.S. workers and industries not only through direct exports from China to the United States, but also through its impact on global prices and supply, which makes it difficult for competitive manufacturers throughout the world to remain viable. Indeed, domestic industries in many of China's trading partners continue to petition their governments to impose trade measures to respond to the trade-distortive effects of China's excess capacity. In addition, the United States has acted under Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. §1862) to increase import duties on steel and aluminum products after finding that excessive imports are a threat to U.S. national security.

## ANTICOMPETITIVE PRACTICES

In March 2018, as part of a major government reorganization, China announced the creation of the SAMR, a new agency that incorporated the former anti-monopoly enforcement authorities from the NDRC, Ministry of Commerce (MOFCOM) and the State Administration of Industry and Commerce (SAIC) into one of its bureaus. It had been hoped that more centralized anti-monopoly enforcement would lead to policy

adjustments that address the serious concerns raised by the United States and other WTO Members in this area, but to date it does not appear to have led to significant policy adjustments.

In November 2021, China elevated the status of SAMR's anti-monopoly bureau, by designating a vice minister as its official-in-charge and re-naming it the National Anti-monopoly Bureau. It remains to be seen how this elevated status will impact anti-monopoly policy enforcement in China.

In June 2022, the National People's Congress Standing Committee passed amendments to the Anti-Monopoly Law. These amendments gave SAMR expanded authority to evaluate and investigate potential anti-competitive behavior, as well as the authority to impose higher fines, up to 50 percent of an alleged violator's annual sales, in order to punish actions determined to be anti-competitive.

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

Another concern expressed by U.S. industry is that remedies imposed on U.S. and other foreign-owned companies in merger cases do not always appear to be aimed at restoring competition. Instead, these remedies seem to be designed to further China's industrial policy goals, such as when the regulatory authorities seek to require the transfer of technology or a reduction in licensing fees for intellectual property.

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

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

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

Given the state-led nature of China's economy, the need for careful scrutiny of anti-competitive government restraints and regulation is high. The Anti-monopoly Law's provisions on the abuse of administrative (*i.e.*, government) power are potentially important instruments for reducing the government's interference in markets and for promoting the establishment and maintenance of increasingly competitive markets in China. The State Council's adoption of the Opinions on Establishing a Fair Competition Review System in 2016 reflects a useful widening of oversight by China's anti-monopoly enforcement agencies over undue government restraints on competition and anti-competitive regulation of competition. However, implementing measures contain a broad list of exemptions, including for national economic security, cultural security, national defense construction, poverty alleviation, disaster relief and general "public interest" considerations. It appears unlikely that the Fair Competition Review System established by the Opinions on Establishing a Fair Competition Review System will be able to achieve its stated goals, given China's continuing efforts to ensure a strong role for the state in China's economy.

## STATE-OWNED ENTERPRISES

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

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

However, instead of adopting measures giving effect to its commitments, China instead took steps intended to strengthen the role of state-owned and state-invested enterprises in the economy and to protect them against foreign competition. China established the SASAC and adopted the Law on State-owned Assets of Enterprises in addition to numerous other measures that mandate state ownership and control of many important industrial sectors. The CCP also ensured itself a decisive role in state-owned and state-invested enterprises' major business decisions, personnel changes, project arrangements and movement of funds. The fundamental premise of these measures was to enable the government and the Party to intervene in the business strategies, management and investments of these enterprises in order to ensure that they play a dominant role in the national economy in line with the overall objective of developing China's "socialist market economy" and China's industrial plans. Over the past few years, Party leadership in state-owned and state-invested enterprises has been strengthened through practices such as appointing a person as both the chairman of the board and the Party secretary for a state-owned enterprise.

Separately, the Chinese Government also has issued a number of measures that restrict the ability of state-owned and state-invested enterprises to accept foreign investment, particularly in key sectors. Some of these measures are discussed below in the Investment section.

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

However, rather than actually embrace the role of the market, China sought to strengthen the role of the state in the economy. Statements by China's President also made clear that China continues to view the role of the state very differently from the United States and other democratic market economies. In October 2016, he called for strengthening the role of the CCP in state-owned enterprises and emphasized that state-owned enterprises should be "important forces" to implement national strategies and enhance national power. In February 2019, in an article in a CCP journal, he further called for the strengthening of the Party's "leadership over the rule of law," and he vowed that China "must never copy the models or practices of other countries" and "we must never follow the path of Western 'constitutionalism,' 'separation of powers' or 'judicial independence.'"

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

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

Overall, while China's efforts at times have appeared to signal a high-level determination to accelerate needed economic reforms, those reforms have not materialized. Indeed, the Chinese state's role in the economy has increased rather than decreased. It also seems clear that China's past policy initiatives were not designed to reduce the presence of state-owned and state-invested enterprises in China's economy or to force them to compete on the same terms as private commercial operators. Rather, the reform objectives were to strengthen state-owned and state-invested enterprises and to place them on a more competitive footing, both in China and globally, through consolidation, increased access to state capital, preferential access to goods and services and the use of other policies and practices designed to give these enterprises artificial advantages over their private competitors.

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

## LABOR

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

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

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

In December 2021, President Biden signed into law the Uyghur Forced Labor Prevention Act (UFLPA), which, among other things, establishes a rebuttable presumption that the importation of goods from Xinjiang is prohibited under section 307 of the Tariff Act of 1930. This rebuttable presumption took effect in June 2022.

In advance of the rebuttable presumption taking effect, several U.S. agencies hosted a public hearing on the use of forced labor in China. Witnesses, included private individuals, industry associations, consultancy and risk-management companies, civil society organizations, non-governmental organizations (NGOs), labor unions and others who shared their views on potential measures to prevent the importation of goods mined, produced or manufactured wholly or in part with forced labor in China into the United States. The UFLPA's Strategy, which was published in June 2022, takes this witness testimony into account. The main components of the Enforcement Strategy include: (1) an assessment of the risk of importing goods made with forced labor in China; (2) the development of the UFLPA Entity List and descriptions of forced-labor schemes; (3) the consideration of efforts, initiatives and tools to identify and trace the origin of goods; (4) a description of relevant legal authorities and tools to prevent entry of violative goods; (5) a description of resources; (6) the development of importer guidance; and, (7) the development of a coordination plan with NGOs and the private sector.

In June 2022, President Biden issued the Memorandum on Combating Illegal, Unreported, and Unregulated Fishing and Associated Labor Abuses. The Memorandum notes that, if left unchecked, IUU fishing and associated labor abuses threaten the livelihoods and human rights of fishers around the world and will undermine U.S. economic competitiveness, national security and fishery sustainability. It also notes that this behavior will exacerbate the environmental and socioeconomic effects of climate change. In December

2022, the Treasury Department sanctioned individuals associated with China's distant water fishing vessels for serious human rights abuse, including forced labor, of workers aboard these vessels.

It also remains concerning that China does not adhere to certain other internationally recognized labor standards, including the freedom of association and effective recognition of the right to collective bargaining. Chinese law provides for the right to associate and form a union, but does not allow workers to form or join an independent union of their own choosing. Unions must affiliate with the official All-China Federation of Trade Unions (ACFTU), which is under the direction of the CCP. Workers at enterprises in China are required to accept the ACFTU as their representative. They cannot instead select another union or decide not to have any union representation. Only collective bargaining through the ACFTU is permitted, and there is no legal obligation for an employer to bargain in good faith. Striking is also prohibited.

## ENVIRONMENT

### Import Ban on Scrap Materials

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

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

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

U.S. exports to China of the unprocessed scrap and recovered materials covered by China's restrictive measures totaled $479 million in 2016, the year before China started to pursue its more restrictive policies. U.S. exports of these materials to China have been significantly reduced.

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

### Import Ban on Remanufactured Products

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

## OTHER BARRIERS

### Export Restraints

Over the years, China has deployed 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. In many instances, through these export restraints, it appears that China has been able to provide substantial economic advantages to a wide range of downstream producers in China at the expense of foreign downstream producers, while creating pressure on foreign downstream producers to move their operations, technologies and jobs to China.

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

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

In September 2021, China announced an export ban on certain fertilizers. Despite repeated requests from its trading partners to lift this export ban and help address growing international concern over food insecurity linked to rising commodity prices and disrupted global supply chains, China continues to impose this export ban.

Meanwhile, U.S. companies report that China has also instituted export restrictions on corn starch. To date, however, the Chinese Government still has not published an official notice, while exporters report the export restrictions remain in place.

### Value-Added Tax Rebates and Related Policies

As in prior years, in 2021, the Chinese Government attempted to manage the export of many primary, intermediate and downstream products by raising or lowering the VAT rebate available upon export. China sometimes reinforces its objectives by imposing or retracting export duties. These practices have caused tremendous disruption, uncertainty and unfairness in the global markets for some products, particularly downstream products for which China is a leading world producer or exporter, such as products made by

the steel, aluminum and soda ash industries. These practices, together with other policies, such as excessive government subsidization, have also contributed to severe excess capacity in these same industries.

An apparently positive development took place at the July 2014 S&ED meeting, when China committed to improve its VAT rebate system, including by actively studying international best practices, and to deepen communication with the United States on this matter, including regarding its impact on trade. Once more, however, this promise remains unfulfilled. To date, China has not made any movement toward the adoption of international best practices.

**Trade Remedies**

As of December 2022, China had in place 118 antidumping measures, affecting imports from 17 countries or regions. China also had in place seven countervailing duty measures, affecting imports from four countries or regions. The greatest systemic shortcomings in China's antidumping and countervailing duty practice continue to be in the areas of transparency and procedural fairness. Over the years, China has often utilized antidumping and countervailing duty investigations as more of a retaliatory tool than as a mechanism to nullify the effects of dumping or unfair subsidization within its domestic market. In response, the United States has pressed China bilaterally, in WTO meetings and through written comments submitted in connection with pending antidumping and countervailing duty proceedings to adhere strictly to WTO rules in the conduct of its trade remedy investigations.

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

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

On several occasions in the past, the United States has expressed serious concerns about China's pursuit of antidumping and countervailing duty remedies that appear to be retaliatory and intended to discourage the United States and other trading partners from the legitimate exercise of their rights under WTO antidumping and countervailing duty rules and the trade remedy provisions of China's accession agreement. More recently, it also appears that China has used arbitrary economic and trade measures, including antidumping and countervailing duty investigations, as a form of economic coercion designed to achieve China's

political goals. Obvious examples include MOFCOM's antidumping and countervailing duty investigations of imports of Australian barley and Australian wine.

In certain recent investigations of U.S. imports, China has determined—without legal or factual support—that costs and prices in certain U.S. markets are distorted, and therefore unusable, because of so-called "non-market situations." For example, in four final antidumping determinations on imports of n-propanol, polyphenylene sulfide, ethylene propylene diene monomer and polyvinyl chloride from the United States in 2020 and 2021, China found a "non-market situation" in certain energy sectors in the United States. However, these findings were made without defining the term "non-market situation" or identifying any legal basis in China's law to make these findings. Separately, in the final countervailing duty determination on imports of n-propanol from the United States, China also found that alleged subsidies to the U.S. oil and gas sector automatically passed through to petrochemical products without providing the analysis required by the Subsidies Agreement, generating a concern that has arisen in prior cases as well.

**Pharmaceuticals**

For several years, the United States has pressed China on a range of pharmaceuticals issues. These issues have related to matters such as overly restrictive patent application examination practices, regulatory approvals that are delayed or linked to extraneous criteria, weak protections against the unfair commercial use and unauthorized disclosure of regulatory data, issues with the implementation of an efficient mechanism to resolve patent infringement disputes, and restrictions on receiving patent term extensions for unreasonable marketing approval delays. In particular, China's narrow definition of "new drug" as a drug that has not been marketed anywhere else before it is launched in China continues to have negative implications for China's provision of patent term extensions for unreasonable marketing approval delays and China's potential implementation of regulatory data protection, and it may cause foreign companies to bring their products to China first regardless of patient demand or other important factors. While China has implemented some helpful reforms, the United States still has many of the same concerns with China's pharmaceutical market, especially as it pertains to treatment of foreign companies.

CFDA also issued several draft notices in 2017 setting out a conceptual framework to protect against the unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. In addition, this proposed framework sought to promote the efficient resolution of patent disputes between right holders and the producers of generic pharmaceuticals. However, in 2018, CFDA's successor agency, NMPA, issued draft Drug Registration Regulations and draft implementing measures on drug trial data that would preclude or condition the duration of regulatory data protection on whether clinical trials and first marketing approval occur in China. Subsequently, China issued a revised Drug Administration Law in 2019, followed by NMPA's revised draft Drug Registration Regulations in 2020 and NMPA's revised draft Drug Administration Law Implementing Regulations in 2021. Despite the opportunities that these revised draft measures afforded China's regulatory authorities, the concerning limitations on regulatory data protection have not been removed.

Since 2018, volume-based procurement has presented a new market access complication for foreign suppliers of pharmaceuticals, largely because of the opaque and unpredictable nature of the bidding processes. In November 2018, a National Drug Centralized Procurement Pilot Scheme was launched. Then, in January 2019, the State Council issued a Pilot Plan for National Centralized Drug Procurement and Use. In December 2021, the National Healthcare Security Administration published the 2021 edition of its annual National Reimbursement Drug List, which became effective on January 1, 2022. U.S. industry also cites the need for increased transparency and greater harmony between national and provincial bidding processes as well as a greater emphasis on a competitive approach to evaluating relevant bids.

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

In October 2020, China amended the Patent Law to provide for patent term extensions for unreasonable patent and marketing approval delays, and it also added a mechanism for the early resolution of potential patent disputes, known as patent linkage. Implementing measures for the patent linkage mechanism were issued in July 2021, as NMPA and CNIPA jointly issued the Trial Implementation Measures for the Mechanism for Early Resolution of Drug Patent Disputes and the Supreme People's Court issued the Regulations on Several Issues Concerning the Application of Law in the Trial of Civil Patent Disputes Related to Drug Registration Application. In 2021 and 2022, CNIPA issued draft implementing rules for the amended Patent Law and drafts of amendments to the Patent Examination Guidelines. Among other things, U.S. right holders have expressed concern about China's implementation of patent term extensions for unreasonable marketing approval delays, including China's use of unfair localization requirements and limits on the type of protection provided. Going forward, the United States will continue to monitor closely China's progress in implementing its commitments, with regard to both patent term extensions for unreasonable patent and marketing approval delays and the patent linkage mechanism.

**Medical Devices**

For many years, working closely with U.S. industry, the United States has raised concerns about China's pricing and tendering procedures for medical devices and its discriminatory treatment of imported medical devices. At the November 2015 JCCT meeting, China did commit that, in terms of accessing the market, it will give imported medical devices the same treatment as medical devices manufactured or developed domestically. Unfortunately, this promise has not been fulfilled. China continues to pursue a wide range of policies that direct China's purchasing authorities to prioritize the procurement of domestic medical device manufacturers over imported medical device manufacturers.

In recent years, the United States has continued to press China's regulatory authorities to develop sound payment systems that are transparent, predictable and competitive. The United States has also urged China to adequately recognize quality, safety and the costs of R&D in its approach to procurement policy.

In 2019, China's State Council launched a volume-based procurement (VBP) approach for medical devices in a few provinces and municipalities in an attempt to cut healthcare costs. Since then, the VBP approach has become further engrained in China's system, with the formation of multi-province and municipal alliances to conduct joint procurements under VBP. In 2020, China implemented its first national VBP tender, which has been followed by additional national tenders in 2021 and 2022. In practice, implementation of China's VBP prioritizes cost over the product's value or quality. With China perceiving the resulting price cuts as successes, U.S. industry expects that China will continue to expand the categories of medical devices subject to VBP in the future.

According to U.S. industry, if China continues to pursue VBP without significant changes, it could lead to the creation of a low-cost, low-quality medical devices sector and low-quality monopolies in China, which would operate to the disadvantage of innovative medical device companies, many of which are foreign companies, and the patients who rely on advanced medical technologies. Currently, medical device

companies that are successful at winning bids often have very thin profit margins or even lose money. Reportedly, some medical device companies are reducing training to healthcare providers in order to offer the expected price cuts. In addition, given the size of China's medical device market, low-quality monopolies from China could expand and then prioritize exports of their medical devices to third countries. With the choice between a higher cost but more effective product or a lower cost, lower quality product, countries with greater budget constraints, and greater vulnerability to Chinese influence, may be more inclined to procure China's offerings. Overall, China's VBP approach poses a risk to the medical device sector and the provision of high-quality medical treatment worldwide.

In July 2022, China's Ministry of Finance issued a revised Government Procurement Law. While China has a history of distributing unofficial, non-public guidance to give preference to domestic over foreign medical devices companies, China's revisions to the Government Procurement Law also officially expands the coverage of products for which domestic alternatives should be given preference.

Meanwhile, the Made in China 2025 industrial plan announced by the State Council in 2015 seeks to prop up China's domestic medical device sector through a series of support policies, including targeted funds and procurement policies. The goal of these policies is to significantly increase the market share of domestically owned and domestically manufactured medical devices, and correspondingly decrease market share of foreign medical devices, by 2025. At the same time, some provincial governments directly subsidize the purchase of domestically manufactured medical devices. In addition, some provincial governments have issued guidelines urging medical institutions to prioritize the procurement of local medical equipment over imported equipment. In at least one province, the guidelines suggest that only imported medical devices for which there is not a domestic replacement will be eligible for procurement. Going forward, the United States will continue to urge China to provide foreign medical devices with fair and equal access to China's market.

U.S. industry also reports that while sub-central governments in China have always provided some financial support to domestic medical devices companies, their support appears to have increased between 2020 and 2022. U.S. industry notes that this trend could be attributed to either the COVID-19 pandemic or China's five-year industrial plan for medical equipment covering the years 2021 to 2025, or perhaps both. The United States will monitor this situation closely and will encourage China to be transparent in its approach.

**Corporate Social Credit System**

Since 2014, China has been working to implement a national "social credit" system for both individuals and companies. The implementation of this system is at a more advanced stage for companies versus individuals, as "unified social credit codes" are assigned to every domestic and foreign company in China. These 18-digit codes will provide a way for the Chinese Government to track a company's record of administrative and regulatory compliance and generate public credit information. Over the past year, China has been increasingly focused on making the social credit system fully functional. Indeed, in his report to the 20th National Party Congress in October 2022, Xi Jinping in his capacity as the General Secretary of the Chinese Communist Party emphasized the need to refine the social credit system.

Under the corporate social credit system, government records and market-generated corporate compliance data are collected on every legal entity in China. The collected information contains regulatory and administrative records contributed by at least 44 state agencies and their branch offices across every province in China. Previously disparate information relating to a company's financial records, regulatory compliance, inspection results and other administrative enforcement activities is being consolidated under a company's unified social credit code. All of this data will be aggregated and shared between regulatory agencies via the National Credit Information Sharing Platform. Reportedly, approximately 75 percent of the records collected on companies is intended to be designated as "open to the public," while the remaining

25 percent that is intended to be withheld will include potentially sensitive information, such as approval records related to national development projects and details of any criminal cases.

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

However, currently, there is no fully integrated national system for assigning comprehensive social credit scores for companies, and the social credit system remains highly fragmented. Certain central government agencies and sub-central government agencies maintain their own rating systems, with each agency making its own decisions about the types of transgressions that warrant negative ratings or placing a company on a censure list.

In November 2022, NDRC and PBOC jointly published a draft law that would give the social credit system a legal basis, further embedding it into China's regulatory network. The draft law seeks to establish NDRC and PBOC as the main government agencies for construction of the social credit system. Their responsibilities would include overall coordination, supervision and guidance of the construction of the social credit system and taking the lead in organizing the formulation and implementation of relevant policies and standards. The draft law also seeks to provide formal legal definitions for certain terms used in implementing the social credit system, such as "untrustworthy," "credit supervision" and "credit information." In addition, the draft law seeks to codify the protection of certain rights, as it calls for the establishment of a social credit system that maintains the security of social credit information and strictly protects state secrets, business secrets and personal privacy, while also protecting the lawful rights and interests of natural persons, legal persons and unincorporated organizations.

Earlier in 2022, prior to the publication of the draft law, NDRC issued a draft update of the 2021 National Basic Catalogue of Public Credit Information and a draft update of the 2021 National Basic List of Disciplinary Measures against Dishonest Acts. The draft Catalogue compiles the scope and types of credit information that can be collected by government agencies. It also stipulates that certain categories of information are exempt from collection, including state secrets and trade secrets. The draft List includes a range of punitive actions that may be applied to violators of trust, such as duties, fees, restrictions on market activity, prohibitions or limitations on occupations and bans from government procurement bidding.

The corporate social credit system has been tied to larger policy objectives as well. For example, the General Office of the State Council and the General Office of the Chinese Communist Party issued a joint opinion on promoting a high-quality credit system in order to further China's "dual circulation" objectives. In addition, in November 2022, the Ministry of Science and Technology (MOST) announced a new pilot project for evaluating STEM talent. Under MOST's new pilot project, evaluation of scientists' performance is to incorporate metrics related to their moral character, which includes their social credit record, in order to ensure that scientific researchers have no history of plagiarism or academic fraud. This pilot project appears to reflect China's struggle to improve the quality of its scientific research talent.

Foreign companies are concerned that the corporate social credit system will be used by the Chinese Government to pressure them to act in furtherance of China's industrial policies or other state priorities or otherwise to make investments or conduct their business operations in ways that run counter to market principles or their own business strategies. Foreign companies are also concerned that the Chinese Government will use the corporate social credit system as another tool to ensure that they do not cross

political redlines on sensitive matters like human rights. In addition, foreign companies are concerned about the opaque nature of the corporate social credit system. Currently, for example, a company sometimes only learns about its negative ratings when, for example, it requests a permit and receives a denial, even though the Measures for Administration of the List of Serious Violators of Trust and Law includes a requirement that companies be informed of their being censured in advance. Other times, a company learns for the first time that it has been censured when a Chinese Government agency posts its name on the agency's website, even though the censuring of a company can cause severe harm to the company's reputation and adversely impact its efforts to attract customers, secure needed financing or make new investments. When Chinese Government agencies begin to pursue joint punishment in the way that NDRC envisions, it will mean that an infraction in one regulatory context could have wider consequences across the company's entire business operations.

Another key concern regarding the corporate social credit system involves its links to individual social credit. In addition, the Chinese Government could also potentially use corporate social credit in the future to exert extraterritorial influence by threatening the social credit standing of foreign multinationals or citizens for behavior or speech outside of China.

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

**Administrative Licensing**

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

**Transparency**

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

*Publication of Trade-Related Measures*

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

At the central government level, moreover, China tends to take a narrow view of the types of trade-related measures that need to be published in the official journal. For those government entities whose trade-related measures are published in the official journal, China more commonly (but still not regularly) publishes trade-related administrative regulations and departmental rules in the journal, but it is rare for

China to publish other measures such as opinions, circulars, orders, directives and notices, which are known as "normative documents" in China's legal system. Normative documents are regulatory documents that do not fall into the category of administrative regulations or departmental rules, but still impose binding obligations on enterprises and individuals. Although the State Council introduced a definition for "administrative normative documents" in 2014, this definition is narrow and does not appear to encompass all normative documents, nor has it resulted in their regular publication as required by China's WTO commitments.

Meanwhile, China rarely publishes certain types of trade-related measures from either the central level or the sub-central level of government in the official journal. As discussed above in the Industrial Subsidies section, an important example involves subsidy measures.

*Notice-and-Comment Procedures*

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

At the May 2011 S&ED meeting, China committed to issue a measure implementing the requirement to publish all proposed trade- and economic-related administrative regulations and departmental rules on the website of the State Council's Legislative Affairs Office (SCLAO) for a public comment period of not less than 30 days. In April 2012, the SCLAO issued two measures that appear to address this requirement.

Currently, the process for issuing new regulatory measures in China can be opaque and unpredictable and implemented without adequate notice. China still needs to improve its practices relating to the publication of administrative regulations and departmental rules for public comment. China also needs to formalize its use of notice-and-comment procedures for all normative documents.

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

*Translations*

In its WTO accession agreement, China committed to make available translations of all of its trade-related laws, regulations and other measures at all levels of government in one or more of the WTO languages, *i.e.*, English, French, and Spanish. Prior to 2014, China had only compiled translations of trade-related laws and administrative regulations (into English), but not other types of measures, such as departmental rules, normative documents and sub-central government measures. Even for trade-related laws and administrative regulations, China was years behind in publishing these translations. At the July 2014 S&ED meeting, China committed that it would extend its translation efforts to include not only trade-related laws and administrative regulations but also trade-related departmental rules. Subsequently, in March 2015, China

issued a measure requiring trade-related departmental rules to be translated into English. This measure also provides that the translation of a departmental rule normally must be published before implementation.

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

*Inquiry Point*

In its WTO accession agreement, China committed to establish an inquiry point that would respond to requests for information relating to legal measures required to be published in its official journal. At times, however, China has refused to provide copies of legal measures in response to legitimate requests directed to its inquiry point.

In April 2020, for example, the United States submitted a request concerning five Chinese legal measures covering semiconductors and fisheries subsidy programs that had not been published in China's official journal and were not otherwise available online, nor had they been notified to the WTO. Despite the obligation in its WTO accession agreement to either provide the documents or respond in writing within 45 days, China did not meet this deadline. The United States made repeated follow-up requests, to no avail. Five months after the United States submitted its request to China's inquiry point, MOFCOM orally informed the U.S. Embassy in Beijing that it would not be providing any of the requested legal measures because two of the measures would soon be replaced and the other three measures, in China's view, were not relevant to China's WTO obligations. USTR promptly responded to MOFCOM in writing, countering its assertions and urging it to provide the requested documents. Since then, China has continued to refuse to provide a written response to the United States' request or to provide any of the requested legal measures, even though the United States and other WTO Members have repeatedly raised this matter before the WTO Subsidies Committee and Council for Trade in Goods.

*Other Non-Tariff Measures*

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

# COLOMBIA

## TRADE AGREEMENTS

### The United States–Colombia Trade Promotion Agreement

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

## IMPORT POLICIES

### Tariffs

U.S. consumer and industrial products are duty free under the Agreement as of January 1, 2021. Duties on some remaining U.S. agricultural goods were phased out on January 1, 2023. Tariffs on the most sensitive products for Colombia will be phased out between January 1, 2026, and January 1, 2030. U.S. agricultural exporters also currently benefit from duty-free access under tariff-rate quotas for some sensitive products.

### Non-Tariff Barriers

*Customs Barriers and Trade Facilitation*

Colombia ratified the WTO Trade Facilitation Agreement (TFA) on August 6, 2020. Colombia has not yet implemented customs reforms that would allow traders to submit electronic copies of invoices instead of physical copies, as encouraged by the TFA. Slow customs clearance in Colombia hampers both imports and exports, and the ability to submit electronic copies of documents would help accelerate customs clearances. The Colombian Government reports that its digital system is under development, and the United States will continue to follow the development of the system.

*Ethanol-Related Measures*

Since March 2021, Colombia's Ministries of Mines and Energy, Agriculture and Rural Development, and Environment and Sustainable Development have imposed a series of emergency measures that decreased the mandated rate of blending ethanol into gasoline from 10 percent to 4 percent, with the stated aim of compensating for local ethanol supply shortages and higher prices. In October 2022, a new draft measure was issued to decrease the ethanol blend mandate to two percent in 2023. The United States continues to raise concerns with Colombia about its ethanol blend mandate policies and will continue to monitor developments.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Front-of-Package Labeling*

On December 14, 2022, the Ministry of Health enacted a Front-of-Package Labeling (FOPL) regulation, Resolution 2492 of 2022, which amended Decree 810 of June 2021, in accordance with the directives of Law 2120. The FOPL regulation, which enters into force on June 14, 2023, requires stop-sign-shaped warning FOPL labels for salt/sodium, added sugar, saturated fats, trans fats, and sweeteners. The regulation

continues to require a supplier's product conformity certificate. Colombia had allowed 18 months of flexibility during the implementation phase of Decree 810, including allowing the use of stickers, and offered communication channels for addressing questions from stakeholders to facilitate compliance with the new regulation. However, Resolution 2492 leaves unclear the length of time companies have to deplete old labels. The United States commented on different iterations of the draft regulation since June 2021, and has been actively engaging Colombia via bilateral meetings, including the October 2021 meeting of the Committee on Technical Barriers to Trade (TBT) under the Agreement, and three bilateral meetings on the margins of the WTO TBT Committee meetings in March, June, and November 2022.

*Maximum Sodium Limits*

In November 2020, the Ministry of Health issued Resolution 2013 to reduce sodium intake in Colombia by setting mandatory maximum sodium content limits for 59 processed food categories. The measure, which applies to domestic and imported products, sets out compulsory reduction goals for an initial set of products in November 2022, and for the remaining products in November 2024. A supplier's declaration of conformity will be permitted until July 2023, after which third-party certification will be required for all products. U.S. industry has raised concerns with the third-party certification requirement, along with how the Ministry of Health will enforce this regulation through local inspectors. The Agreement lists supplier declarations on the indicative list of conformity assessment procedures.

*Automobile Conformity Assessment*

Colombia requires third-party safety certification for several components of imported vehicles. Colombia's regulations on several automobile components require companies to provide third-party compliance reports on those components, though U.S. manufacturers already test their products for compliance with U.S. Federal Motor Vehicle Safety Standards. After consultation processes and the receipt of U.S. Government and other stakeholder comments, Colombia amended its regulations to state that U.S. manufacturers can satisfy the legal requirement for third-party certification by providing documentation issued by the U.S. National Highway Traffic Safety Administration. Stakeholders remain concerned with this approach, given the volume of motor vehicles exported to Colombia from the United States and the challenges of securing so much documentation. Colombia also is considering imposing similar requirements on author automobile components. The U.S. Government will continue working with the Colombian Government and stakeholders to seek workable alternatives.

**Sanitary and Phytosanitary Barriers**

*Lactic Acid Limits and Bulk Dried Milk Sales Restrictions*

In August 2020, INVIMA (Colombia's regulatory authority equivalent to the U.S. Department of Health and Human Services' Food and Drug Administration) informed the United States that all U.S. shipments of milk powder to Colombia must meet the physical and chemical properties requirements in Decree 616 of 2006, including minimum lactic acid content requirements. Decree 616 was notified to the WTO Committee on Sanitary and Phytosanitary Measures (SPS Committee) in 2005 and again in 2012. The basis and rationale for the regulation remains unclear. The Codex Alimentarius Commission standards for food additives only establish a maximum limit for lactic acid and do not set a minimum limit. The Ministry of Health is updating Decree 616. The draft of the regulation includes mandatory minimum lactic acid requirements for milk powder and would introduce changes to the regulation, such as restrictions on the sale of bulk powdered milk. The United States participated in Colombia's domestic consultation process for the draft regulation, which ended on August 12, 2022. The draft regulation is pending notification to the WTO SPS Committee.

## INTELLECTUAL PROPERTY PROTECTION

Colombia remained on the Watch List in the 2022 Special 301 Report. Colombia has not yet implemented the provisions of the Agreement regarding enforcement against online copyright infringement, and has not yet acceded to the 1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV 1991). During 2022, the United States continued to engage with Colombia on these outstanding Agreement commitments.

Article 72 of Colombia's National Development Plan added criteria to pharmaceutical marketing approvals that are not related to a product's safety or efficacy. Colombia issued Decree 433 in March 2018, as amended by Decree 710 of April 2018, to clarify that Colombia would not condition approvals on factors other than the safety and efficacy of the underlying compound. However, due to an action challenging these decrees, the Council of State provisionally suspended them in September 2019. As of December 31, 2022, Colombia was still considering how it would resolve this issue.

Colombia continues to face a large number of pirated and counterfeit goods crossing the border or sold at markets, on the street, and at other distribution hubs around the country. High levels of digital piracy persist year after year, and Colombia has not curtailed the number of free-to-air devices, community antennas, and unlicensed Internet Protocol Television (IPTV) services that permit the retransmission of otherwise-licensed content to a large number of non-subscribers.

## SERVICES BARRIERS

### Distribution Services

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

## LABOR

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

# COSTA RICA

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

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

In addition, nearly all U.S. agricultural exports enter Costa Rica duty free under the CAFTA–DR. Costa Rica will eliminate its remaining tariffs on certain rice and dairy products by 2025. On August 12, 2022, Costa Rica unilaterally reduced tariffs on imported rice irrespective of origin. For certain agricultural products, tariff-rate quotas (TRQs) permit duty-free access for specified quantities during the tariff phase-out period, with the duty-free quantities expanding during that period. Costa Rica will liberalize trade in fresh potatoes and onions through continual expansion of a TRQ, rather than the reduction of the out-of-quota tariff. Costa Rica is required under the CAFTA–DR to make TRQs available on January 1 of each year. Costa Rica monitors its TRQs through an import licensing system, which the United States carefully tracks to ensure the timely issuance of these import licensing permits.

*Taxes*

Costa Rica currently assesses a specific excise tax on distilled spirits calculated as a percentage of alcohol per liter, based on three specific rates (Law 7972). The highest rate applies to spirits bottled at a rate above 30 percent alcohol-by-volume (abv). While locally produced spirits (produced in the largest volume by the state-owned alcohol company) are bottled at 30 percent abv, the vast majority of internationally traded spirits are bottled at 40 percent abv. As a result, most imported spirits are taxed at a higher rate than most spirits produced domestically. Furthermore, domestic producers may pay the tax within the first 15 days of each month on sales made during the prior month, while importers must pay the tax prior to release of their product from customs. On August 1, 2022, the Finance Ministry increased spirits taxes by three percent for domestic and international producers.

### Non-Tariff Barriers

*Dietary Supplements*

Since 2014, U.S. producers have expressed concerns regarding Costa Rican product registration and technical regulations related to nutritional and dietary supplements. Because the United States does not

regulate dietary supplements as pharmaceuticals, U.S. manufacturers of these products generally do not have the certification and product analysis that is required for products to be sold in Costa Rica under the Central American Technical Regulation for Natural Medicines.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Product Registration*

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

*Telecommunications*

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

### Sanitary and Phytosanitary Barriers

The Costa Rican Ministry of Agriculture occasionally delays the issuance of phytosanitary import permits for sensitive products, such as onions, during specific periods, such as harvest time (usually from April to June for onions), creating difficulties for U.S. exporters of those products. In addition, repeated U.S. requests to re-open the market for table stock potatoes (closed since 2013) have gone unanswered, restricting the CAFTA–DR potato TRQ to lower-value chipping potatoes. The table stock market is currently closed pending completion of a pest risk assessment. In 2021 and 2022, the United States exported approximately $1.9 million and $1.7 million, respectively, of chipping potatoes to Costa Rica; however, industry estimates that exports could increase to over $5 million if phytosanitary issues are addressed and the table stock market is reopened. The U.S. Department of Agriculture Animal and Plant Health Inspection Service and the Costa Rican Ministry of Agriculture conduct frequent bilateral meetings to discuss regulatory procedures for the import and export of new products, promoting market access for new U.S. products.

Costa Rica has a 2016 regulation requiring extensive questionnaires for certain animal product facilities that export products to Costa Rica, including dairy, seafood, lamb and egg product facilities. Most U.S. exporting facilities find this process overly burdensome and have complained that the questionnaire requests irrelevant and business proprietary information. As a result, U.S. exports of these products face delays of several months or longer when introducing new products to the Costa Rican market.

## GOVERNMENT PROCUREMENT

U.S. companies have indicated that the private sector is sometimes disadvantaged in public bids when competing against Costa Rican state-owned enterprises in both the ICT and insurance sectors. Article 2 of the Public Contracting Law allows for the non-competitive awarding of contracts to public entities if

officials of the awarding entity certify the award to be an efficient use of public funds. The United States has engaged with Costa Rica on these issues.

Costa Rica is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since June 2015. Additionally, the CAFTA–DR contains disciplines on government procurement.

## INTELLECTUAL PROPERTY PROTECTION

Costa Rica was removed from the Watch List in the 2020 Special 301 Report due to the concrete steps it took to improve its intellectual property (IP) regime, including initiating new programs within the government to track licenses to address unlicensed software use in the central government, and to implement an online recordation system to improve border enforcement. While the United States recognizes the progress Costa Rica has made, and the potential of these positive developments, their effectiveness remains to be demonstrated through enforcement and outcomes on the ground. The United States held bilateral discussions with Costa Rica on this issue in 2022, and while the IP Registry was supposed to issue its first report on government usage of unlicensed software in early 2021, the report had not been issued as of December 31, 2022. The United States also continues to urge Costa Rica to bolster IP enforcement to curb online piracy, address cumbersome border measure processes to deter counterfeit and pirated goods, and effectively utilize *ex officio* authority for border enforcement against counterfeit and pirated goods. The United States continues to encourage Costa Rica to build on initial positive steps to protect and enforce IP, and to continue bilateral discussions of these issues.

# COTE D'IVOIRE

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

Cote d'Ivoire's average Most-Favored-Nation (MFN) applied tariff rate was 12.1 percent in 2021 (latest data available). Cote d'Ivoire's average MFN applied tariff rate remained 15.8 percent for agricultural products and 11.5 percent for non-agricultural products in 2021 (latest data available). Cote d'Ivoire has bound 33.3 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 11.2 percent.

Consistent with the Economic Community of West African States (ECOWAS) common external tariff (CET), Cote d'Ivoire applies: (1) zero percent duty on essential social goods (*e.g.*, medicine); (2) 5 percent duty on essential commodities, raw materials, and capital goods; (3) 10 percent duty on intermediate goods; (4) 20 percent duty on consumer goods; and, (5) 35 percent duty on certain goods that the Ivoirian Government elected to afford greater protection. The CET was slated to be fully harmonized by 2020, but, in practice, some ECOWAS Member States have maintained deviations from the CET beyond the January 1, 2020 deadline.

Since 2021, the tariff rate was reduced to 9 percent for milk (except yogurt and other dairy products), infant milk, homogenized and composite preparation foods for infants, imported rice, meat imported from outside ECOWAS, pasta products containing 100 percent durum wheat semolina, and equipment designed for solar energy. The Ivoirian Government applies a tariff of CFA 1,000 (approximately $1.75) per kilogram to imports of frozen meats.

*Taxes*

Imports from countries that are not members of the West African Economic and Monetary Union (WAEMU) are subject to an additional 2.5 percent tax on the cost, insurance, and freight (CIF) value of imports, which consists of the solidarity tax (0.8 percent), African Union import tax (0.2 percent), community levy (0.5 percent), and statistical charge (1.0 percent), all of which are used for financing WAEMU commissions and assisting landlocked WAEMU members Niger, Burkina Faso, and Mali. Like all ECOWAS countries, Cote d'Ivoire imposes a one percent ECOWAS levy on all goods originating from non-ECOWAS countries to finance the activities of the ECOWAS Commission and Community institutions. Cote d'Ivoire levies an additional one percent charge on the CIF value of imports, except those destined for re-export, transit, or donations for humanitarian purposes under international agreements.

An import tax of 15 percent is applied on imports of electrical transformers from 16 kilovolt-ampere (kVA) to 500 kVA.

Excise duties apply to cigarette imports, alcoholic or non-alcoholic beverages, and oil products. Excise duties on tobacco were extended by the 2022 Financial Law and apply to electronic cigarettes, pipes and pipe parts, and products and materials for shisha and electronic cigarettes. The tax rate on tobacco products increased to 40 percent (from 39 percent). Tobacco products include cigars, cigarillos, cigarettes, smoking tobacco, electronic cigars, and pipes. The tax on cosmetic products containing hydroquinone decreased from 50 percent to 15 percent.

The 2019 Financial Law extended excise duties of 10 percent to tourism vehicles with at least 13 fiscal horsepower, and 10 percent on marble. Under the 2021 Financial Law, excise duties of 10 percent to 50 percent are applied to perfume and cosmetic products. The 50 percent maximum excise rate was reduced to 15 percent under the 2022 tax schedule.

A special tax is paid by all taxpayers for the purpose of the equipment of the government. The tax is calculated on 0.1 percent of total turnover and paid monthly. This tax, originally scheduled to end on December 31, 2019, is now a permanent tax under the 2020 Financial Law. A cumulative tax of 10 percent is levied on bank services rendered. Tax on banking operations charged by banks to companies is fully deductible from output value-added tax (VAT). The 2019 Financial Law has extended the application of this tax to money transfer companies via mobile networks.

Companies operating in the telecommunications, information technology, and communications sector must also invest 20 percent of the dividends transferred abroad in bonds of the public Treasury or any borrowing instrument issued by the Government of Cote d'Ivoire. Moreover, the Directorate General of Taxes extended the scope of the VAT to operators of digital online market platforms as of January 4, 2022. The VAT is 18 percent on commissions.

**Non-Tariff Barriers**

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

*Import Bans*

Cote d'Ivoire has prohibited wheat flour imports since 2008. In January 2020, Cote d'Ivoire banned the importation of sugar for five years. By doing so, Cote d'Ivoire ensures the consumption of the national production of sugar and protects a well-known national company in this sector. An authorized local company can import sugar in case of a national shortage. Ivory and certain types of wood cannot be imported.

*Import Licensing*

Imports of cotton and products consisting of 100 percent cotton, such as the "Wax and Resin" textile cloth most often used in traditional African clothing, require an import license from the External Trade Promotion Office. Imports of petroleum products and their derivatives require an import license, without any quota limits. Imports of alcoholic beverages are also subject to import license requirements from the External Trade Promotion Office, with special labeling that states: "For Sale in Cote d'Ivoire." The importer must provide yearly statistics to the External Trade Promotion Office.

*Import Restrictions*

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

*Customs Procedures and Trade Facilitation*

All goods imported into Cote d'Ivoire must first be examined by a pre-shipment inspection company for compliance with relevant requirements. U.S. exporters find the process often increases the time and cost to export without providing assurance of a more streamlined clearance process at the border. Four European

companies, BIVAC (affiliated with the French group Bureau Veritas), Swiss-based firms COTECNA and SGS, and British company Intertek, are contracted to carry out pre-shipment inspections of goods exported to Cote d'Ivoire with a value exceeding 1 million CFA (approximately $1,750). A certificate of compliance from one of these firms is required to clear customs.

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

*Minimum Import Prices*

The Ivoirian Government imposes minimum import prices on cooking oil, cigarettes, sugar, used clothing, concentrated tomato paste, broken rice, matches, notebooks, tissues, polypropylene sacks, alcohol, and milk; it does so for some tariff lines under a WTO waiver that expired in 2001.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

Cote d'Ivoire has not consistently notified its draft technical regulations to the WTO Committee on Technical Barriers to Trade since becoming a WTO Member on January 1, 1995. Transparency of the regulatory system in Cote d'Ivoire is a concern, as companies complain that regulations are issued only as final measures without a clear process or a period for public comment on draft regulations.

### Sanitary and Phytosanitary Barriers

The Border Inspection and Veterinary Sanitary Control Department is responsible for ensuring that sanitary and quality control standards for imported live animals, animal products, and fish products are upheld. This agency also provides the necessary sanitary certifications for them to be sold.

The Veterinary Services Department is responsible for maintaining animal health and public hygiene where animal products are kept. This includes inspecting the facilities used for storing, distributing, and selling meat and fish products to ensure they comply with health and hygiene standards. The Department also tests veterinary medications and products, in collaboration with the Ministry of Health and Public Hygiene. These agencies monitor processing facilities for animal and fish products in conjunction with the Ministry of Industry. The Ministry of Agriculture is responsible for plant variety protection.

In 2015, Cote d'Ivoire established the Sanitary and Phytosanitary / Technical Barriers to Trade Sub-Committee as part of the National Institutional Advisory Committee on WTO Agreements (Article 6 of Decree No. 2015-115 of February 25, 2015).

## GOVERNMENT PROCUREMENT

The government publishes tender notices in the local press and sometimes publishes tenders in international magazines and newspapers. On occasion, there is a charge for the bidding documents. Cote d'Ivoire has a generally decentralized government procurement system, with most ministries undertaking their own procurements. The National Bureau of Technical and Development Studies, the government's technical and investment planning agency and think tank, occasionally serves as an executing agency in major projects to be financed by international institutions.

The Public Procurement Department is a centralized office of public tenders in the Ministry of Finance to help ensure compliance with international bidding practices. Cote d'Ivoire's update to its public procurement code in 2019 introduced some positive changes, including electronic procurement bidding, provisions on sustainable public procurement, and promotion of socially responsible vendors as a bidding qualification. While the public procurement process is open by law, in practice it is often opaque and government contracts are occasionally awarded outside of public tenders. Some foreign companies appear to secure contracts as a result of longstanding relationships with government officials or aided by partnerships with Ivoirian commercial entities that have close connections to the government. During negotiations on a tender, the Ivoirian Government at times imposes local content requirements on foreign companies. In other instances, although there are specific regulations governing the use of sole source procurements, the government has awarded sole source bids without tenders, citing the high technical capacity of a firm or a declared emergency.

Many firms continue to cite corruption as an obstacle to a transparent understanding of procurement decisions.

Cote d'Ivoire is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since July 2020.

## INTELLECTUAL PROPERTY PROTECTION

Inadequate enforcement of intellectual property (IP) rights remains a serious concern. The Ivoirian Copyright Office (BURIDA) utilizes a labeling system to prevent counterfeiting and piracy in audio, video, literary, and artistic works. BURIDA has also facilitated stakeholder engagement to promote IP, and its police unit still conducts some raids to confiscate pirated CDs and DVDs; however, due to recent streaming alternatives, CDs and DVDs are less and less circulated in the market. IP enforcement, nevertheless, suffers in Cote d'Ivoire because of limited resources and a lack of customs checks at the country's porous borders.

## SERVICES BARRIERS

Cote d'Ivoire distinguishes between providing legal advice and practicing law in court. In order to practice law in a courtroom, one must be accredited by the Ivoirian bar association, which requires Ivoirian nationality. Those solely providing legal advice are not subject to this restriction.

Cote d'Ivoire has restrictions on the registration of foreign nationals by the chartered accountants' association (which also requires Ivoirian nationality). The restrictions do not apply to foreign nationals who have already been practicing in Cote d'Ivoire for several years under the license of an Ivoirian practitioner.

## INVESTMENT BARRIERS

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

## SUBSIDIES

The Cote d'Ivoire Government granted cotton producers a subsidy of 29 billion CFA (approximately $45 million) to offset significant increases in the cost of fertilizer (*e.g.*, an increase of 84 percent for nitrogen, phosphorus, and potassium, and 114 percent for urea) and other inputs.

## STATE-OWNED ENTERPRISES

To improve governance and due to several non-payments by state-owned enterprises (SOEs) on private procurements, the managers of SOEs are required, as of July 27, 2022, to transmit financial updates to the government quarterly.

## OTHER BARRIERS

### Bribery and Corruption

Bribery and corruption remain a significant concern. Stakeholders report that bribes are sometimes solicited to speed up the slow bureaucratic process or to secure public tenders. The government established the High Authority of Good Governance (HABG) in 2013. The HABG is an independent administrative authority that is nominally under the Office of the President. It is responsible for executing the national plan to fight corruption and investigating allegations of corruption. In 2021, the HABG undertook an audit of Ivoirian parastatal companies in key sectors. Several parastatals' managers have been suspended from their positions. In addition, 14 entities (11 public companies and 3 private companies) in the health sector were charged with corruption. Corruption, opaque business practices, and capacity constraints on the judiciary and in law enforcement have resulted in poor enforcement of the law. This situation has been particularly acute with regard to the protection of private property rights, particularly when the subject of the judicial proceeding or law enforcement action is a foreigner and the plaintiff is Ivoirian or a long-established foreign resident. These situations are further complicated by conflicting modern and traditional concepts of land tenure, the latter including communal ownership. On July 11, 2022, the government launched "Spacia," a platform for monitoring and preventing acts of corruption and similar offenses.

### Export Policies

Cote d'Ivoire's 2021-2025 National Development Plan prioritizes agro-industrial development. As a result, the government provides incentives and supports funds to investors expanding agro-industrial processing of locally grown cashew, cocoa, and other commodities for export. The government also incentivizes domestic processing of agricultural commodities such as cocoa, rubber, palm oil, and coffee, by imposing a higher export tax on unprocessed commodities. The government prohibits the export of raw ivory, certain tropical hardwood logs, and iron products. Exports of metallic ores, gems, and precious metals require prior authorization from both the Ministry of Mining and Geology and the Ministry of Economy and Finance.

# DOMINICAN REPUBLIC

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

Under the CAFTA–DR, as of January 1, 2015, U.S. originating consumer and industrial goods have entered the Dominican Republic duty free. In addition, nearly all U.S. agricultural exports enter the Dominican Republic duty free under the CAFTA–DR. The Dominican Republic will eliminate its remaining tariffs on rice, chicken leg quarters, and some dairy products by 2025. For certain agricultural products, tariff-rate quotas (TRQs) permit duty-free access for specified quantities during the tariff phase-out period. The Dominican Republic is required under the CAFTA–DR to make TRQs available on January 1 of each year.

*Taxes*

U.S. ethanol imported into the Dominican Republic is subject to an internal 10 percent *ad valorem* tax and an excise tax of approximately $11 per liter, and these taxes disincentivize importation of U.S. ethanol. Imported ethanol is also subject to the internal Tax on Transfer of Industrial Goods and Services (ITBIS) at a rate of 18 percent. This practice disadvantages U.S. exports as locally produced ethanol is not subject to these internal taxes.

Cheese importers face unequal treatment with regard to taxation; imported cheese is subject to the ITBIS of 18 percent, while locally produced cheese is not. This puts U.S exports of these products at a competitive disadvantage. In meetings conducted in 2020 and 2021, the Dominican Republic Government advised that the General Directorate of Internal Taxes (DGII) had discussed implementing the ITBIS on local cheese producers through a schedule. The DGII has not made any progress on this proposed implementation. The U.S. Government will continue to work with the DGII to seek a resolution of this issue.

### Non-Tariff Barriers

*Import Licensing*

The Dominican Republic's Ministry of Agriculture continues to administer import licenses as a means to manage trade in sensitive commodities such as rice, beans, dairy, sugar, poultry, beef, pork, onions, and garlic, and intermittently with respect to other products. In August 2004, a side letter was signed under the CAFTA–DR by the United States and the Dominican Republic affirming that the Dominican Republic would not grant or deny import licenses based on unjustified sanitary or phytosanitary concerns, domestic purchasing requirements, or discretionary criteria. However, the need to obtain an import license from the

Ministry of Agriculture and the way in which the licensing process is handled can lead to inconsistent application of the law and uneven treatment. In 2022, the Dominican Republic proposed a new system to issue import licenses for agricultural products, led by the Ministry of Agriculture. In April 2022, the United States submitted comments on the new regulations. The Dominican Government had not responded to the U.S. comments or implemented the new system as of December 31, 2022. The United States will continue to work with the Ministry of Agriculture to ensure that this new system responds to U.S. concerns.

Importers of U.S.-made used vehicles less than five years old have reported that the Dominican customs authority frequently has challenged the eligibility of those vehicles for preferential tariff treatment under the CAFTA–DR, citing technical difficulties in demonstrating compliance with the rules of origin. The United States continues to engage with the Dominican Republic to address these complaints.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Regulation of Steel Rebar*

Multiple U.S. exporters of steel rebar used for construction have complained that a Dominican technical regulation (RTD 458) constitutes a barrier to trade. Dominican authorities have required imported U.S. rebar to be sampled and tested by third-party laboratories, which is not required of domestic production. Because no suitable third-party laboratories are present in the Dominican Republic, samples have been sent back to the United States for testing. These conformity assessment procedures appear to present unnecessary obstacles to international trade, deviate from international standards, lack transparency in their application, and have unduly increased the cost and time required for commercialization of rebar in the Dominican Republic.

The United States has continued to engage with U.S. companies and Dominican authorities on this issue. While Dominican authorities have worked with certain individual companies in the U.S. steel industry to accept test results and certify rebar before export so that products may clear customs and enter commerce in the Dominican Republic without delay, the Dominican Republic has yet to reform the regulations and practices to ensure that imported rebar is treated no less favorably than domestically manufactured rebar.

*Traceability System for Alcoholic Beverages and Cigars*

On September 29, 2021, the DGII issued Regulation 07-21, implementing the Fiscal Control and Traceability System for Alcoholic Beverages and Cigars (TRAFICO) to tackle illicit trade and tax evasion in the alcoholic beverage and cigarette sectors. The United States, the European Union, the United Kingdom and other foreign governments have expressed concerns over this system. Exporters, including from the United States, may incur additional costs in complying with the regulation, and their exports may also decrease due to logistical challenges associated with the requirements of a relatively small market. In 2021, the United States shared its concerns on the measure but the Dominican Republic implemented the final regulation without fully addressing U.S. concerns. On March 9, 2022, U.S. representatives met with the DGII and obtained their agreement to: (1) extend the implementation date for importers to June 22, 2023; and, (2) exclude beer from the regulation.

### Sanitary and Phytosanitary Barriers

Delays in the process for obtaining sanitary registrations from the Dominican Republic for foods, medicines, and health products have resulted in higher operating costs and delays moving products to market, according to industry representatives. Since April 2018, the General Directorate of Medicines,

Food, and Health Products (DIGEMAPS), which oversees the registration process, has requested declarations of product additives, which are not required under Dominican Republic health law. Improvements have been made in expediting new registrations and renewals through the implementation of a simplified procedure, including accepting a sworn statement on why confidential additives are not provided. However, the practice of requiring business confidential information, such as exact product formulas, continues to make registration difficult for many products. The functioning of the sanitary registration process remains inconsistent, with certain products taking up to a year to be registered by DIGEMAPS, often resulting in importers choosing not to import the product.

## INTELLECTUAL PROPERTY PROTECTION

The Dominican Republic remained on the Watch List in the 2022 Special 301 Report. The Dominican Republic made some progress on intellectual property (IP) protection and enforcement, including by taking steps to create the National Advisory Board for Intellectual Property to improve coordination on IP enforcement, but concerns remain. The United States continues to urge the Dominican Republic to address long-standing IP issues, particularly against online and signal piracy, including the continued deprioritization of IP prosecutions and investigations by the Special Office of the Attorney General for High-Tech Crimes and the National Copyright Office. The United States also continues to urge the Dominican Republic to improve coordination among enforcement agencies and to ensure that such agencies are adequately funded and staffed.

## GOVERNMENT PROCUREMENT

U.S. suppliers have complained that Dominican Republic Government procurement is not conducted in a transparent manner and that corruption is a problem. The U.S. Government has engaged with the Dominican Government on this issue and transparency has increased in its procurement system over the last few years. In a Memorandum of Understanding signed by the United States and the Dominican Republic in October 2020, the Dominican Government expressed its intent to prioritize passage of new legislation on public procurement and implement it in a manner that is timely, transparent, and consistent with international best practices. In March 2022, the Dominican Republic issued a draft law on government procurement establishing a legal regime for all stages of the procurement process. The draft law excludes "international treaties, trade or integration agreements…when so determined by the treaties, agreements, or conventions" from the scope of the law, but it does not offer guidance as to how procuring entities are to implement the law in accordance with the Dominican Republic's CAFTA–DR commitments. The U.S. Government also engaged the Dominican Government on this matter and will continue to monitor the Dominican Republic's procurement practices for consistency with CAFTA–DR's disciplines.

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

## LABOR

A review of the Dominican Republic's progress on implementing specific recommendations from the United States to improve worker rights practices in the Dominican sugar sector has been ongoing since the issuance of a U.S. Department of Labor (DOL) report in 2013. The DOL report, published in response to a submission from the public under the CAFTA–DR, raised concerns regarding labor law enforcement in the sugar sector related to acceptable conditions of work, the minimum age for work and the worst forms of child labor, and forced labor. In its seventh report of review, published in September 2022, the DOL detailed ongoing concerns and challenges in the Dominican Republic's sugar industry. Although the country's Ministry of Labor and sugar companies have made progress in some areas, the country still faces

challenges related to labor law enforcement, and concerns remain about dangerous working conditions, verification of pay and hours, unsuitable living conditions, workers' precarious legal status, and other potential labor rights abuses. The United States has also established a bilateral technical working group with the Dominican Republic under the CAFTA–DR to help improve labor law enforcement in the Dominican sugar sector.

# ECUADOR

## TRADE AGREEMENTS

### The United States–Ecuador Trade and Investment Council Agreement

The United States and Ecuador signed a Trade and Investment Council Agreement (TIC) in 1990. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Ecuador.

On December 8, 2020, the United States and Ecuador signed a Protocol on Trade Rules and Transparency (the Protocol), which entered into force August 15, 2021. The Protocol is an update to the TIC and is an integral part of that Agreement, containing provisions that establish high standards for increased trade facilitation, transparency in regulatory development, anticorruption policies, and cooperation and information sharing to benefit small and medium-sized enterprises. The Protocol establishes high-level trade rules that will improve opportunities for bilateral trade and investment in all sectors. The United States will continue to work with Ecuador to monitor the full implementation of the Protocol.

## IMPORT POLICIES

### Tariffs

Ecuador's average Most-Favored-Nation (MFN) applied tariff rate was 11.2 percent in 2021 (latest data available). Ecuador's average MFN applied tariff rate was 17.4 percent for agricultural products and 10.2 percent for non-agricultural products in 2021 (latest data available). Ecuador has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 21.9 percent.

When Ecuador joined the WTO in January 1996, it bound most of its tariff rates at or below 30 percent *ad valorem*; most products bound at higher rates are agricultural products covered by the Andean Price Band System (APBS). Ecuador agreed to phase out its participation in the APBS when it joined the WTO; however, as of December 31, 2022, Ecuador has taken no steps to phase out use of the APBS. As a member of the Andean Community of Nations (CAN), Ecuador grants and receives exemptions from tariffs (*i.e.*, reduced *ad valorem* tariffs and no application of the APBS) for products from the other CAN countries.

Foreign Trade Committee (Comex) Resolution 009-2021, which took effect in October 2021, provides for permanent tariff reductions on 667 items; 590 products became duty free, while the rest are subject to reduced rates of between 5 percent and 25 percent.

Ecuador still imposes a mixed tariff (composed of an *ad valorem* tariff and a specific tariff) on approximately 360 products, including textiles and shoes. In some cases, the mixed tariff appears to result in a 40 percent tariff rate.

*Agricultural Products*

Ecuador's continued use of the APBS affects many U.S. agricultural exports by subjecting them to a variable levy or surcharge (on top of an *ad valorem* tariff) that increases as world prices decrease. Comex Resolution 009-2021 provided for tariff reductions on 43 agricultural products. Of those, the resolution reduced tariffs on 17 products to zero percent, and reduced tariffs on the other products by 2 percentage to

15 percentage points. The two principal U.S. exports benefitting from this tariff reduction are soybean meal and wheat. They are subject to a zero percent tariff, and the APBS will not be applied.

*Information and Communication Technology Products*

Comex Resolution 009-2021 eliminated tariffs for computers, switching devices for automatic telephony or telegraphy, satellite dishes, fiber optic cables, cordless headset phones with microphones, keyboards, memory units, and automatic machine units for data treatment or processing. Comex Resolution 009-2021 also reduced tariffs to five percent for television cameras, digital cameras, camcorders, routers, modems, and wireless equipment.

*Raw Materials and Industrial Capital*

Comex Resolution 007-2021, which took effect in June 2021, eliminated tariffs on 128 subheadings that include raw materials and inputs and capital goods for the agricultural, fishing, and aquaculture sectors. Additionally, Comex Resolution 009-2021 provided tariff reductions on 328 items that correspond to machinery and equipment used in the agricultural industry.

**Non-Tariff Barriers**

*Import Licensing*

Comex and the Ecuadorian Ministry of Agriculture (MAG) impose a mandatory, cumbersome process for allocating import licenses for 55 agricultural tariff lines, including dairy, potatoes (including frozen french fries), beef, pork, chicken, turkey, soybean meal, beans, sorghum, and corn. After consulting with the domestic private sector consultative committees, MAG allocates single import licenses on a per-shipment basis.

Due to the difficulty of obtaining import permits, the licensing policy incentivizes domestic sourcing of products at the expense of imported products. For these products, an importer's total annual import allowance cannot surpass an amount determined by MAG. For most products subject to the licensing system, MAG also requires that interested parties provide sales and consumption forecasts before it will authorize imports. In the case of wheat, corn, soybean meal, and pork, MAG requires proof of local purchases to assign amounts for import licenses.

While Ecuador subjects all food and agricultural imports to the import licensing regime, beef, pork, and dairy imports face further impediments because an importer's total allowance for these products cannot surpass a volume pre-determined by MAG, in some cases in consultation with domestic producers of the same commodities. The review process for import licensing applications is often lengthy and lacks transparency. In cases where import licenses are not approved, the Ecuadorian government does not typically notify companies or provide a formal explanation for the denial. Permits are limited to a single shipment, meaning that importers are required to repeat a lengthy and arduous application process each time they seek to import these products in a given year.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Medical Devices*

In June 2021, Ecuador implemented a technical regulation that establishes a Unique Traceability Code (CUT) for medical devices. The CUT differs from the globally harmonized Unique Device Identification guidance documents developed by the International Medical Device Regulators Forum. Ecuador made several notifications to the WTO regarding this measure beginning in January 2021. U.S. industry provided technical comments to Ecuador through the domestic consultation process, and through the U.S. Enquiry Point in September 2021. The U.S. Government held bilateral meetings with Ecuador in the last quarter of 2021 to encourage the use of the international standard. The regulation provides for a 42-month grace period for implementation, until November 2024.

*Pre-Shipment Controls and Prohibited Imports*

Comex Resolution 009-2022, which became effective on October 1, 2022, established three annexes: a revised list of products that require pre-shipment control documentation, a list of prohibited imports, and a list of subheadings subject to prior control documentation for products imported under quota within the framework of current trade agreements. The resolution also eliminated pre-shipment control documents for 601 tariff lines.

Prohibited imports include hazardous waste; used clothing or footwear; ozone depleting substances; used spare parts for vehicles; baby bottles with bisphenol A (BPA) component; used tires; bottles made of polyethylene, terephthalate, and other types of polymers; equipment containing CFCs using R-12 or R-502 refrigerants; worked ivory and its byproducts; used vehicles; and, motorcycles.

As of October 1, 2022, Comex Resolution 014-2022 prohibits imports of Free-to-Air (FTA) satellite decoders and receivers classified in Harmonized Tariff System subheading 8528.71.00.21 through the Ecuadorian post office, courier, or travelers entering through airports. The resolution does not apply to internet-based satellite devices. Imports of FTA satellite decoders by other means require an import license issued by Ecuador's telecommunications regulator, the Agency of Telecommunications Regulation and Control.

*Processed Foods Facility GMP Registration Requirements*

In September 2020, Ecuador's National Agency for Sanitary Regulation, Control, and Observation (ARCSA) notified to the WTO Committee on Technical Barriers to Trade (TBT Committee) a technical regulation that would establish new registration requirements on processing plants for food products intended for retail sale. Concerns relating to this technical regulation include the requirement for duplicative certificates, the validation of certifying documents by U.S. state governments, and the approval of Good Manufacturing Practices certifiers by Ecuadorian authorities. The United States submitted comments regarding this measure to Ecuador in December 2020. These concerns were raised on the margins of the February 2021 meeting of the TBT Committee and formally in the June 2021 meeting of the TBT Committee. Ecuador has not notified the final regulation to the WTO.

### Sanitary and Phytosanitary Barriers

*Processed Foods–Quality Compliance and Prior Authorization Requirements*

Processed food products of animal origin must acquire prior authorization from three separate government authorities within MAG, including the Agency of Sanitary and Phytosanitary Regulation and Control (AGROCALIDAD), the Undersecretary of Commercialization, and the Undersecretary of Agriculture Development. ARCSA authorizes imports of consumer-oriented products. For meats and dairy products, the Undersecretary of Commercialization and the Undersecretary of Livestock Development conduct a market assessment resulting in unnecessary redundancy and delay. The United States is working with Ecuadorian authorities to explore more efficient and streamlined alternatives.

*Establishment of Registration Requirements*

In January 2021, AGROCALIDAD began requiring the registration of foreign establishments that export animals or animal products and products that are fed or applied to animals. Discussions with AGROCALIDAD and MAG resulted in some clarifications in the requirements for U.S. importers. For instance, companies need to provide a list of ingredients for the products in question, but not specific formulas or percentages. The United States continues to engage with AGROCALIDAD and MAG to facilitate registration of U.S. establishments.

In December 2022, Ecuador completed its review of information submitted by U.S. regulatory agencies as required for pork and poultry establishments. Ecuador is expected to complete its review of the information submitted for beef establishments by the end of the third quarter in 2023. Individual U.S. pork, poultry, and beef establishments are also required to submit establishment information in order to be eligible to export to Ecuador.

## INTELLECTUAL PROPERTY PROTECTION

Ecuador remained on the Watch List in the 2022 Special 301 Report. Among other issues, enforcement of intellectual property (IP) rights against widespread counterfeiting and piracy remains weak.

In addition, the 2016 Code of the Social Economy of Knowledge, Creativity, and Innovation (COESCCI), also known as the Ingenuity Code, contains legislation covering multiple IP matters. In December 2020, Ecuador published the final regulations implementing the COESCCI. Ecuador's National Intellectual Property Service continues to consider amendments to the COESCCI and to review feedback from stakeholders, though has not communicated a timeframe for revisions.

The United States continues to engage with Ecuador on IP issues, including with respect to revisions to the COESCCI and its implementing regulations, through the Special 301 process and the TIC.

## SERVICES BARRIERS

### Telecommunications Services

Article 34 of Ecuador's Organic Telecommunications Law (LOT) required telecommunications service suppliers with a market share of at least 30.0 percent to pay 0.5 percent of their gross revenue to the government, and an additional 1.0 percent of their gross revenue for each additional 5.0 percent market share they hold above 30.0 percent. National Telecommunications Corporation (CNT), which is owned by the Ecuador Government and is the dominant provider of fixed telecommunications services, is not included in the calculation of market share for Article 34 and is exempt from the fees. In November 2021, the Law

on Economic Development and Fiscal Sustainability After the Covid-19 Pandemic eliminated Article 34 of the LOT effective January 2023.

### Advertising

With limited exceptions, the 2013 Organic Law of Communication prohibits advertisements produced abroad.

## BARRIERS TO DIGITAL TRADE

### Data Localization Requirements

The 2021 Organic Law on the Protection of Personal Data will take effect in May 2023. The law allows cross-border transfers of personal data only to countries or organizations that have been determined to provide an adequate level of protection. The law creates an autonomous Data Protection Superintendence which has the authority to determine which countries have adequate levels of protection, and to implement and enforce the law. Regulations implementing the data privacy law are still in draft form and are expected to be published in early 2023, followed by the appointment of a Data Superintendent and Data Superintendence later in the year. Restrictions on the flow of data can have a significant effect on the functionality embedded in smart devices. The United States encourages Ecuador to work closely with companies and organizations, both in and outside Ecuador, that are affected by the law to resolve implementation and enforcement issues in a reasonable and consistent manner.

## INVESTMENT BARRIERS

In May 2017, Ecuador's National Assembly voted to terminate 12 of the country's Bilateral Investment Treaties (BITs), including the United States–Ecuador BIT. The United States–Ecuador BIT was terminated on May 18, 2018, but the sunset provisions of the Agreement protect U.S. investments predating May 18, 2018, for 10 years following the date of termination.

### Capital Exit Tax

The Ecuadorian Government levies a capital exit tax (ISD) on any form of currency outflow in cash, debit and credit cards, checks, and internet payment methods. In 2021, the Ecuadorian Government committed to the gradual phaseout of the five percent ISD over four years. The President issued Executive Decree 182 in August 2021, eliminating the ISD for the aviation industry as a first step. As of October 2022, the government has gradually reduced the ISD tax from five percent to four percent.

### Other Investment Barriers

Ecuador's Energy and Mines Ministry (MEM) has identified illegal mining as a significant deterrent to foreign investment. The Ecuadorian Government is undertaking efforts to combat illegal mining, but lacks adequate resources. The U.S. Government has ongoing initiatives to train Ecuadoran authorities to identify and deter illegal mining.

Since 2018, Ecuador's mining cadastre (registry of mining concessions) has been closed, creating a barrier for large-scale mining investments. MEM is updating its mining tender process and model agreements, together with U.S. Government technical assistance, to meet international standards of transparency and bankability. In June 2022, MEM announced plans to reopen the mining cadastre in December 2022, but as of December 31, 2022, Ecuador has not done so.

# EGYPT

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs

Egypt's average Most-Favored-Nation (MFN) applied tariff rate was 19.0 percent in 2022. Egypt's average MFN applied tariff rate was 65.0 percent for agricultural products and 11.6 percent for non-agricultural products in 2022. Egypt has bound 99 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 36.6 percent.

On June 9, 2022, Egypt lowered tariffs under Decree No. 218/2022 on over 150 categories of imported products including a few consumer products, such as pharmaceuticals and natural gas-powered automobiles, with most reductions targeting capital goods and inputs for agriculture and industry. Tariffs on agricultural equipment, fertilizer, and seeds have dropped from five percent to two percent. Tariffs on industrial vehicles, such as aircraft, tractors, railcars, and ships, have fallen from 40 percent to 2 percent, and the duty on natural gas-powered automobiles has fallen from 30 percent to 2 percent.

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

### Non-Tariff Barriers

*Import Licensing*

The National Food Safety Authority (NFSA) must register and approve all nutritional supplements, specialty foods, and dietary foods according to NFSA Decision No. 1/2018 on the Rules Governing the Registration and Handling of Foods for Special Dietary Uses. Importers must apply for a license to import specialty food products and renew the license every five years. License renewals can cost up to $1,000 per renewal, depending on the product. In December 2021, the NFSA issued Decree No. 11/2021, which more than doubled the cost of conducting an inspection of imported food.

*Import Bans/Restrictions*

In 2003, Egypt imposed restrictions on poultry, limiting imports to only whole and frozen poultry. The executive regulations to Egypt's Import and Export Law (Ministry of Trade and Industry Decree 770/2005)

suspended the importation of chicken limbs and offal, which acted as a *de facto* ban on U.S. chicken leg quarter exports to Egypt. In 2022, Egypt began allowing shipments of chicken leg quarters from the United States on a limited basis. The United States pushed to expand access for poultry at the December 2022 TIFA meeting in Cairo.

The Egyptian Drug Authority (EDA), an independent agency under the Prime Minister's Office, is responsible for the registration, licensing, and implementation of import procedures for pharmaceutical products, medical devices, and cosmetics. The approval process for the importation of new, used, and refurbished medical equipment and supplies consists of a number of steps, which some importers have found burdensome. Importers must present a form requesting the EDA's approval to import; provide a safety certificate issued by health authorities in the country of origin, such as the U.S. Department of Health and Human Services Food and Drug Administration (FDA); and, submit a certificate of approval from the U.S. FDA or the European Bureau of Standards. The importer also must present an original certificate from the manufacturer indicating the production year of the equipment and, if applicable, certifying that the equipment is new. The importer must prove it has a service center to provide after-sales support for the imported medical equipment, including spare parts and technical maintenance.

*Customs Barriers and Trade Facilitation*

Egypt's National Single Window for Foreign Trade Facilitation (Nafeza) requires foreign exporters to register and submit all necessary shipping documentation and transaction data via the online portal CargoX, which is a blockchain provider, to facilitate the release of goods from ports in Egypt. U.S. businesses raised concerns about the lack of transparency and implementation guidance on CargoX procedures. Industry also raised concerns about the ACI filing fee increase from $50 to $150 between October 1, 2021 and October 14, 2021.

Egypt's Customs Authority continues to employ reference pricing when assessing duties. Egypt's Customs Valuation Committee engages in lengthy deliberations without coming to a final decision on customs valuation appeals filed by U.S. businesses. The U.S. Government has raised and will continue to raise U.S. business concerns through the TIFA dialogue and in other bilateral and multilateral fora.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Vehicles*

U.S. vehicle and automotive parts exports face significant barriers in Egypt. In 2012, Egypt became a Contracting Party to the 1958 U.N. Economic Commission for Europe (UNECE) Agreement Concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts. As of June 2014, Egypt has applied EU regional emissions and UNECE safety standards for vehicles and automotive parts, thereby blocking imports of U.S. vehicles which meet comparable regulatory emissions and safety standards. Egyptian law also prohibits the importation of used vehicles for commercial purposes, pursuant to Ministerial Decree No. 580/1998 and Annex 2 to Ministerial Decree No. 770/2005.

Egypt does not recognize U.S. Federal Motor Vehicle Safety Standards (FMVSS), even though U.S. standards achieve comparable regulatory goals, and exports of these goods have declined significantly since 2015. The failure to recognize these standards has a negative impact on U.S. exports to Egypt. The United States has raised this issue in TIFA Council meetings. The U.S. Agency for International Development (USAID), in collaboration with the U.S. Department of Commerce, conducted a regulatory environmental assessment in June 2022 and is communicating with U.S and Egyptian stakeholders to come up with a recommended

approach to address these issues that could be accepted by both the United States and Egypt. At the most recent TIFA Council meeting in December 2022, Egypt indicated its willingness to consider recognition of FMVSS. The United States and Egypt intend to hold technical consultations and discussions in early 2023 to assist Egypt in working through its standards concerns.

*Foreign Manufacturers Registration*

Egyptian Ministerial Decree No. 43/2016 requires foreign entities that export finished consumer products to Egypt (*e.g.*, dairy products, furniture, fruits, textiles, confectioneries, and home appliances) to register their brand names and their manufacturing facilities with Egypt's General Organization for Exports and Imports Control (GOEIC). Egypt does not allow imports of goods from nonregistered entities. Throughout 2022, the registration could take several months, adding costs and uncertainty to the export process. The United States has raised these concerns with Egypt multiple times, including at the most recent TIFA Council meeting in December 2022. At the TIFA meeting, GOEIC indicated that the two decrees had been amended and consolidated into new Decree 195, which establishes a deadline for completing the registration process within 40 days and establishes a dedicated grievance committee for companies to report delays. GOEIC notified the decree to the WTO on November 28, 2022.

*Halal Import Requirements*

In August 2021, NFSA announced that it would extend the scope of its halal certification requirements to include dairy and other agricultural products in addition to the already existing requirement for imports of poultry and meat products. In December 2021, Egypt notified this measure to the WTO Committee on Technical Barriers to Trade (TBT Committee) with an implementation date of January 29, 2022; however, following U.S. requests, Egypt postponed implementation of this measure several times. The United States requested these implementation delays due to a lack of procedural details that would permit U.S. producers and exporters to understand, adjust their procedures to, and comply with the measure. Egypt also specified that only one entity would be authorized to provide the halal certification.

The announcement of the new measures and the lack of clarity on halal certification has resulted in a disruption of U.S. dairy exports to Egypt. Although the United States exported $106 million in dairy products to Egypt in 2021, U.S. dairy exports to Egypt fell 34 percent in the first nine months of 2022. The United States' biggest export, non-fat dried milk, decreased during the same period by 77 percent ($60 million to $13.6 million) in 2021. The United States pressed Egypt to provide procedural details to support compliance with this measure and to allow additional halal certifiers to certify products, during the December 2022 TIFA Council meeting and multiple interventions in the WTO throughout the year, including by raising the issue in the WTO TBT Committee first in November 2021 and subsequently in the March, July, and November meetings in 2022. The United States will continue to actively engage with Egypt regarding these matters, including through the TIFA dialogue and in other bilateral and multilateral fora.

**Sanitary and Phytosanitary Barriers**

*Seed Potatoes*

The United States remains unable to export seed potatoes to Egypt because the Ministry of Agriculture's Central Administration for Plant Quarantine (CAPQ) and the U.S. Department of Agriculture Animal and Plant Health Inspection Services (APHIS) have not been able to come to agreement on the results and mitigation measures of a pest risk assessment completed by CAPQ. According to APHIS, several of the proposed mitigation measures are not scientifically justified. Despite several rounds of bilateral technical meetings in 2019 and 2020, U.S. seed potatoes remain barred from Egypt. However, Egypt has been

importing in vitro micro tubers from the United States, signaling a growing demand for U.S. seed potato varieties.

## GOVERNMENT PROCUREMENT

In July 2018, the Egyptian Parliament passed Law No. 182/ 2018 on government procurement, which requires procurement decisions be made in a competitive and transparent manner and consider not only technical requirements and price, but also sustainable development goals. As with the prior procurement law, Egyptian small and medium-sized enterprises are given the right to obtain at least 20 percent of available government contracts annually.

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

## INTELLECTUAL PROPERTY PROTECTION

Egypt remained on the Watch List in the 2022 Special 301 Report. Although Egypt has made some efforts to strengthen intellectual property (IP) protection and enforcement, including reducing patent backlogs and improving enforcement against piracy and counterfeiting, concerns remain. The 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List) includes egy.best, which reportedly operates out of Egypt and is one of the oldest and largest piracy websites in the Middle East and North Africa regions. Egypt continues to lack deterrent-level penalties for IP violations and ex officio authority for customs officials to seize counterfeit and pirated goods at the border. Continuing to strengthen efforts to address the number of unlicensed satellite channels offering pirated broadcasts of U.S. works and the unlawful decryption of encrypted signals would also improve Egypt's IP enforcement regime. Egypt's lack of up-to-date, publicly available general patent and trademark examination guides online remains an obstacle for the growth of U.S. IP exports to Egypt. Stakeholders have raised concerns regarding the lack of an effective mechanism for the early resolution of potential patent disputes. Additionally, Egypt is not currently a member of the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty and WIPO Copyright Treaty.

## SERVICES BARRIERS

### Express Delivery Services

The Egyptian National Post Organization (ENPO) must grant special authorization to foreign-owned private courier and express delivery service suppliers seeking to operate in Egypt. Although express delivery services constitute a separate, for-profit, premium delivery market, ENPO requires private express delivery operators to pay a postal agency fee of 10 percent of annual revenue on shipments of less than 20 kilograms (approximately 44 lbs.). ENPO imposes an additional fee of 5 Egyptian Pounds (approximately $0.21) on private couriers and express delivery services for all shipments under 5 kilograms (approximately 11 lbs.). Civil Aviation Decree 607/2015 requires all courier and express delivery services to have at least 51 percent Egyptian ownership.

### Financial Services

There are no legal barriers prohibiting foreign banks from establishing branches in Egypt. However, in practice, the Central Bank of Egypt (CBE) has not issued new commercial banking licenses to foreign banks since 1979. In January 2022, the CBE issued London-based Standard Chartered Bank preliminary approval for a license to establish a branch in Egypt, under the Central Bank and Banking Act (Law 194/2020). Final

approval is still pending. Three state-owned banks (Banque Misr, Banque du Caire, and the National Bank of Egypt) control approximately 57 percent of the banking sector's total assets.

## BARRIERS TO DIGITAL TRADE

Egypt's Law No. 180/2018 Regulating the Press, Media, and the Supreme Council for Media Regulation (SCMR) requires media outlets to pay a fee of 50,000 Egyptian Pounds (approximately $1,636) to obtain a license from the SCMR and gain legal status. The law defines "media outlet" very broadly to include any social media account with at least 5,000 subscribers. The Egyptian Government has used this and other laws as grounds to limit cross-border services. This website blocking undermines the value of Internet-based services to the companies, including U.S. firms, that provide them and to their customers, and imposes costs on local firms that depend on these services for their business.

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

## INVESTMENT BARRIERS

Egypt implemented investment Law No. 72/2017 in 2017 to address longstanding complaints of foreign investors. While the law allows foreign investors to operate sole proprietorships and partnerships, it continues to limit the number of non-nationals working at any business to 10 percent of the workforce, or up to 20 percent of the workforce if it is not possible to find Egyptian citizens with the necessary qualifications. Foreigners may act as importers for their own businesses, albeit with certain limitations on the items that may be imported by the business. Egypt restricts foreign equity in construction and transport services to 49 percent. A prohibition on the acquisition of land by foreigners for commercial purposes was amended in 2022 to allow such acquisition under certain circumstances.

# EL SALVADOR

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

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

In addition, nearly all of U.S. agricultural exports enter El Salvador duty-free under the CAFTA–DR. El Salvador eliminated its remaining tariffs on rice, yellow corn, and chicken leg quarters on January 1, 2023, and is scheduled to eliminate remaining tariffs on dairy products by 2025. For certain agricultural products, tariff-rate quotas (TRQs) will permit duty-free access for specified quantities during the tariff phase-out period, with the duty-free quantities expanding during that period. El Salvador is required under the CAFTA–DR to make TRQs available on January 1 of each year. El Salvador monitors its TRQs through an import licensing system, which the United States carefully tracks to ensure the timely issuance of these permits.

*Taxes*

El Salvador, under its general alcoholic beverage law, assesses a specific excise tax on distilled spirits that is applied on a per-liter of alcohol basis, with four specific rates ($0.0325, $0.05, $0.09, and $0.16 per liter). The lowest rate applies only to *aguardientes*, a locally bottled spirit made from cane sugar. Whiskey, which is exclusively imported, is assessed at the highest rate. Distinctions between types of distilled spirit may result in lower tax rates on domestically produced spirits compared to imported products.

### Non-Tariff Barriers

*Customs Barriers and Trade Facilitation*

U.S. companies frequently express concerns regarding the inconsistent and discretionary application of customs regulations and procedures, resulting in unpredictable delays and administrative fines. For example, exporting from the duty-free zone is unduly cumbersome, with a requirement that a representative of the receiving company and the shipping company be physically present for the exchange of documents and release of materials. Additionally, U.S. companies indicate that El Salvador's procedures for applying

for an advance ruling are difficult to find online, making it hard to get advance assurance of how Salvadoran customs will treat a good upon importation.

The United States continues to monitor customs practices and offer technical assistance.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

El Salvador requires a Certificate of Free Sale to register food products. The Ministry of Health agreed in 2019 to accept the U.S. Department of Agriculture Food Safety Inspection Service (FSIS) 9060-5 health certificate for meat and meat products in lieu of the Certificate of Free-Sale. However, the Ministry of Agriculture (MAG) requires an original FSIS 9060-5 certificate. Obtaining the original health certificate for the purpose of food product registration is problematic as this document only accompanies actual shipments of meat or processed meat products. These shipments cannot occur until the food product is registered. Additionally, under the CAFTA–DR, El Salvador granted equivalence to the U.S. sanitary inspection system for beef, pork, and poultry and poultry products, which may make the health certificate requirement unnecessary or duplicative for U.S. exports. Unnecessary and duplicative import requirements contribute to higher consumer prices while providing no discernable food safety benefits, and also can make U.S. products less competitive in the local marketplace. In 2022, U.S. beef, pork, and poultry and poultry products exports to El Salvador decreased 3.8 percent in value to $72 million.

### Sanitary and Phytosanitary Barriers

Animal product exporting facilities are subject to MAG inspection and certification every three years. As the CAFTA–DR provides equivalence for the U.S. beef, pork, and poultry inspection systems, the inspection and certification requirements only apply to U.S. animal products not covered by the equivalence agreement, such as pet food and pet food additives or probiotics. Since 2018, MAG has accepted the U.S. Department of Commerce National Oceanic and Atmospheric Administration Seafood Inspection Program certificates for U.S. grown and U.S. raised seafood. Foreign sourced materials without further U.S. processing are excluded from certification. The United States is working with MAG to allow imports of all U.S. products based on broader recognition of U.S. inspection programs.

Extensive laboratory tests are mandatory for all new imported food products, including samples, even for those low-risk products that are permitted into other markets without testing. To register product samples, the Ministry of Health requires large quantities of the product for testing, including samples of each available flavor of the same product. The Ministry of Health, in consultation with U.S. officials, is reviewing laboratory testing requirements to determine to what extent additional flexibility would be permissible under the existing health code.

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

Since 2019, U.S. food and beverage exporters have periodically faced requirements for Certificates of Free Sale. Article 88 of the Salvadoran Health Code requires that imported food and beverage products be authorized by the corresponding health authority of the origin country. On March 8, 2022, El Salvador approved a technical regulation that recognizes U.S. Export Certificates and Sanitary Certificates as

equivalent to Certificates of Free Sale. This regulation not only facilitates registration, but also resolves a long-standing trade barrier.

## GOVERNMENT PROCUREMENT

U.S. companies have expressed concerns about Salvadoran Government agencies not providing sufficient advance notice, as required under the CAFTA–DR, to foster wide participation in bidding procedures, particularly complex infrastructure works or public-private partnership projects.

In August 2020, the Salvadoran Government passed an executive order allowing the submission of bids for contractual services via email and eliminating bidders' obligation to register online with the public procurement system (Comprasal), in addition to lifting the responsibility of procurement officers to keep a record of companies and individuals who receive tender documents. Transparency advocates and legal experts contend that the order would decrease potential bidders' ability to assess and compete fairly for government tenders. The order is pending review in the Salvadoran Supreme Court of Justice but without injunctive effect.

In March 2022, the Legislative Assembly approved a State of Emergency due to a spike in homicides and other criminal activities perpetrated by gangs. Initially intended to be in effect for 30 days, the State of Emergency has been extended six times since April. Under the State of Emergency, the Executive branch can enter negotiations and make direct purchases of goods and services without adhering to the Public Procurement Law. Legal experts and business have expressed concerns that excluding purchases from bidding procedures for as long as the State of Emergency is in place will discourage competition for government procurement and further undermine transparency. The United States has engaged with El Salvador on these issues.

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

## INTELLECTUAL PROPERTY PROTECTION

To implement its CAFTA–DR obligations, El Salvador undertook legislative reforms providing for stronger intellectual property (IP) protection and enforcement. However, several concerns remain, including trafficking in counterfeit products, music and video piracy, and the unlicensed use of software. The United States remains concerned about the adequacy of implementing regulations to protect against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. The effectiveness of the IP system to address patent issues expeditiously in connection with applications to market pharmaceutical products is unclear. The United States continues to engage El Salvador to ensure protections for geographic indications do not negatively impact the existing rights and market access of U.S. stakeholders. The United States will continue to monitor El Salvador's implementation of its IP obligations under the CAFTA–DR.

## SERVICES BARRIERS

### Financial Services

On August 17, 2021, the Legislative Assembly passed amendments to the Credit History Law. The amendments introduce data localization requirements mandating credit bureaus and economic agents that report on credit history to store data and its backup exclusively in El Salvador and grant unrestricted access to the Central Bank and the Superintendence of the Financial System. U.S. stakeholders have expressed

concerns that these new requirements could compromise consumer data privacy and protection. The United States continues to engage El Salvador on the negative impact of forced data localization.

# ETHIOPIA

## IMPORT POLICIES

### Tariffs and Taxes

In September 2021, the Government of Ethiopia lifted taxes and tariffs on the importation of wheat, rice, sugar, and edible oil to address rising inflation.

*Tariffs*

Ethiopia's average Most-Favored-Nation (MFN) applied tariff rate was 15.17 percent in 2021 (latest data available). Ethiopia's MFN applied tariff rate averaged 22.5 percent for agricultural products and 16.1 percent for non-agricultural products in 2021 (latest data available). Ethiopia implemented tariff reductions for certain raw materials, intermediate goods, and capital goods to promote the growth of the manufacturing sector in 2021. Ethiopia is not a member of the World Trade Organization (WTO) and so has no bound tariff rates.

*Taxes*

Imports into Ethiopia are subject to an excise tax, surtaxes, and a 15 percent value-added tax (VAT). Excise taxes are levied on selected domestically produced and imported goods and range from 10 percent for textiles and most other goods to as much as 100 percent for alcoholic beverages. A VAT is imposed on most imported items, but some products and services are exempted from the VAT. These exempted sectors include financial services, educational services, healthcare, and transportation services. All goods imported into the country are subject to a 10 percent surtax, with exceptions for fertilizer, petroleum, investment goods, raw materials, and some medicines.

### Non-Tariff Barriers

*Import Bans and Import Restrictions*

Ethiopia prohibits imports of used clothing and used or refurbished medical equipment intended for resale. Imports of goods intended for resale/commercial purposes are permitted, provided payment transactions are carried out through Ethiopian banks. On October 14, 2022, the Ministry of Finance indefinitely restricted the use of foreign currency for the importation of 38 selected "luxury items," including automobiles, furniture, packed foods, cosmetics, and alcohol, which effectively bans the importation of these items.

*Import Licensing*

In July 2022, the Government of Ethiopia decentralized the import licensing process and delegated the authority to issue import licenses to regional state trade bureaus. Most regions have operationalized the new online import licensing process, although the new process remains unavailable in some regions due to structural issues such as poor Internet access. In addition to obtaining an import business license, importers must obtain an import registration number before bringing products into the country. Imports of food or drug items must receive additional certification from the Ethiopian Food and Drug Administration without regard to the risk of the food or drug product. Trading companies must submit a proposal to the Ministry of Trade and Regional Integration (MOTRI) or regional authorities to obtain a currency exchange permit certificate, which includes obtaining a letter of credit for the total value of an import transaction and

applying for an import permit, before placing an order. The new online process typically takes about 30 minutes after all required paperwork is provided. However, even with a letter of credit, import permits are not always granted, and there are often delays of several months or even over a year before an importer is allocated foreign exchange.

*Customs Barriers and Trade Facilitation*

Logistics backlogs occur regularly, in part because the customs process remains inefficient. Further, monopolistic market conditions in multimodal transport operations and inadequate infrastructure inhibit private sector logistics companies. Logistics costs comprise approximately 22 percent to 27 percent of final costs for many products. Shipping and freight costs are approximately 60 percent higher than in neighboring countries. Customs and administrative challenges are exacerbated by the fact that Ethiopia is land-locked and upwards of 90 percent of its foreign trade passes through a single port in neighboring Djibouti, which has inadequate infrastructure and inefficient customs procedures. Under the framework of a comprehensive logistics strategy, the Government of Ethiopia has slated the logistics sector for liberalization, and Ethiopian Railways officials report the border crossing process between Ethiopia and Djibouti via train has been streamlined.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

Imports of processed food products made from genetically engineered (GE) ingredients are subject to mandatory labeling requirements; items subject to these requirements include soybean oil, corn oil, and breakfast cereals. Ethiopia's regulations require that GE foods carry a label with one of the following phrases: "genetically modified," "genetically modified organism," or another comparable description. Food aid shipments that contain GE ingredients are exempted from this labeling requirement.

### Sanitary and Phytosanitary Barriers

The Government of Ethiopia has taken steps to enhance its sanitary and phytosanitary (SPS) regulatory environment. In 2020, Ethiopia implemented a five-year national SPS strategy aimed at ensuring public health and enhancing access to international markets. With the support of development partners, the Government of Ethiopia is building capacity to improve food safety and animal and plant health regulatory systems.

In preparation for the African Continental Free Trade Agreement, the Government of Ethiopia is also exerting considerable effort to harmonize its national SPS standards with standards used in African Regional Economic Communities, such as the Common Market for Eastern and Southern Africa and the Intergovernmental Authority on Development. When a national standard is not available for a specific product, Ethiopia defers to the Codex Alimentarius Commission standards. Further, Ethiopia is investing in the expansion of national and regional labs, quarantine stations, and standards for quality assurance. SPS-related barriers that impede international trade in Ethiopia are associated with cumbersome requirements for registration and approval of imported products, such as processed foods, planting seeds, and plant protection products.

In September 2022, the Ethiopian Environmental Protection Authority issued an environmental clearance for genetically modified maize, which is a drought-tolerant and insect-resistant variety of maize. If approved for commercial cultivation, the maize would be the first genetically modified food crop in Ethiopia. Stakeholders report that the approval process for commercial imports of GE grains and oilseeds for food and feed remains overly burdensome.

## GOVERNMENT PROCUREMENT

Some Ethiopian Government tenders are open to foreign participation and tender announcements are usually public, but many major procurements do not go through a transparent tendering process. Obstacles to foreign participation in government procurement tenders include complicated and inadequately established procedures, repeated cancellation of published requests for proposals, capacity gaps on the part of procurement agencies, delays in decision-making, lack of public information, and the need for personal connections to compete effectively. Another obstacle is the frequent requirement for potential suppliers to appear in person to collect solicitation packages, which business associations complain creates an advantage for state-owned enterprises (SOEs) in Ethiopia. U.S. firms have expressed concern about the failure of procurement agencies to respect tender terms. However, at least one U.S. firm has successfully utilized the government appeals process to reverse an unfair tendering decision. Further, since 2018, several dozen government procurement officials across a variety of Ethiopian Government agencies have been arrested for corruption as part of a broader reform effort. On February 16, 2022, four Ethiopian federal institutions started to process their procurement electronically—the first step by Ethiopia to institute electronic government procurement aimed at increased transparency.

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

## INTELLECTUAL PROPERTY PROTECTION

Inadequate intellectual property (IP) protection and enforcement remain a serious concern in Ethiopia. Ethiopia is a member of the World Intellectual Property Organization (WIPO) and has demonstrated an interest in strengthening its IP regime. Ethiopia is not a member of major international IP treaties, including the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Trademark infringement, especially in the hospitality and retail sectors, continues to be an issue. Given the lack of enforcement capacity and coordination among Ethiopian Government agencies, IP enforcement is inconsistent. In November 2021, the Government of Ethiopia restructured the Ethiopian Intellectual Property Office as the Ethiopian Intellectual Property Authority (EIPA) to strengthen its enforcement capacity. This included granting the EIPA a mandate to establish an Intellectual Property Tribunal to arbitrate intellectual property disputes and appeals, which previously could be decided only in courts. The EIPA is responsible for the administration and arbitration of IP cases, but actions to combat the sale of pirated goods remain inadequate. Ethiopia does not publicly track seizures of counterfeit goods, so no statistics are available.

## SERVICES BARRIERS

### Financial Services

Ethiopia prohibits foreign investment in the financial services industry, including banking and insurance, with an exception for foreign nationals of Ethiopian origin. Few international banks maintain representative offices, and all trade financing is required by law to go through an Ethiopian bank. This creates significant challenges for foreign investors with offshore accounts. On September 3, 2022, the Ethiopian Government approved a policy framework to open the banking sector fully or partially to foreign investment. The National Bank of Ethiopia (NBE, Ethiopia's central bank) is drafting proposed amendments to the 2008 Banking Business Proclamation, which it will submit to the legislature for approval, and preparing directives that will regulate the expected opening. The NBE expects the first foreign banks to enter the

market during the first half of 2024. In July 2021, the NBE launched a digital payment strategy aimed at providing online access to financial services.

Ethiopia allows reinsurance to be offered on a cross-border basis. A proportion of each reinsurance policy and of treaty reinsurance contracts must be ceded to local reinsurance companies.

**Telecommunications Services**

The 2019 Communication Service Law established an independent telecommunications regulator, the Ethiopian Communications Authority, and opened the sector to private investment. In May 2021, the Government of Ethiopia awarded a 15-year full-service telecommunications spectrum license to Safaricom Telecommunication Ethiopia, which started service on October 6, 2022. The Ethiopian Government aimed to issue a second telecommunications license in 2021 to a private operator and sell a 40 percent stake in state-owned operator Ethio Telecom but ended both initiatives following muted interest. Generally poor telecommunications service in Ethiopia impedes business operations across a range of other sectors.

For companies and organizations whose operations are Internet-dependent or located in remote areas of the country, the Ethiopian Government allows the use of Very Small Aperture Terminals (VSATs), which can facilitate satellite-based Internet access in rural or remote regions. Ethiopia does not allow the general public to use VSATs.

## INVESTMENT BARRIERS

Many formal and informal barriers impede foreign investment in Ethiopia. The 2020 Investment Law allows foreign investors to invest in any area except those that are clearly reserved for domestic investors. The law reserves banking, insurance, microfinance, electricity transmission and distribution, and retail and wholesale trade to domestic investors. Foreign investors can jointly invest as minority stakeholders with domestic investors in areas such as freight forwarding and shipping, domestic air transportation services, cross country public transport services, advertisement and promotion, and accounting and auditing services. Investment in the defense industry, electricity imports and exports, international air transportation services, and postal services is permitted only in partnership with the Government of Ethiopia. For joint ventures with SOEs, some investors report informal requirements of up to 30 percent domestic content in goods or technology, or both.

There is no private land ownership in Ethiopia. Land may be leased from local and regional authorities for up to 99 years. However, current land-lease regulations place limits on the duration of construction projects, allow for revaluation of leases at a government-set benchmark rate, place previously owned land under leasehold, and restrict the transfer of leasehold rights. Land disputes with regional administrations are common.

## STATE-OWNED ENTERPRISES

While the Government of Ethiopia has launched processes to fully or partially privatize some SOEs, most notably under the Homegrown Economic Reform Plan, SOEs continue to dominate major sectors of the economy. These include the telecommunications, power, banking, insurance, air transport, certain agricultural processing, industrial parks, and shipping industries. Many SOEs maintain a monopoly over their respective sectors, which allows the Government of Ethiopia to dictate prevailing rates for many goods and services. U.S. investors complain of the lack of a level playing field when it comes to SOEs. Although the Government of Ethiopia passed a law in 2019 prohibiting SOEs from accessing new loans and instructing them to focus on completing outstanding projects, SOEs have considerable advantages over private firms, such as expedited customs clearance processing, priority access to financing and foreign

currency from the Commercial Bank of Ethiopia, preferences in government tenders and land acquisition, and marketing assistance. In December 2021, the Government of Ethiopia established Ethiopian Investment Holdings, a sovereign wealth fund, to prepare over 40 SOEs for full or partial privatization. The Government of Ethiopia has offered to sell eight state-owned sugar enterprises and a 40 percent stake in Ethio Telecom.

## OTHER BARRIERS

### Bribery and Corruption

Ethiopian and foreign businesses routinely encounter corruption in tax collection, customs clearance, and land administration. Some U.S. businesses operating in Ethiopia reported that they were frequently solicited for bribes to secure business contracts. Tax administration in Ethiopia is corrupt and inefficient, and the Ethiopian Government supplements revenues by levying higher taxes on foreign investors and businesses and limiting their ability to appeal tax levies. U.S. and other foreign companies complain they are unfairly targeted for tax collection compared with local companies and are presented with spurious tax bills. The Government of Ethiopia has acknowledged that perception of corruption is one of the main obstacles to doing business. From June 2021 to February 2022, the Ministry of Justice Anti-Corruption Directorate prosecuted over 1,500 corruption cases.

### Commercial Code Enforcement

In 2021, Ethiopia reformed its Commercial Code for the first time in 62 years, aiming to bring its commercial law in line with international best practices and address business community concerns. Implementation of the new code across ministries is ongoing, which is expected to lessen the difficulty of doing business in Ethiopia by facilitating trade license registration and renewal, providing registration exemptions for some companies, and allowing new and different types of businesses to form and operate in Ethiopia. Some members of the business community have expressed concern about consistent enforcement of the new code.

### Foreign Currency Controls

The NBE administers a strict foreign currency control regime. However, Ethiopia's foreign currency shortage and the extreme difficulty of obtaining foreign currency from legal sources hampers the ability of manufacturers to import raw materials and semi-finished goods and restricts the repatriation of profits, despite laws allowing foreign investors to remit profits and dividends. All imports, exports, and outgoing foreign payments require a foreign exchange permit.

Difficulty obtaining foreign currency for inputs and repatriating profits has been cited by U.S. companies as a major impediment to foreign investment. Larger private firms, SOEs, businesses that import goods prioritized by the Ethiopian Government's development plan, manufacturers in prioritized export sectors, and importers of emergency food generally have priority access to foreign currency. Investors in non-priority sectors and politically less well-connected importers, particularly smaller new-to-market firms, can face long delays in arranging trade-related payments and, on occasion, may be denied foreign currency.

Due to a critical shortage of foreign currency, on April 8, 2022, the Government of Ethiopia issued a directive allowing Franco Valuta imports, a scheme that facilitates the importation of essential food commodities—wheat, rice, sugar, edible oils and instant baby milk—by permitting the use of foreign currency from non-official sources including personal foreign currency supplies and foreign accounts without due checks on the sources of the foreign currency by the country's central bank.

**Commercial Disputes**

Companies that operate businesses in Ethiopia assert that the judicial system remains underdeveloped and inadequately staffed, particularly with respect to commercial disputes. While property and contractual rights are recognized, and there are commercial and bankruptcy laws, judges often lack an understanding of commercial matters and cases often face extended delays. Contract enforcement remains weak, although Ethiopian courts will at times reject spurious litigation aimed at contesting legitimate tenders. In December 2021, the Federal Supreme Court established a court-led mediation process, which could provide a more streamlined, quicker, and less contentious process for private-sector commercial dispute resolution. On October 9, 2022, the Federal First Instance Court of Ethiopia established a Commercial and Investment Bench, which will specialize in commercial matters, including banking and investment.

# EUROPEAN UNION

## OVERVIEW

The United States and the Member States of the European Union (EU) share the largest economic relationship in the world. Trade and investment flows between the United States and the EU are a key pillar of prosperity on both sides of the Atlantic and generate substantial economic opportunities.

Goods and services produced by the United States nonetheless face persistent barriers entering and maintaining access to certain sectors of the EU market, which limits the opportunity of U.S. workers and businesses to benefit from transatlantic trade. This chapter of the NTE Report highlights the most significant of these barriers, some of which have persisted despite repeated efforts at resolution through bilateral consultations, World Trade Organization (WTO) committee meetings, or WTO dispute settlement. Certain barriers have been highlighted in the annual NTE Report for many years.

## IMPORT POLICIES

### Tariffs

The EU's average Most-Favored-Nation (MFN) applied tariff rate was 5.2 percent in 2021 (latest data available). The EU's average MFN applied tariff rate was 11.7 percent for agricultural products and 4.1 percent for non-agricultural products in 2021 (latest data available). The EU has bound 100 percent of its tariff lines in the WTO, with an average WTO bound tariff rate of 5.3 percent.

Although the EU's tariffs are generally low for non-agricultural goods, some EU tariffs are high, such as rates of up to 26 percent for fish and seafood, 22 percent for trucks, 14 percent for bicycles, 10 percent for passenger vehicles, 12 percent for processed wood products, and 6.5 percent for fertilizers and plastics.

### Non-Tariff Barriers

*Pharmaceutical Products*

The United States is monitoring potential developments related to the Commission proposal on the EU general pharmaceutical legislation, which is expected to be released early 2023. As part of the EU Pharmaceutical Strategy for Europe, the consultation called on stakeholders and members of the public to share their views on matters such as unmet medical needs, incentives for innovation, affordability of medicines, and other issues. The Commission is evaluating two pieces of EU general pharmaceutical legislation relating to medicinal products for human use and to Community procedures for the authorization and supervision of medicinal products for human and veterinary use.

*Member State Measures: Pharmaceutical Products*

U.S. pharmaceutical stakeholders have expressed concerns about several EU Member State policies affecting market access for pharmaceutical products, including non-transparent procedures and a lack of meaningful stakeholder input into policies related to pricing and reimbursement. These policies have been identified in several Member States as described below. Stakeholders have also expressed concerns over inconsistent and lengthy time limits for pricing and reimbursement decisions. U.S. industry stakeholder have grown increasingly concerned about policies that are being made with little opportunity for engagement. Moreover, changes to European Medicines Agency (EMA) policy regarding disclosures of clinical trial data, including potential disclosure of confidential commercial information submitted to EMA

by pharmaceutical firms seeking marketing authorization, are also of concern to stakeholders. The United States continues to engage with the EU and individual Member States on these matters.

*Austria*: U.S. pharmaceutical companies continue to express concern about non-transparent reimbursement pricing decisions by the statutory insurance providers association that are not preceded by a meaningful opportunity for stakeholder engagement.

*Belgium*: U.S. industry stakeholders report that domestically manufactured medicines are permitted a price premium of up to 10 percent on the manufacturing cost component when calculating their manufacturer's selling price. Imported products are only eligible for up to a five percent price premium. Meanwhile, initiatives intended to lead to faster market access for new innovative drugs have been slowly, and incompletely, implemented.

*Czech Republic*: Although the Czech Republic's system for determining pharmaceutical pricing and reimbursement for innovation remains challenging for U.S. companies, many report the situation has improved after new legislation came into effect in early 2022. Still, U.S. companies continue to express concerns regarding non-transparent and lengthy reimbursement processes.

*France*: U.S. stakeholders have expressed concern that the process of gaining market access for drugs in France is slower than elsewhere in Europe, resulting from delays in reimbursement approvals of as much as 19 months after marketing authorization, compared to no more than 16 months, as required by EU law. A drug is effectively not on the market until it receives reimbursement approval.

*Greece*: U.S. pharmaceutical industry stakeholders have raised concerns about the lack of transparency or opportunities for meaningful stakeholder input into the application of policies. Stakeholders have also raised concerns about lengthy reimbursement timelines and inconsistent application of pricing and reimbursement processes.

*Hungary*: U.S. pharmaceutical industry stakeholders express concern that the Hungarian Government's pricing and reimbursement policies, delays in decision-making and reimbursement, and lengthy processes for making changes to the list of drugs approved for reimbursement, cause considerable unpredictability in the Hungarian market. U.S. pharmaceutical industry stakeholders note the lack of opportunity to provide input into these pricing and reimbursement processes.

*Italy*: U.S. healthcare industry stakeholders face an unpredictable business environment in Italy, which includes highly variable implementation of complex pricing and reimbursement policies. U.S. stakeholders have raised concerns regarding reimbursement delays for pharmaceutical products and delayed payments for medical devices. Moreover, the average time Italian public hospitals take to pay medical device suppliers continues to exceed the maximum period permitted by EU law. U.S. industry stakeholders continue to request that the Italian Government address these issues.

*Ireland*: U.S. pharmaceutical industry stakeholders expressed concerns over the Irish Government's delays in reimbursement decisions. Access to new drugs and medicines may be subject to a lengthy decision process.

*Poland*: U.S. stakeholders have expressed concern over the lack of opportunity for meaningful stakeholder input into Poland's rulemaking and tendering processes, as well as the transparency of reimbursement rules for pharmaceutical products. U.S. industry stakeholders report that Poland's pricing and reimbursement system is backlogged, taking more than 844 days on average from regulatory approval to patient access. The United States will continue to urge Poland to engage meaningfully with stakeholders with respect to their concerns.

*Romania*: Innovative pharmaceutical producers have identified several significant challenges resulting from the Romanian Government's failure to update, despite repeated requests, the lists of innovative pharmaceuticals that are eligible for reimbursement under the national health system, with numerous applications pending. In addition, both innovative and generic pharmaceutical companies have withdrawn drugs from the Romanian market, as the low official prices set in Romania can fall below production costs.

*Spain*: U.S. pharmaceutical industry stakeholders continue to note concerns as to cost containment measures affecting the industry, including lack of clarity around criteria for reimbursement, substantial delays in reimbursement processes, and uneven patient access across autonomous regions.

*Slovakia*: In the past, U.S. stakeholders reported that processes for marketing and reimbursement approvals of new pharmaceutical products in Slovakia have lacked transparency and predictability, and deadlines have sometimes been missed. In June 2022, the Slovak parliament passed legislation aimed at streamlining and accelerating the approval and reimbursement of innovative medicines. U.S. pharmaceutical industry stakeholders welcomed the adoption of this new legislation, but raised concerns about meaningful opportunities to engage with Slovakia on its implementation.

*Sweden*: U.S. pharmaceutical industry stakeholders have raised concerns about Sweden's increasingly challenging and nontransparent environment with regard to pricing and reimbursement.

## Agriculture

### *Bananas*

Following years of disputes, beginning under the General Agreement on Tariffs and Trade (GATT) and later involving litigation under WTO dispute settlement proceedings, the United States and other countries in 2010 reached agreements with the EU to resolve complaints about successive EU banana import regimes. Beginning in 2013, a U.S. stakeholder expressed concerns to the U.S. Government about actions taken since 2010 by Italian customs authorities to collect retroactive payment of customs duties due to the authorities' unilateral re-interpretation of the validity of certain EU banana import licenses under pre-2006 EU regulations. In 2013, the Italian Supreme Court, on jurisdictional grounds, ruled against the Italian Government and ordered authorities to repay the collected duties to the U.S. stakeholder. However, as of December 31, 2022, the duties had not been completely repaid, and Italian customs authorities, claiming to have resolved the jurisdictional issues cited by the Italian Supreme Court, continue to re-issue some of the previous retroactive duty assessments against the stakeholder.

### *Meursing Table Tariff Codes*

Many processed food products, such as confectionary products, baked goods, and miscellaneous food preparations, are subject to a special tariff code system in the EU. Under this system, often referred to as the Meursing table, the EU charges a tariff on each imported product based on the product's content of milk protein, milk fat, starch, and sugar. As a result, products that the United States and other countries might consider equivalent for tariff classification purposes sometimes receive different rates of duty in the EU depending on the particular mix of ingredients in each product. The difficulty of calculating Meursing duties imposes an unnecessary administrative burden on, and creates uncertainty for, exporters, especially those seeking to ship new products to the EU.

*Subsidies for Fruit and Vegetables*

The EU Common Market Organization (CMO) provides a framework for market measures under the EU's Common Agricultural Policy, including for measures related to the promotion of fruit and vegetables. Implementing rules covering fresh and processed products are designed to encourage the development of producer organizations (POs) as the main vehicle for crisis management and market promotion. The CMO makes payments to POs for dozens of products, including peaches, citrus fruits, and olives. In 2015, a new basic payment scheme and greening payments were introduced, replacing the single payment scheme. Direct payments also are paid to support certain processing sectors, including, for example, peaches for juicing in Greece. The general lack of transparency around the distribution of EU subsidies at the Member State level in the fruit and vegetable industry raises questions about whether the payments are decoupled from production, and U.S. producers remain concerned about potential hidden subsidies. The United States continues to monitor and review EU assistance in this sector, evaluating potential trade-distorting effects.

*Tax on Sugar-Sweetened Beverages*

*Poland*: On January 1, 2021, a sugar tax on beverages entered into force in Poland. The purported goal of the new tax is to promote healthy beverage choices among consumers. The tax ranges from $0.14 to $0.31 per liter and applies to sweetened beverages (drinks containing added sugar, sweeteners, caffeine, or taurine) and alcohol in small bottles. The tax applies to both imported and domestically manufactured products, but in practice it primarily impacts imported products as certain sugar-containing beverages, such as fruit juices and dairy-based drinks, which are produced primarily by Polish companies, have been exempted. Dietary supplements and infant formula are also exempted.

Customs Barriers and Trade Facilitation

Notwithstanding the existence of customs legislation that governs all Member States, the EU does not administer its laws through a single customs administration. Rather, there are separate agencies responsible for the administration of EU customs law in each Member State. It is thus difficult for the EU to ensure that its rules and decisions on classification, valuation, origin, and customs procedures are applied uniformly throughout the Member States.

The Binding Tariff Information program provided for by EU-level law, but administered at the Member State level, does provide for advance rulings on tariff classification and country of origin. However, EU rules do not require the customs agency in one Member State to follow the decisions of the customs agency in another Member State with respect to materially identical issues. In some cases where the customs agency of a Member State administers EU law differently from, or disagrees with the Binding Tariff Information issued by, another Member State, the matter may be referred to the Customs Code Committee (CCC). The CCC consists of Member State representatives and is chaired by a Commission representative. Although a stated goal for the CCC is to help reconcile differences among Member States and thereby help to achieve uniformity of administration, in practice its success in this regard has been limited. The CCC and other EU-level institutions do not provide transparency in decision-making or opportunities for participation by traders, which might make them more effective tools for achieving the uniform administration and application of EU customs law.

In addition, the EU lacks tribunals or procedures for the prompt review and EU-wide correction of administrative actions relating to customs matters. Instead, review is provided in the tribunals of each Member State, and the rules regarding these reviews vary from Member State to Member State. A trader encountering differing treatment in multiple Member States must bring a separate appeal in each Member State whose agency rendered an adverse decision.

Ultimately, a question of interpretation of EU law may be referred to the Court of Justice of the European Union (CJEU). Although the judgments of the CJEU apply throughout the EU, referral of a question to the CJEU is generally discretionary, may take many years, and may not afford sufficient redress. Thus, obtaining corrections with EU-wide effect for administrative actions relating to customs matters is frequently cumbersome and time-consuming. The United States has raised concerns regarding the uniform administration of EU customs law with the EU in various forums, including in the WTO Dispute Settlement Body (DSB).

The Commission has sought to modernize and simplify customs rules and processes. The Union Customs Code (UCC), adopted by the Commission in 2013, entered into force in 2016. While the UCC contains a number of procedural changes, the key element of a harmonized information technology infrastructure has yet to be completed. Member States continue to use different data templates. In 2019, the expected completion date for full implementation of harmonized customs data systems was extended from the end of 2020 to the end of 2025.

The United States will continue to monitor the UCC implementation process, focusing on its impact on the consistency of customs treatment under EU customs law.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Transparency and Notification*

U.S. exporters face a proliferation of technical barriers to trade (TBT) in the EU, attributable in part to aspects of the EU's regulatory processes, which prescribe conditions for the consideration and adoption of regulations and related decisions without adequate public notification or the opportunity to incorporate meaningful public comments. The United States regularly raises concerns, both in bilateral engagement and in the WTO Committee on Technical Barriers to Trade (TBT Committee), that EU notifications often take place at a procedural stage when it is too late to revise the measure to take into consideration any substantive concerns raised by other WTO Members. Furthermore, notifications of proposed measures often lack specificity, or incorporate by reference the publication of future, European-unique standards that do not yet exist, so that non-European producers do not have a meaningful opportunity to engage or offer informed comments.

For example, under the EU's regulatory processes for Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH) and Classification, Labeling, and Packaging (CLP), proposed restrictions are typically notified to the WTO only after scientific review regulatory impact committees have convened and the Commission's domestic consultations are concluded. These domestic consultations are not always transparent to non-EU stakeholders, which can limit their ability to provide comment and for those comments to be taken into consideration. In other cases, measures undergo significant change during the negotiations between the European Council, Commission, and Parliament, leading to significant changes without stakeholder consultations, such as under the expansion in scope of the Radio Equipment Directive 2014/53/EU, also known as "Common Charger." Finally, failure to notify measures with adequate comment periods are also observed at the Member State level, including in the case of recent French recycling labeling regulations. Improvement and greater consistency in EU and Member State notification of measures could have a significant effect on trade contributing to a more predictable market environment.

The United States is concerned that further transparency and notification issues may arise regarding various initiatives under the European Green Deal, announced in December 2019, including the use of prescriptive

labeling and certification measures. During 2022, the United States continued to monitor these proposals and to engage with the EU to ensure regulatory requirements support the stated environmental objectives without unnecessarily discriminating against foreign trade. (*Sanitary and phytosanitary (SPS) concerns with the European Green Deal are discussed in the SPS Barrier section of this NTE Report chapter*.)

*European Standardization and Conformity Assessment Procedures*

The EU's exclusionary approach to standards-related measures, including its conformity assessment framework, and its efforts to encourage governments around the world to adopt this restrictive approach, imposes significant burdens on U.S. workers, producers, and exporters. In particular, the EU's approach impedes market access for products that do not conform to European regional standards (called European harmonized standards or European harmonized norms (ENs)), including international standards that are not harmonized with ENs, even though these international standards may meet or exceed the EU regulatory requirements. Products regulated by the EU must conform to these EU-specific regional standards in order to benefit from a presumption of conformity with the EU's essential regulatory requirements. U.S. workers, producers, and exporters thus face additional burdens in accessing the EU market not faced by domestic producers in the EU and often not faced by EU exporters when accessing the U.S. market.

Harmonized ENs can only be developed through three European Standards Organizations (ESOs), as directed by the Commission through a standardization request. The three ESOs are the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC), and the European Telecommunications Standards Institute (ETSI). Within these designated ESOs, the CEN and CENELEC technical committees draft harmonized ENs. Both generally exclude non-EU nationals from participating in their standard-drafting process. In the limited instances where non-EU nationals do participate, they are not allowed to vote.

On February 2, 2022, the EU published the European Standardization Strategy, which, *inter alia*, amends Regulation 1025/2012 on European Standardization Organizations to require that the ESOs restrict the involvement of non-EU interests in the development of harmonized EN standards. The change primarily affects the development of standards at the ETSI, which specializes in information and communications technologies and had been the only ESO to provide for direct participation by foreign firms. In addition, new policies implemented by the Commission, such as a refusal to reference underlying standards developed outside of Europe and new restrictions imposed on participation in expert advisory groups (including the newly created High Level Forum on European Standardization), suggest a sustained effort to exclude foreign participants, undermine the acceptance of international standards developed in the United States, and project European regional standards abroad. The United States is concerned that the European Standardization Strategy and other exclusionary steps indicate that the EU is moving further from cooperation with trading partners in standardization, and barriers in the transatlantic market will thus be exacerbated, rather than ameliorated. The United States has relayed its concerns to the EU through the United States–European Union Trade and Technology Council.

As part of its free trade agreements, the EU seeks commitments affirming that only a standard issued by a subset of specific standards-developing organizations, none of which are domiciled in the United States, be considered an international standard (*e.g.*, the EU–Japan Economic Partnership Agreement, Article 7.6). This practice accords preferential treatment to organizations in which the EU carries an outsized influence (*e.g.*, the World Forum for Harmonisation of Vehicle Regulations within the framework of the United Nations Economic Commission for Europe's 1958 Agreement) or with which the ESOs have existing cooperation agreements (*e.g.*, the International Organization for Standardization and the International Electrotechnical Commission). This approach is narrower than what is provided for under the WTO TBT Agreement. It is also contrary to relevant decisions of the TBT Committee, which recognizes that any standards developed in accordance with relevant WTO principles can qualify.

The United States also has serious concerns regarding the EU's conformity assessment framework, set out in Regulation (EC) 765/2008 and Decision 768/2008. Regulation 765/2008 requires each Member State to appoint a single national accreditation body that can accredit conformity assessment bodies and prohibits competition among Member States' national accreditation bodies. Furthermore, the EU's interpretation of Decision 768/2008 sets out that conformity assessment bodies must be established in the EU in order to test to EU regulations. This interpretation denies U.S.-domiciled conformity assessment bodies the opportunity to certify products for the EU market outside of existing mutual recognition agreements. It also raises significant market access concerns for U.S. producers whose products have been tested or certified by conformity assessment bodies located outside the EU. Without any associated improvement in quality or safety, the EU conformity assessment approach increases time to market, increases costs for manufacturers, and requires U.S. testing and certification bodies to establish operations in the EU to remain competitive.

*Regulation of Emerging Technology*

The EU is seeking to establish broad regulations of emerging technology, which will have significant implications for industry's marketing of products and services in the EU. The United States is closely monitoring progress on legislation such as the proposed Machinery Regulation, which is a revision of the Machinery Directive, and the EU Artificial Intelligence (AI) Act (both notified to the WTO in November 2021), as well as the development of standards under the finalized Cybersecurity Act (Regulation 2019/881), seeking to ensure that the EU applies a consistent approach to regulation so that foreign products are treated no less favorably than products of national origin. The United States also has concerns with conformity assessment procedures and the inability of non-EU conformity assessment bodies to test to EU regulations, which could hinder participation of smaller companies in the transatlantic technology marketplace. Finally, the United States also seeks to ensure that there is clarity across various pieces of legislation, particularly in areas such as artificial intelligence. The United States raised concerns on the proposed Machinery Regulation and the AI Act bilaterally throughout 2022. The United States has responded with comments to both WTO notifications. *(Digital trade concerns with the AI Act are discussed in the Barriers to Digital Trade and Electronic Commerce section of this NTE Report chapter.)*

*Chemicals*

The EU regulation concerning the production, marketing, and use of chemicals as substances, mixtures, articles, and products, known as REACH, entered into force on June 1, 2007. U.S. stakeholders have raised concerns that as part of the registration process under REACH, they must provide data that is not relevant to the specific hazards and proposed uses of a registered substance. The United States agrees that it is important to regulate chemicals to ensure environmental and health safety. However, the United States is concerned that REACH relies on an unduly restrictive hazard-based approach instead of a scientific assessment of the actual risks of exposure to a chemical in a specific use.

Additionally, Member States' application of REACH appears to be inconsistent and lacks transparency, which can result in requirements that are more onerous for U.S. exporters than they are for EU businesses and products that are already in the EU Single Market. The United States and many other WTO Members continue to raise concerns regarding various aspects of REACH at the WTO TBT Committee, particularly in light of the impact of REACH on small businesses. WTO Members remain committed to gaining greater transparency in the development and implementation of REACH requirements and frequently cite the need for further information and clarification, in addition to citing the problems producers have in understanding and complying with REACH's registration, and labeling requirements. In 2022, the United States discussed with the EU the risk assessment and management processes in measures proposed by the European Chemicals Agency (ECHA) to the Commission for a REACH Annex XV Restriction for "intentionally-

added microplastics", later updated as REACH Annex XVII Restriction for "synthetic polymer microparticles".

The CLP implements "hazard classes" based on the United Nations Economic Commission for Europe Globally Harmonized System for the Classification and Labeling of Chemicals (UNECE GHS). All chemical manufacturers, importers, and downstream users of REACH and CLP-regulated substances and mixtures are required to adhere to CLP requirements to classify, label, and package their substances and mixtures. U.S. stakeholders note that the process to determine CLP harmonized classifications often seems arbitrary, since the EU only provides six weeks for public comment on its classifications, even when the classification proposed by the EU and the resulting restrictions will differ significantly from the classifications used by industry in their REACH registrations and approved uses.

On October 14, 2020, the Commission released its Chemical Strategy for Sustainability (CSS), which is intended to reform the EU's chemical legislation over the coming years in an effort to strengthen the EU's ability to more consistently implement REACH and CLP's approach to chemical registrations, while incentivizing industry to develop and scale the use of safer, more sustainable chemicals. The CSS will entail revisions to both the REACH and CLP regulations, as well as immediate changes to the CLP through a legislative process called "delegated acts," which allows the Commission to amend technical aspects of a legislation. On December 19, 2022, the Commission adopted a delegated act that introduced new hazard classes for the classification and labeling of substances (*e.g.*, for endocrine disruptors as well as for persistent, mobile, and bio-accumulative substances). These proposed new hazard classes and criteria were not set at the UNECE GHS level, which means that their application in the EU will cause the EU to deviate from the UNECE GHS. Barring objections from the Parliament or the Council, the Commission's delegated act is expected to enter into force in March 2023, with compliance required within two to five years. Given the novelty of the new hazard classes, U.S. industry stakeholders have raised concerns that the EU: (1) will not sufficiently consult with stakeholders, including the UNECE GHS Working Group and the OECD, on the development of guidance as to the science and procedures to identify some of these new hazards; and, (2) implement the guidance, before the new hazard classes take effect.

Finally, the Commission published proposed revisions to the CLP regulation on December 19, 2022. The proposed revisions introduce new formatting rules for chemical labelling that are not aligned with the UNECE GHS. The Commission has not yet responded to a U.S. request that the draft proposal be notified to the WTO.

*Pesticide Maximum Residue Limits*

On July 6, 2022, the EU notified to the WTO a draft regulation to reduce EU maximum residue limits (MRLs) for clothianidin and thiamethoxam to the limit of determination in an effort to protect pollinators, particularly bees in countries outside of the EU. The United States shares the EU's concerns about pollinator health and is actively working to protect bees and other pollinators in the United States. However, to date, the global scientific and regulatory community has found that complex interactions among multiple factors affect pollinator health, including the health of bees. In addition, pesticide MRLs are intended to manage the food safety risk of treated imported food products on arrival into a market; they are not intended to be an environmental safety management tool. Their use for this latter purpose may have unintended consequences that could undermine the development and use of international standards for food safety. Given the critical importance of the pesticides identified in the draft regulation, the proposed measure appears to pose a significant obstacle to international trade and production of agricultural products. In 2022, the United States raised this issue with the EU at the TBT Committee. The United States continues to encourage the EU to pursue a collaborative approach to protecting pollinators.

*Member State Circular Economy Measures*

*Packaging and Packing Waste Regulation*: On November 30, 2022, the Commission published its proposal for a Packaging and Packaging Waste Regulation (P&PWR) to replace the existing directive in an effort to harmonize Member State packaging and packaging waste regulations. The update is a part of the EU's Circular Economy Action Plan announced in 2020 and is intended to reduce overpackaging, promote the reusability and recyclability of packaging, and reduce the complexity of packaging materials. The proposal contains binding targets for packaging reusability as well as mandatory recycled content requirements for different types of plastic packaging. In addition, the proposal sets out to harmonize certain aspects of packaging and labeling rules to address the growing fragmentation of packaging rules among Member States and to prevent market distortions and obstacles to free movement within the single market have threatened to disrupt the free movement of goods within the single market. There is no established timeline for passage of the legislation under the ordinary legislative procedure. The process may take over a year given the complexity of the proposed regulation.

Until the proposed P&PWR is final, regulations published by individual Member States remain a concern. Divergent measures in Bulgaria, France, Italy, the Netherlands, Portugal, Slovenia, and Spain remain in effect. In particular, France has passed the new Circular Economy and Fight Against Waste Law, with the goal of banning all plastic packaging by 2040. Implementing decrees subsequently published by France have set a timeline for specific objectives, but lack important details about implementation and enforcement, leading U.S. stakeholders to raise concerns about the feasibility of compliance. The United States has raised questions and concerns about the differences among these Member State measures, both in bilateral engagements with the Member States and with the Commission at the WTO TBT Committee.

*The Netherlands*: In March 2015, the Netherlands amended the regulation governing sustainability requirements for solid biomass. The regulation includes a requirement for sustainability certification at the forest level, effectively precluding reliance on the U.S. risk-based approach to sustainable forest management.

*Renewable Fuels: Renewable Energy Directive*

The EU Renewable Energy Directive (RED) requires that biofuels and biofuel feedstocks obtain a "Proof of Sustainability" certification to qualify for tax incentives and national use targets. To that end, RED also establishes a methodology and accounting system by which Member States may record and calculate required greenhouse gas emission savings as compared to a baseline for fossil fuels.

In 2018, the Commission adopted a new directive (RED II) for the period 2021 to 2030. RED II entered into force on January 1, 2021. RED II and its pending revisions introduce sustainability requirements for forestry biomass (wood pellets). In 2022, as part of the 'Fit for 55' package, the Commission began revisions to RED II that would increase renewable energy targets and may decrease the share of biomass that can be counted toward European renewable energy targets. Revisions to RED II were expected to be finalized in early 2023. U.S. stakeholders have raised concerns that these changes may deviate from good forest management practice and would severely hinder U.S. wood pellet exports to the EU. The United States exported approximately $287 million in wood pellets to the EU in 2021 (latest data available). The United States continues to actively monitor revisions to RED II.

*Glyphosate*

The EU requires that the approval of the active substance of a pesticide (*i.e.*, the substance that works against pests or plant diseases) be periodically renewed. Glyphosate, the herbicide used in certain plant protection products, had been approved by the EU as an active substance until December 15, 2022. As the

normal EU renewal process for approval takes about three years to complete, the Glyphosate Renewal Group, a group of private sector stakeholders, submitted an application to renew the approval of glyphosate in December 2019.

The Commission established the Assessment Group on Glyphosate (AGG) in May 2019 to assess the next application for renewal of the approval of glyphosate. The AGG is comprised of France, Hungary, the Netherlands, and Sweden. The AGG completed its Renewal Assessment Report (RAR) on June 15, 2021 (updated on August 10, 2021). On May 30, 2022, ECHA announced the conclusion of its review for the classification of glyphosate. However, the scientific assessment for the renewal of glyphosate by the European Food Safety Authority (EFSA) has been delayed and the Commission put forward a proposal seeking the extension of the approval for glyphosate for one year in line with EU legal requirements.

On October 14, 2022, the Standing Committee on Plants, Animals, Food and Feed voted on the Commission's proposal for a one-year extension, but did not reach the qualified majority required to approve or reject it. The Commission submitted the proposal to the Appeals Committee on November 15, 2022, but the Appeals Committee also did not deliver an opinion, so this matter passes to the College of Commissioners for its decision. In the meantime, on December 2, 2022, the Commission adopted an implementing regulation extending the approval of glyphosate until December 15, 2023.

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

*Austria*: The Austrian Parliament adopted a partial ban of glyphosate, which entered into force on June 5, 2021. This amendment to the Austrian Pesticide Law bans the use of glyphosate in areas considered sensitive, which include publicly accessible areas like playgrounds, parks, and areas designated for vulnerable groups of people like healthcare facilities and retirement communities. The law also prohibits the use in home and community gardens and for private or non-professional use. Professional use, including application in agriculture, continues to be allowed.

*France*: In October 2020, the French Government announced plans to reduce the use of phytopharmaceutical products by 50 percent by 2025 and to phase out most uses of glyphosate, "as long as a replacement is available." Beginning in 2017, local governments were barred from using glyphosate in public green areas (parks, forests, streets, etc.). As of July 2022, this ban extends to all places, private or public. In March 2022, the French Government extended the "phase out of glyphosate programme" through 2023. This program provides tax credits of up to €2,500 (approximately $3,030) for farmers who declare that they no longer use glyphosate. France is also encouraging a phase-out of glyphosate at the EU level.

*Germany*: The German Parliament adopted a partial ban of glyphosate, which entered into force on September 8, 2021. This amendment to the German Pesticide Law Application Ordinance is a part of the insect protection package and generally bans the use of glyphosate-containing herbicides, but allows for limited exceptions for professional use under defined circumstances. Exceptions are not possible in areas under nature conservation or protection. Glyphosate is completely prohibited for use in home and community gardens and for private or non-professional use. Germany plans to phase out the use of Glyphosate by January 1, 2024.

*Luxembourg*: In December 2020, Luxembourg became the first Member State to ban glyphosate.

*Medical Devices and In-Vitro Diagnostics*

The United States continues to be concerned about the implementation timeline for both the Medical Device Regulation (MDR) and the In-Vitro Medical Device Regulation (IVDR), especially the shortage of notified bodies available to assess medical devices and in-vitro medical devices. The shortage of notified bodies is particularly problematic for manufacturers of medical devices seeking compliance to ensure they can serve the EU market and limits the availability of lifesaving devices.

The United States engaged the EU in 2022 through the TBT Committee and bilateral discussions around those meetings to seek updates on the implementation of the MDR and IVDR, including the number of qualified notified bodies to perform conformity assessment requirements. On January 6, 2023, the Commission published a proposal to amend the MDR and allow for staggered and conditional extension of a transition period to the new rules until 2027/2028, according to the risk class of the devices. In addition, the proposal will extend validity of certificates and cancel the "sell-off" date, which will allow devices placed on the market before or during the transition period to continue to be made available absent time limitations. The Commission also adopted the European Medical Device Nomenclature (EMDN). EMDN is based on the Italian "Classificazione nazionale e internazionali," which is not harmonized with the well-established Global Medical Device Nomenclature (GMDN). GMDN was developed with the support of the ISO and the International Medical Device Regulators Forum. It is widely adopted by the medical device industry and is used by over 100 national medical device regulators. The United States remains highly concerned that the EU's adoption of the EMDN is undermining the interoperability of unique device identification systems, which helps to identify medical devices from the time of manufacturing through to when it reaches the patient user. The EMDN will pose several significant obstacles to the medical device and healthcare community.

*Wine Traditional Terms*

The EU continues to restrict the use of "traditional terms," such as "tawny," "ruby," and "chateau," on labels on imported wine. This impedes U.S. wine exports to the EU, including U.S. wines that include these traditional terms within their trademarks. U.S. wines sold under a trademark that includes one of the traditional terms can only be marketed in the EU if the trademark was registered before May 2002.

The EU has not taken any visible steps to address U.S. concerns and has consistently refused to provide a timeline for review of the applications for the use of terms submitted by U.S. industry stakeholders.

**Sanitary and Phytosanitary Barriers**

The United States remains concerned about a number of measures the EU maintains ostensibly for the purposes of food safety and protecting human, animal, or plant life or health. Specifically, the United States is concerned that these measures unnecessarily restrict trade without furthering safety objectives because they are not based on science, are maintained without sufficient scientific evidence, or are applied beyond the extent necessary.

As part of the European Green Deal, described in the Technical Barriers to Trade (TBT) section of this NTE Chapter, the Commission published its Farm to Fork (F2F) Strategy in May 2020 that included targets and policy proposals for enhancing food and agricultural sustainability by 2030. Among other things, these targets aim to reduce pesticide and fertilizer use by farmers and antimicrobial use in livestock, and to change land use in agriculture by transitioning farmland into organic production or taking other farmland out of production.

The EU has stated it will seek to "obtain ambitious commitments from third countries in key areas," and the EU is increasingly attempting to expand the reach of this policy beyond the EU. The targets must be converted into legislative proposals, and the European Parliament and Member States will shape and amend these proposals as part of the EU legislative process between 2021 and 2024. The EU Ministers of Agriculture adopted conclusions on the F2F Strategy in October 2020, endorsing goals while registering a request that farming models other than organics be considered and that any new legislation be based on "scientifically-sound ex-ante impact assessments." The EU is also scheduled to release several proposals in 2023, notably a proposal on the "Sustainable EU Food System Initiative."

The United States shares the EU's goals for more sustainable food systems and recognizes the importance of considering the economic, social, and environmental dimensions of sustainability. However, it remains to be seen how the EU will implement the broader objectives of the F2F through these interrelated initiatives, which appear to blend SPS issues with potential TBT requirements like labeling or certification schemes. U.S. stakeholders are concerned that EU implementing regulations may focus on promoting EU production practices that are not appropriate, effective, or efficient in other parts of the world and, if required, could unnecessarily restrict trade or require farmers in the United States and other countries outside the EU to produce crops in less sustainable ways than they otherwise would have, as a precondition for gaining access to the EU market.

*Hormones and Beta Agonists*

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

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

The EU's ban on growth promotant hormones in beef is inconsistent with its WTO obligations. In 1996, the United States brought a WTO dispute settlement proceeding against the European Communities (the EU predecessor entity) over its ban on beef treated with any of six growth promotant hormones. A WTO dispute settlement panel concluded—and a subsequent report of the WTO Appellate Body affirmed—that the ban was maintained in breach of the EU's obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. The EU failed to implement the recommendations of the WTO Dispute Settlement Body to bring itself into compliance with its WTO obligations, and the United States was granted authorization by the WTO in 1999 to suspend concessions. Despite a favorable outcome in the WTO dispute settlement process and the suspension of concessions, the EU's unscientific ban on meat and animal products produced using hormones, beta agonists, and other growth promotants remains in place and unchanged.

In September 2009, the United States and the Commission signed a Memorandum of Understanding that established a new EU duty-free import quota for grain-fed, high quality beef (HQB) as part of a compromise solution to the U.S.–EU hormone beef dispute. Since 2009, Argentina, Australia, Canada, New Zealand, and Uruguay have also begun to ship under the HQB quota. As a result, the market share of U.S. beef in

the HQB quota has decreased significantly. To remedy the erosion of U.S. beef access to the HQB, the United States and the EU engaged in negotiations to change the HQB quota after the EU received a mandate to do so from the European Council in October 2018.

In 2019, the United States and the EU concluded a new agreement, which established a duty-free tariff-rate quota (TRQ) exclusively for the United States. Under the agreement, American ranchers had an initial TRQ of 18,500 metric tons annually, valued at approximately $220 million. Over seven years, the TRQ will grow to 35,000 metric tons annually, valued at approximately $420 million. The agreement went into effect on January 1, 2020.

*Antimicrobial Resistance and the Restrictions on the Use of Veterinary Medicinal Products*

In December 2018, the EU published Regulation (EU) 2019/6 on veterinary medicinal products that revised EU protocols for the approval and use of veterinary medicinal products. A stated goal of the regulation is to address antimicrobial resistance by more strictly defining the criteria for use of antimicrobial products in animal medicine, and defining a list of products that will be exclusively reserved for human medicine and no longer permitted in agricultural production. Article 118 of the regulation also expands these restrictions to operators in third countries, although it is unclear how the EU intends to provide a scientific justification for or enforce these restrictions. The official implementation date for (EU) 2019/6 was January 28, 2022, but the EU is still finalizing the legislation necessary to implement the regulation. U.S. stakeholders are concerned about the potential impacts of the as-of-yet unfinalized implementing regulations on U.S. exports of animal products to the EU upon entry into force.

In March 2021, the EU published an amendment to the Official Controls Regulation (EU) 2017/625 that clarified the legal mechanism for verification of compliance with Article 118. In October 2021, the EU published Commission Delegated Regulation (EU) 2021/1760 that fixed the criteria used to establish the list of antibiotics exclusively preserved for human medicine. The Commission adopted the European Medicines Agency's (EMA) advice as Commission Implementing Regulation (EU) 2022/1255, which was published in the EU Official Journal on July 20, 2022. In addition, the Commission is working on a draft delegated regulation that will formally implement Article 118. The United States continues to engage the EU regarding management of antimicrobial resistance and encourage science-based approaches.

*Agricultural Biotechnology*

Decades of data and experience demonstrate the safety of genetically engineered (GE) crops, in addition to the benefits of their use in reducing carbon emissions, pesticide use, and impact on non-target organisms, while increasing soil health, crop yields, and farmers' incomes. Despite these benefits, the lack of predictability, excessive data requirements, and delays in the EU's approval process for GE crops have prevented products from being exported to the EU, even though these products have been approved and grown safely in the United States for many years.

The United States continues to reiterate concerns with delays in the EU's biotechnology approval procedures and to engage the EU in efforts to normalize trade in these products, including through semiannual consultations in accordance with the 2008 decision by the United States and the EU to suspend Article 22.6 arbitration proceedings associated with the WTO dispute settlement proceeding against the European Communities (the EU predecessor entity) regarding the approval of biotechnology products. In 2022, the EU issued 6 approvals and 1 renewal for GE crops, compared to 12 approvals and 6 renewals in 2021. While these new authorizations are welcomed, the EU's average approval time for new GE crops in 2022 was approximately 6 years. In contrast, the EU's own legally prescribed approval time for such products is 12 months (6 months for the review with EFSA and 6 months for the political committee process known as comitology).

As of December 31, 2022, the United States was tracking approximately 35 agricultural biotechnology product applications (including renewals) submitted to the EU, including with respect to corn, soybean, rapeseed, and cotton. Of those applications, 30 were under scientific review by the EFSA and 5 await action by the Commission through comitology. Delays in both of these stages contribute to increasingly lengthy EU approval timelines. For example, EFSA continues to demand unnecessary studies while conducting risk assessments, which result in unpredictable delays in issuing final opinions. In comitology, repeated findings of "no opinion" by the relevant Standing Committee on Plants, Animals, Food and Feed also delay the EU from making decisions on GE approvals, by requiring products to go through an additional assessment by an Appeal Committee before receiving a final approval. The United States continues to engage the EU on delays of this nature and urge the EU to address other barriers to trade in biotechnology products. For example, the EU has yet to establish a practical low-level presence policy and instead maintains a 0.1 percent limit for unapproved biotechnology traits in feed shipments, which is not commercially feasible and disrupts trade in products that have otherwise passed U.S. safety assessments.

*Acceptance of APHIS Certification for Wheat Products*

The EU does not accept the Karnal bunt (KB) fungus certification for wheat products issued by the U.S. Department of Agriculture (USDA) Animal Plant Health and Inspection Services (APHIS), stating that the APHIS bunted kernel standard for KB does not provide adequate risk protection. According to U.S. wheat producers, sampling procedures by many EU Member States, including Italy and Greece, appear to discriminate against U.S. products and create delay and uncertainty that encourages buyers to source wheat from other non-U.S. sources, primarily Canada. APHIS and its EU counterpart have repeatedly exchanged scientific views on this issue, but no progress has been made on securing EU acceptance of the APHIS certification.

*EU Fumigation Requirements for Hardwood Lumber and Logs*

The EU previously banned the use of methyl bromide to fumigate logs and wood chips imports. Fumigation with sulfuryl fluoride is considered an equally effective substitute and is used throughout the EU, including for EU log exports. However, the EU has not approved its use for U.S. products, which leaves U.S. log and chip exporters without a commercially viable fumigation option. Heat treatment, which has been proposed by the EU as a fumigation option, is not scalable in many instances. The United States will continue to engage with the EU on this issue to identify a path forward.

*Member State Measures*

*Agriculture Biotechnology Cultivation Opt-Out*

In March 2015, the EU adopted a directive allowing Member States to ban the cultivation of GE plants in their respective territories for non-scientific reasons (EU Directive 2015/412). Under the transitional measures, Member States had until October 2015 to request exemption from the geographical scope of the authorizations already granted or in the pipeline. Eighteen Member States "opted-out" of GE crop cultivation for all or part of their territories and none of the five Member States (the Czech Republic, Portugal, Romania, Slovakia, and Spain) that grew GE corn opted out. However, as of 2021, only Portugal and Spain were commercially cultivating GE corn.

Seventeen Member States have opted out of cultivation using biotechnology seeds. The 17 Member States that requested exclusion of their entire territory from the geographical scope of biotechnology applications are Austria, Bulgaria, Croatia, Cyprus, Denmark, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, and Slovenia. Additionally, one region in

Belgium, Wallonia, has also opted out of cultivation. All of these Member States and regions have decided to ban the cultivation of Monsanto 810 corn (MON810) and the seven varieties of corn that were in the pipeline in 2015, apart from Denmark and Luxembourg, which have only banned MON810 and three of the seven varieties of corn in the pipeline.

*Pathogen Reduction Treatments*

The EU maintains measures that prohibit the use of any substance other than water to remove contamination from animal products unless the substance has been approved by the Commission. These measures significantly affect U.S. exports of beef, pork, and poultry to the EU because the Commission has failed to approve several pathogen reduction treatments (PRTs) that have been approved for use in the United States. PRTs are rinses used to kill microbial pathogens that commonly exist on meat after slaughter. The PRTs at issue have been approved by USDA, after establishing their safety on the basis of scientific evidence.

In March 2017, the National Pork Producers Council submitted an application to the Commission for the approval of two organic acids, lactic and acetic, for use on pork. The application was submitted to EFSA by the Commission in September 2017. EFSA published its evaluation in December 2018, confirming the safety of the use of acetic acid and lactic acid in pork processing. As of December 2022, the Commission has taken no action for the approval of pork PRTs.

The United States maintains that the use of PRTs is a critical tool during meat processing that helps further the safety of products being placed on the market. The United States has engaged the EU to share scientific data regarding the safe use of PRTs and will continue to engage the EU regarding the approval of PRTs for beef, pork, and poultry as an effective tool to improve food safety.

*Certification Requirements*

EU certification requirements may limit U.S. agricultural exports such as fish, meat, dairy, eggs, processed products, and animal byproducts by requiring exporters to certify an increasing number of public health, animal health, or animal welfare claims. These certifications are not necessary to protect human or animal health, and are increasingly adding costs and burden to the movement of exports in Europe. The certification requirements are enforced irrespective of whether these goods are destined for commercial sale in the EU, transiting through the EU, or intended for cruise ships located in the EU. The EU's requirements often appear to have been established without scientific evidence, a risk assessment, or consideration of Codex guidance on certifications, the latter of which establish the minimum amount of information necessary to ensure the safety of the product being traded. Moreover, the EU's changes to certificates are increasingly frequent, complex, and instituted through updates to multiple EU implementing or delegated regulations, making compliance difficult for manufacturers, exporters, and EU importers, as well as U.S. regulatory agencies. Differences in interpretation of EU legislation by Member State authorities also creates legal instability and often results in trade disruptions, creating additional burden for U.S. exporters.

In December 2020, the EU updated its animal health certification requirements through implementing regulation (EU) 2020/2235 for products of animal origin, including dairy, eggs, meat, casings, animal byproducts, composite products, live animals, and aquatic animals, with an implementation deadline of April 2021. In August 2021, the EU extended the implementation deadline to March 15, 2022, as long as certificates for affected products were certified before January 15, 2022. In January 2022, the EU issued another series of changes to its requirements under (EU) 2020/2235 and extended the deadline for a subset of products until September 15, 2022, provided that certificates were signed by June 15, 2022. In May 2022, the EU issued a subsequent series of changes to its requirements under (EU) 2020/2235 and extended the deadline for a subset of products until February 2023, provided that certificates were signed by November 15, 2022. In July 2022, the EU again issued a series of changes to its requirements under (EU)

2020/2235 and extended the deadline for a subset of products until April 2023, provided that certificates were signed by January 15, 2023. While the EU's extensions have allowed the United States to address EU requirements through updates to U.S. export verification programs, the EU's prescriptive requirements and numerous changes to certificate templates have caused confusion for U.S. exporters and created delays in implementation by U.S. regulatory authorities. The United States is working to address remaining issues on certificates for products of animal origin transiting the EU that are destined for third countries, as well as certificates for composite products with multiple ingredients of animal origin. The United States continues to engage the EU bilaterally to resolve concerns regarding the EU's certification requirements.

*Ban on Titanium Dioxide in Food*

Commission Regulation (EU) 2022/63 banned titanium dioxide (E171) as a food additive in the EU as of August 7, 2022. The regulation includes a commitment to review the necessity to maintain or delete titanium dioxide from the EU list of food additives for exclusive use as a color in medicinal products. The Commission has tasked the EMA with reviewing the situation by April 2024. The regulation calls on the pharmaceutical industry to accelerate research and development for alternatives to titanium dioxide in both new and previously authorized products. The EMA has published information for pharmaceutical companies and is monitoring industry efforts.

In November 2021, the Commission published Commission Implementing Regulation (EU) 2021/2090 in the Official Journal denying the authorization of titanium dioxide (E171) as a feed additive for all animal species.

*Animal Byproducts, Including Tallow*

The EU considers all animal byproducts sourced from animals raised under conditions not essentially identical to those in the EU to be hazardous materials. Since 2002, the EU has made modifications to its regulations and implementation practices governing animal byproducts that have resulted in the treatment of U.S. products being considered hazardous. The current EU interpretation of the animal byproducts regulations could potentially prevent most exports of U.S. animal byproducts. Several Member State border inspection posts have already blocked consignments of various technical blood products.

The United States has requested that tallow be allowed entry into the EU for any purpose without verification other than that the tallow and derivatives made from the tallow contain no more than a maximum level of insoluble impurities consistent with the internationally recognized standard for trade in tallow and with World Organisation for Animal Health (WOAH) recommendations.

*Live Cattle*

Live cattle from the United States are not authorized to be exported to the EU, or transited through the EU en route to third countries, due to EU certification requirements for several bovine diseases. U.S. exports remain blocked because the United States and EU have not agreed on the conditions and format for an export certificate. APHIS continues to work with the EU to resolve the remaining import health conditions and reach agreement on a mutually acceptable certificate through the U.S.–EU Animal Health Technical Working Group.

*Trade in Raw and Processed Shellfish*

In February 2022, the United States and EU concluded negotiations to allow for resumption of bilateral trade in live, raw bivalve shellfish from Massachusetts and Washington. In April 2022, the United States sent dossiers for Rhode Island, Connecticut, and Maine seeking to export raw product to the EU. Although

the EU committed to expedited reviews of U.S. state dossiers, as of December 31, 2022 the EU had not completed its review. With regard to processed shellfish, the EU requires a determination of equivalence for processed and raw shellfish, a level of control for a processed product that has is not been supported by science-based risk assessment.

*Specified Risk Materials Certification Requirement*

The EU has a different definition of specified risk materials (SRM) from the United States for the animal tissues most at risk of harboring the transmissible spongiform encephalopathies (BSE). The EU requires that materials exported to the EU meet the EU's SRM definition and be derived from carcasses of animals that can be confirmed as never having been outside of regions that the EU considers to be of negligible risk for BSE. Although the United States has been recognized by WOAH as having negligible risk, the source cattle for U.S. ruminant origin animal byproduct exports may not necessarily come from negligible risk countries. The EU SRM requirement unnecessarily impedes U.S. exports of ruminant origin animal byproducts considered safe in the United States and would potentially limit the market for ovine/caprine byproducts were other market impediments removed.

The SRM requirement otherwise has not been an issue for bovine meat for human consumption, because the special EU-required production controls in the non-hormone-treated cattle program already provide the necessary verifications regarding the history of the animal. The United States has requested the removal of the EU's "born and raised" BSE requirement for all relevant U.S. commodities; the EU's requirement is based on its non-recognition of WOAH animal disease status for the United States and is related to animal health versus the origin of the products. Consistent with the recommendations of WOAH, it is the BSE status of the country of export that should determine whether SRMs have to be removed. The United States continues to raise this issue in appropriate fora, including bilateral technical working groups.

*Agricultural Chemicals*

*Hazard-based Cutoff Criteria – Categorization of Compounds as Endocrine Disruptors*

Active substances can only be approved for use in crop protection products in the EU if they fulfill the approval criteria established in Regulation (EC) 1107/2009. Under this regulation, the EU's determination includes hazard-based "cutoff" criteria that exclude certain categories of products from consideration for normal authorization for use in the EU. In instances where an active substance triggers the cut-off criteria, the EU regulatory process allows for an active substance to remain unapproved, regardless of risk of exposure. For such products, the EU does not complete a risk assessment. Rather, the EU discontinues authorization for a particular product at the time of re-approval, as has happened for an increasing number of substances. The EU has also been taking a "hazard-based approach" to new products, declaring them to be ineligible for authorization based solely on the intrinsic properties of the product, without taking important risk factors such as level of exposure or dosage into account. The United States is concerned that an increasing number of safe and widely-used substances are not being reapproved or having reasonable import tolerances set for their use, due to these arbitrary cut-off criteria when current registrations expire.

One category of crop protection products subject to this hazard-based approach are substances classified as endocrine disruptors (EDs). EDs are naturally occurring or man-made substances that may mimic or interfere with hormone functions. The United States evaluates possible endocrine effects associated with the use of certain chemicals to ensure protection of public health and the environment, while the EU appears to be setting up approaches to regulating these compounds that are not based on scientific principles and evidence, thereby restricting trade without improving public health.

The scope of trade effects of Regulation (EC) 1107/2009 is broad and overlaps with that of the other hazard criteria and environmental criteria the EU uses in regulating pesticides. The EU obscures its hazard-based decisions with onerous data requirements that allow the Commission to claim an inability to measure risk. The United States continues to monitor this issue and raise concerns in international and bilateral fora.

*Pesticide Maximum Residue Limits*

MRLs and import tolerances are established under separate legislation, Regulation (EC) 396/2005, which is risk-based rather than hazard-based. However, for active substances that are not approved due to the EU's cut-off criteria under Regulation (EC) 1107/2009, the EU may forgo the risk assessment process established under Regulation 396/2005, withdraw MRLs, and reduce import tolerances to the default level of 0.01 mg/kg. The EU conducted an evaluation of existing legislation on plant protection products and pesticide residues through the Regulatory Fitness and Performance process. At this time, the EU has no intention to further align Regulation (EC) 396/2005 with the hazard-based principles of Regulation (EC) 1107/2009. As the number of substances ineligible for reauthorization by the EU increases, and as the EU reduces the corresponding MRLs and import tolerances to the default level, the significant negative effect on agricultural production and trade is likely to increase.

The EU regulations also establish transitional periods to allow producers to adjust to changes in EU MRLs, although the transition periods established by the EU are generally not long enough to avoid trade disruption. For many products, there may be a gap of several years between pesticide application and when a final product is offered for sale, creating a situation where products that are compliant with EU MRLs at the time of production do not have time to clear the channels of trade. EU products, on the other hand, appear to remain available for sale as long as they are produced prior to MRLs changing.

The United States has raised concerns over the EU's policy approaches for years and continues to engage on these issues in the WTO SPS Committee. The United States is also monitoring the EU's actions with regard to evaluating and establishing import tolerances for active substances, which have the potential to create further trade disruptions when MRLs are set at levels that are lower than necessary to protect human health, and that are not viable. According to U.S. industry estimates, U.S. exports valued at over $5 billion and global trade amounting to $75 billion are at risk of significant harm. Discontinuing the use of critical substances without a proper science-based risk assessment, and withdrawing or lowering MRLs to levels that are not commensurate with the findings of risk assessments, would have serious adverse effects on agricultural productivity and global markets.

## GOVERNMENT PROCUREMENT

Government procurement is governed by the EU public procurement directives. The directive on procurement in the utilities sector covers purchases in the water, transportation, energy, and postal sectors. This directive requires open and competitive bidding procedures, but it permits Member States to reject bids with less than 50 percent EU content for tenders that are not covered by an international or reciprocal bilateral agreement. The EU content requirement applies to foreign suppliers of goods and services in water (the production, transport, and distribution of drinking water), energy (gas and heat), urban transport (urban rail, automated systems, trams, buses, etc.), and postal services.

The EU is a Party to the WTO Agreement on Government Procurement (GPA). U.S.-based companies are allowed to bid on public tenders covered by the GPA.

*International Procurement Instrument*

On August 29, 2022, the EU's new International Procurement Instrument (IPI) entered into force. The IPI empowers the Commission to limit or exclude, on a case-by-case basis, access to its public procurement markets by economic operators originating in countries that apply restrictive or discriminatory procurement measures to EU businesses. The United States understands that procurement from non-market economies is the principal target of the IPI, but GPA and free trade agreement parties are not exempt from the IPI. As a consequence, procurement not covered by the GPA to which U.S. suppliers have had access in the past may be subject to the IPI.

*Member State Measures*

Lack of transparency in certain Member State public procurement processes continues to be an almost universally cited barrier to the participation of U.S. firms. U.S. firms have voiced concerns over a lack of transparency, as well as overly narrow definitions of tenders, language and documentation barriers, and implicit biases in favor of local vendors and state-owned enterprises. Additional Member State-specific trade barriers to U.S. participation in public procurement processes are discussed below.

*Croatia*: U.S. companies have complained about instances in which technical specifications and scoring in public procurement tenders appear to favor a specific bidder, typically a local or other Member State company, thus impacting the participation of competitive U.S. firms.

*Greece*: U.S. firms have complained that Greece often requires suppliers to source services and production locally or partner with Greek manufacturers as a condition for the awarding of some defense contracts. Additional complaints center on onerous certification and documentation requirements for U.S. firms.

*Hungary:* In April 2022, the European Commission launched a budget conditionality mechanism against Hungary over the "systemic irregularities, deficiencies and weaknesses" in its public procurement procedures. U.S. companies express serious concerns that public procurements in Hungary are not transparent and tend to favor either local or other non-EU countries including China.

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

*Poland*: Defense companies operating in Poland have indicated that the Ministry of Defense sometimes requests significant offsets and technology transfers primarily associated with large-scale acquisitions. However, the last few major defense purchases through the U.S. Government's Foreign Military Sales process included no offset requirement.

*Slovakia*: A perceived lack of transparency in procurement, in addition to the excessive length and complexity of tender verification and appeal procedures, remains an impediment to the widest possible participation of potential bidders. Lock-in contracts, in which the Slovakian Government commits to procure a basic service and subsequently expands the contract to include additional services, continue to hamper the access of U.S. firms to public procurement, especially with regard to information technology services.

*Slovenia*: U.S. firms report instances of tendering documentation that provide unfair advantages to favored vendors, typically an EU Member State company, and opacity in the bid evaluation process as major impediments. Slovenia's quasi-judicial National Revision Commission (NRC), which reviews all disputed public procurement cases, has received multiple complaints. The NRC has the authority to review, amend, and cancel tenders, and its decisions are not subject to judicial appeal. In the instances where U.S. companies alleged improprieties in the procurement process, Slovenian authorities directed them to the NRC, which is not required to justify its decisions.

**Cybersecurity**

*Proposed EU Cybersecurity Certification Scheme for Cloud Services (EUCS)*: The EU is considering a new certification scheme for cloud services. U.S. stakeholder concerns include data localization, headquarters' location, and corporate control requirements, all of which aim to make EU data "immune" from non-EU laws for certain high-risk tenders. Once finalized, we expect the EUCS to be made mandatory for certain public sector and possibly select private sector cloud services. The EU covers cloud services in their GPA schedule and is required to offer non-discriminatory access to U.S. and GPA suppliers.

*France*: France's national digital security agency, Agence Nationale de la Securite des Systemes d'Information (ANSSI), maintains a security certification scheme for cloud services, commonly referred to as SecNumCloud. In May 2021, the French Government issued a strategy for the use of cloud computing by the state (Trusted Cloud strategy), requiring that government agencies and commercial entities considered "critical" must select only cloud services vendors with a SecNumCloud certification to handle their highly sensitive data. As part of this strategy, ANSSI published in March 2022 a revision to the SecNumCloud certification requirements. This revision requires, in part, that any cloud provider that handles "highly sensitive" data (a category to be defined by a circular still to be released) must be at least 61 percent European-owned and "immune" from non-EU laws. U.S. companies have expressed concern that U.S. cloud services suppliers will be precluded from providing these services to French public authorities. There are also concerns that in the future the French private sector would adopt a SecNumCloud certification requirement, which could further hamper U.S. cloud service providers from providing services in the French market.

## INTELLECTUAL PROPERTY PROTECTION

As part of the Commission's Digital Single Market (DSM) Strategy, the Directive on Copyright in the Digital Single Market (Copyright Directive) went into effect in June 2019, with the stated goal of addressing legal uncertainty for both rights holders and users with regard to certain uses of copyright-protected works and other subject matter in the digital environment. Member States were required to transpose it by June 7, 2021. As of December 2022, the following countries still had not transposed the Copyright Directive in full: Bulgaria, Denmark, Finland, Latvia, Poland, and Portugal. The United States continues to follow copyright issues in the EU and its Member States, including legislative developments relating to the transposition of the Copyright Directive into national laws, and will continue to engage with various EU entities as appropriate to address U.S. stakeholder equities.

The Digital Services Act (DSA) went into effect in November 2022 and is intended to regulate certain online services, including through rules for how content is shared online. U.S. stakeholders expressed concern that the DSA's adoption of a framework for limitations of liability included modifications to the eligibility threshold and conditions that had been set in the E-Commerce Directive, which may adversely impact their intellectual property (IP) rights, in particular for copyright and trademarks.

The Commission proposed a Data Act in February 2022 with the goal of maximizing the value of data and promoting innovation by increasing the transfer of data that is stored within devices and applications. Drafts

of the Data Act require the disclosure and making available of data that may be protected by the data holder's or a third party's trade secrets, copyright, or other IP.

The Commission proposed an Artificial Intelligence (AI) Act in April 2021 with the aim of providing a risk-based approach to regulating the development, deployment, and use of AI-driven products, services, and systems. Drafts of the AI Act require the disclosure of source code without strong, consistent, and transparent protection schemes for innovative and proprietary information embedded in the source code that is of particular economic value to small businesses.

In response to the CJEU's judgment in Recorded Artists Actors Performers (RAPP), the Commission is exploring the possibility of publishing a draft amendment to the Rental and Lending Directive to require or permit material reciprocity for equitable remuneration collected for the performance and communication of sound recordings. The CJEU held that all sound recording producers and performers from contracting parties to the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) are entitled to equitable remuneration. U.S. stakeholders are concerned that such a legislative change reversing the CJEU holding will result in EU Member States withholding full payment of royalties to U.S. producers and performers.

The United States remains highly troubled by the EU's overbroad protection of geographical indications (GIs), which adversely impacts both protection of U.S. trademarks and market access for U.S. products that use common names in the EU and third country markets.

Regulation 1151/2012, for example, contains numerous problematic provisions with respect to the protection and enforcement of Protected Designations of Origin (PDOs) and Protected Geographical Indications (PGIs). Troubling provisions include those governing the scope of protection of PDOs and PGIs, including expansive rules about evocation, extension, co-existence, and translation, among others, which not only adversely affect trademark rights and the ability to use common names, but also undermine access to the EU market for U.S. rights holders and producers. The EU has granted GI protection to thousands of terms that limits use in the EU market to only certain EU producers, and the use of any term that even "evokes" a GI is also blocked. Despite this level of protection afforded to products sold within the EU, it appears that some producers in Member States continue to produce products featuring terms that are protected as GIs in other Member States and then export these products outside the EU. The EU has also granted GI protection to the cheese names danbo and havarti, widely traded cheeses that are covered by international standards under Codex. Several countries, including the United States, opposed GI protection of these common names both during the EU's opposition period and at the WTO, but the Commission granted the protection over that opposition and without sufficient explanation to interested parties.

Regulation 1151/2012 also serves as the basis for the EU's international GI agenda, which includes requiring EU trading partners to protect and enforce specific EU GIs in their markets, often with only limited due process requirements to safeguard existing producers, right holders, consumers, importers, and other interested parties. Regulation 1151/2012 replaced the former GI regulation for food products, Council Regulation (EC) 510/06, which was adopted in response to WTO DSB findings in a successful challenge brought by the United States (and a related case brought by Australia) that asserted that the EU GI system impermissibly discriminated against non-EU products and persons. The DSB findings also agreed with the United States that the EU could not create broad exceptions to trademark rights guaranteed by the Agreement on Trade-Related Aspects of International Property Rights (TRIPS). Regulation 1151/2012 sped up the registration procedure for registering GIs, reduced the opposition period from six to three months, and expanded the types of products capable of being registered as a GI.

In 2022, the EU adopted Delegated Regulation 2022/891 on procedural rules for GI protection and the use of GI signs and symbols and Implementing Regulation 2022/892 on agricultural and foodstuff GIs. As to new GI proposals in 2022, the United States has concerns with the proposed revision of the GI system for agricultural products, foodstuffs, wines, and spirit drinks, and with the proposed establishment of *sui generis* GI protection for craft and industrial products.

The United States continues to have concerns about the EU's GI regulations and monitors carefully their implementation and effects on bilateral trade. The United States does not believe that the EU should bargain for specific GI recognition in its bilateral trade agreements in return for market access, because such IP rights should be evaluated independently on their merits, based on the unique circumstances of each jurisdiction. The United States is also concerned by the EU's attempts to restrict common terms for wine in third country markets. The United States is carefully monitoring the implementation of each of these regulations and proposals.

The United States remains extremely concerned by the conduct and outcome of the 2015 WIPO negotiations to expand the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration to include GIs. Of particular concern to the United States was the manner of engagement in these negotiations by the Commission and by several Member States, including the Czech Republic, France, Greece, Italy, and Portugal, which took precedent-setting steps to deny the United States and the vast majority of WIPO countries full negotiating rights and depart from longstanding WIPO practice regarding consensus-based decision-making. Likewise, the resulting text—the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications—raises numerous and serious legal and commercial concerns, including with respect to the degree of inconsistency with the trademark systems of many WIPO countries, and could have significant negative commercial consequences for trademark holders and U.S. exporters that use common terms. The EU became a party to this Agreement in November 2019. The Agreement entered into force in February 2020.

In addition, the U.S. pharmaceutical industry stakeholders have expressed concerns as to the possible ramifications of recent export and stockpiling exceptions to its patent term restoration mechanism known as supplemental protection certificates, particularly the possibility of the diversion of pharmaceuticals either within the EU or in foreign markets. The United States is closely monitoring this matter as well as additional legislative developments in this field.

*Member State Measures*

Although Member States generally maintain high levels of IP protection and enforcement, the United States remains concerned about the IP practices of several countries. The United States actively engages with the relevant authorities in these countries and will continue to monitor the adequacy and effectiveness of IP protection and enforcement, including through the annual Special 301 review process. The United States is particularly concerned about counterfeit pharmaceuticals and personal protective equipment.

*Austria*: With regard to trade secrets, U.S. companies reported gaps in criminal liability, insufficient specialization of judges, low criminal penalties, and procedural obstacles that limit efforts to effectively combat trade secret theft and misappropriation. The Austrian Government is considering these gaps in criminal law internally in connection with a reform in corruption law and is expected to develop a draft law in the coming months.

*Bulgaria*: Enforcement concerns in Bulgaria include inadequate prosecution efforts, lengthy procedures, and insufficient criminal penalties, particularly in the area of online piracy. Stakeholders have raised concerns as to notorious online pirate sites reportedly hosted in Bulgaria. The number of prosecutions against individuals continues to be low and penalties for IP criminal violations, including in the area of

online piracy, fail to offer any meaningful deterrent. In addition, Bulgaria still has not adopted the technique of evidence sampling in connection with criminal investigations involving online infringement. As a result, USTR announced an Out-of-Cycle Review of Bulgaria in April 2022 as part of the Special 301 process.

*Germany*: When Germany implemented the Copyright Directive in 2021, it introduced new requirements for online platforms regarding the filtering of user uploads to prevent the automatic blocking of potentially copyright-protected content for uses that are presumably authorized by law. Some U.S. stakeholders are concerned that Germany also introduced an overly broad copyright presumption that makes it difficult for creators to enforce their copyrights in music and videos that are used in the background of short-form content that is often posted on social media. U.S. stakeholders also voiced concerns that Germany's legal framework for technological protection measures remain inadequate and that Germany's private copy exception is too broad. The United States will monitor how implementation impacts U.S. stakeholders.

*Poland*: Stakeholders continue to identify copyright piracy online as a significant concern in Poland and noted inconsistent enforcement on the part of law enforcement and backlogs in the Polish courts. Stakeholders also are concerned about illegal camcording.

*Romania*: Online piracy remains a concern with some notorious online pirate sites reportedly hosted or registered in Romania. Low penalties for IP violations impede investigations and do not offer any meaningful deterrent to further IP crimes, so law enforcement choose to bundle significant cases under tax evasion penal files. Romania lacks an effective and timely mechanism for rights holders to submit takedown requests against online markets and hosting platforms for infringing material. Adequate resources, including additional training for law enforcement, are needed to enhance enforcement quality. However, Romania has made progress on addressing long-standing IP protection and enforcement concerns, and recently Romania appointed a National IP Coordinator to monitor and evaluate the effectiveness of IP protection and enforcement strategies.

## SERVICES BARRIERS

### Telecommunications Services

*Electronic Communications Code*

The EU Electronic Communications Code (EECC), adopted in 2018, regulates the telecommunications sector and includes rules on network access, spectrum management, communication services, universal service, and institutional governance. EU Member States were required to transpose the rules into national laws by December 2020. Based upon the most recently available public information, all but eight Member States had fully transposed the EECC into their national laws.

*Regulation on Privacy and Electronic Communications*

In January 2017, the Commission proposed a new Regulation on Privacy and Electronic Communications, which would replace the e-Privacy Directive of 2002. The proposed regulation would expand the scope of the existing directive, which applies to traditional telecommunications services providers, to include over-the-top Internet-enabled services. U.S. suppliers have expressed concerns that, although the proposed regulation is supposed to align the specific rules for telecommunications services with the General Data Protection Regulation (GDPR), it may actually lead to additional and potentially conflicting requirements. In late 2017, the European Parliament adopted its final amendments to the proposed regulation, and in February 2021, the European Council announced that it had finalized its version, clearing the way for trilogue negotiations to begin. Those negotiations have proceeded slowly and are ongoing.

*Audiovisual Media Services Directive*

In November 2018, amendments to the 2007 Audiovisual Media Services Directive (AVMSD) were adopted. Member States were given 21 months to transpose the amendments into national legislation. On November 23, 2021, the Commission launched proceedings against 23 Member States for failure to transpose the AVMSD into national law. As of December 31, 2022, proceedings were still ongoing for a number of member states including the Czech Republic, Ireland, and Slovakia, which have cases before the CJEU. The Commission also has open proceedings against Slovenia, Croatia, France, and Estonia. The amendments updated the AVMSD to reflect developments in the audiovisual and video-on-demand markets.

The original AVMSD established minimum content quotas for broadcasting that had to be enforced by all Member States. Member State requirements were permitted to exceed this minimum quota for EU content, and several have done so. However, the original AVMSD did not set any strict content quotas for on-demand services, although it still required Member States to ensure that on-demand services encourage production of, and access to, "EU works."

The 2018 amendments include provisions that impose on Internet-based video-on-demand providers a minimum 30 percent threshold for EU content in their catalogs and require that they give prominence to EU content in their offerings. The new AVMSD also provides Member States the option of requiring on-demand service providers not based in their territory, but whose targeted audience is in their territory, to contribute financially to EU works, based on revenues generated in that Member State. In addition, the new rules extend the scope of the AVMSD to video-sharing platforms that tag and organize content, which has raised concerns among social media platforms.

*Member State Measures*

A number of Member States maintain measures that affect the free flow of some programming or film exhibitions. A summary of some of the more significant national practices follows.

*France*: France continues to apply the AVMSD and other content laws in order to promote local industry. France's implementing legislation, approved by the Commission in 1992, requires that 60 percent of television programming in France be of EU origin, thus exceeding the AVMSD threshold. In addition, 40 percent of the programming devoted to EU origin must include original French-language content. These quotas apply to both regular and prime-time programming slots, and the definition of prime time differs from network to network. The French Government issued an order in December 2020, and an additional six decrees in December 2021, transposing the AVMSD into French law.

Internet, cable, and satellite networks are permitted to broadcast as little as 50 percent EU content (the AVMSD minimum) and 30 percent to 35 percent French-language content, but channels and services are required to increase their investment in the production of French-language content. In addition, radio broadcast quotas require that 35 percent of songs on almost all French private and public radio stations be in French. The quota for radio stations specializing in cultural or language-based programing is 15 percent. A July 2016 regulation specifies that the top 10 most commonly played French-language songs on a station can make up only 50 percent of the station's quota. France's Audiovisual and Digital Communication Regulatory Authority oversees implementation of the quotas.

Beyond broadcasting quotas, cinemas must reserve five weeks per quarter for the exhibition of French feature films. This requirement is reduced to four weeks per quarter for theaters that include a French short subject film during six weeks of the preceding quarter. Operators of multiplexes may not screen any one film in such a way as to account for more than 30 percent of the multiplex's weekly shows.

*Poland*: Television broadcasters must dedicate at least 33 percent of their broadcasting time quarterly to programs originally produced in the Polish language, except for information services, advertisements, telemarketing, sports broadcasts, and television game shows. Radio broadcasters are obliged to dedicate 33 percent of their broadcasting time each month and at least 60 percent of broadcasting time between 5:00 a.m. and midnight to programming in Polish. Television broadcasters must dedicate at least 50 percent of their broadcasting time quarterly to programs of EU origin, except for information services, advertisements, telemarketing, sports broadcasts, and television game shows. Television broadcasters must devote at least 10 percent of their broadcasting time to programs by EU independent producers, and compliance is reviewed every three months. On-demand audiovisual media services providers also must promote content of EU origin, especially content originally produced in Polish, and dedicate at least 20 percent of their catalog to EU content. In addition, Poland's Broadcasting Law stipulates that a television broadcasting company may only receive a license if the voting share of non-European owners does not exceed 49 percent and if the majority of the members of the management and supervisory boards are Polish citizens and hold permanent residence in Poland. One private television broadcaster with significant foreign ownership has faced legal uncertainty and delays in renewing broadcasting licenses for its channels. In April 2022, a Polish regional court found the excessive delays in renewing licenses for two channels owned by this broadcaster were a serious infringement of the law.

In December 2022, the Polish Parliament proposed a new Electronic Communications Law that would include changes to "must carry, must offer" requirements that apply to paid television distributors. The proposed rules specify that five of the state-funded national broadcaster's channels are required to be carried by statute as the first five channels, with the National Broadcasting Council empowered to decide on a list of up to thirty other channels which must be offered to television subscribers. The law has not yet been passed and faces opposition by industry, which prefers to keep with the status quo of seven "must carry, must offer" channels with distributors deciding on the assignment of channel numbers.

*Spain*: For every three days that a film from a non-EU country is screened, one EU film must be shown. This ratio is reduced to every four days if the cinema screens a film in an official language of Spain other than Spanish and keeps showing the film in that language throughout the day. In addition, broadcasters and providers of other audiovisual media services annually must invest 5 percent of their revenues in the production of EU and Spanish films and audiovisual programs, and 60 percent of this allocation should be directed towards productions in any of Spain's official languages. This also applies to digital terrestrial television.

In June 2022, the Generalitat de Catalunya published a preliminary draft law on Audiovisual Communications that would deviate from the AVMSD country-of-origin principle and impose quotas related to the Catalan language and the Aranese dialect.

In 2015, the Spanish Government awarded six digital terrestrial television broadcasting licenses through a public tender process. U.S. investors were unable to participate directly in this tender process due to restrictions on foreign ownership. U.S. companies have complained about lack of reciprocity in their efforts to purchase portions of Spanish broadcasting companies. The United States continues to engage on these issues with the Spanish Government.

**Legal Services**

Austria, Belgium, Bulgaria, Croatia, Cyprus, Greece, Hungary, Latvia, Lithuania, and Malta require EU or EEA nationality or citizenship for full admission to the bar, which is necessary for the practice of EU and Member State law. In many cases, non-EU lawyers holding authorization to practice law in one Member

State face more burdensome procedures to obtain authorization in another Member State than would a similarly situated lawyer holding EU citizenship.

**Accounting and Auditing Services**

The Commission has taken the position that its directive on statutory auditing prohibits Member States from considering professional experience of foreign auditors acquired outside of the EU when considering whether to grant statutory auditing rights. The United States will continue to advocate for Member States to take into account the experience of U.S. certified public accountants acquired outside of the EU.

**Retailing Services**

*Member State Measures*

EU nationality is required for operation of a pharmacy in Greece and Hungary.

*Romania*: In July 2016, Romania passed a law requiring large supermarkets to source at least 51 percent of the total volume of their merchandise in meat, eggs, fruits, vegetables, honey, dairy products, and baked goods from the local supply chain. This law applies to high-volume supermarkets with more than €2 million (approximately $2.3 million) in annual sales, affecting all major chains.

## BARRIERS TO DIGITAL TRADE

**Data Localization Requirements**

The GDPR restricts the transfer of the personal data of EU "data subjects" (any natural person whose personal data is being processed) outside of the EU, except to specific countries that the EU has determined provide adequate data protection under EU law or when other specific requirements are met, such as the use of standard contractual clauses or binding corporate rules. Restrictions on the flow of data have a significant effect on the conditions for enabling the functionality embedded in smart devices. Because of the EU's assertion of extraterritorial jurisdiction for the GDPR, as well as the GDPR's broad impact on many areas of the economy, U.S. companies have expressed concerns that there remains a need for clear and consistent guidance in the implementation and enforcement of the GDPR.

In July 2016, the Commission deemed the EUU.S. Privacy Shield Framework adequate to enable data transfers from the EU to the United States. In July 2020, however, the CJEU issued a judgment in the *Schrems II* litigation that invalidated the Commission's adequacy determination.

On March 25, 2022, the United States and EU announced that they have agreed in principle on a new Data Privacy Framework, which is designed to provide a new mechanism to comply with EU data protection requirements for the transfer of personal data from the EU. On October 7, 2022, the U.S. President signed the Executive Order on Enhancing Safeguards for United States Signals Intelligence Activities, which directs relevant federal agencies to implement the U.S. commitments under the Data Privacy Framework. The steps taken by federal agencies under the Order provide the Commission with a basis to adopt a new adequacy determination for the Data Privacy Framework, which will restore an important, accessible, and affordable data transfer mechanism under EU law. It will also provide greater legal certainty for companies using standard contractual clauses and binding corporate rules to transfer EU personal data to the United States.

**Interactive Computer Services**

*Digital Services Act*

The Digital Services Act (DSA) was published in the Official Journal of the European Union on October 19, 2022, and went into effect on November 16, 2022. The DSA provides the Member States and the Commission with the authority to impose fines not exceeding six percent of the total annual turnover of an intermediary service provider. The DSA also provides the Commission with the power to adopt "delegated acts" for portions of the DSA, granting the Commission expansive authority to adopt additional regulation.

The DSA also provides the Commission with new authority to regulate the business practices of certain large digital services suppliers. The DSA defines a "Very Large Online Platform" (VLOP) as any online platform with "average monthly active recipients of the service" in the EU equal to or higher than 45 million (this number will be adjusted by the EU in the future to ensure it corresponds to 10 percent of the EU population). Platforms were required to report this information to the Commission by February 17, 2023. The DSA also requires VLOPs to address "systemic risks" present in their services. It defines systemic risks as the dissemination of illegal content, any negative effects for the exercise of certain fundamental rights, and intentional manipulation of the service. The VLOP will have to consider how its content moderation systems, recommendation systems, and systems for displaying advertisements, influence these risks and enact mitigation measures for any systemic risks. Once a platform is designated as a VLOP by the Commission, the platform has four months to come into compliance with its obligations under the DSA. Other platforms that are not designated as VLOPs have until February 17, 2024, to come into compliance with the DSA.

*Digital Markets Act*

The Digital Markets Act (DMA) was published in the Official Journal of the European Union on October 12, 2022, and went into effect on November 1, 2022. The DMA will enter into force on May 2, 2023. The DMA provides the Commission with new authority to regulate the business practices of certain large digital services suppliers. The DMA authorizes the Commission to impose fines not exceeding 10 percent of the total annual turnover of a covered intermediary service provider, and provides the Commission with the power to adopt "delegated acts" for portions of the DMA, thereby granting the Commission expansive authority to adopt additional regulation.

The DMA applies to "core platform services," which includes a broad swath of existing digital services, including online intermediation services, online search engines, online social networking services, video-sharing platform services, number-independent interpersonal communications services, operating systems, cloud computing services, and advertising services (including networks, exchanges, and any other advertising intermediation services). The DMA provides the Commission with authority to add new services to the list of "core platform services." While the Commission has broad authority to determine that any provider of one or more core platforms services is a "gatekeeper," and is therefore subject to the DMA's requirements, the DMA sets out that the Commission should designate as a "gatekeeper" any provider that: (1) provides a core platform services in at least three Member States and has an annual EEA turnover of €6.5 billion (approximately $7.7 billion) or more over the previous three years, or an average market capitalization of at least €65 billion (approximately $78 million); and, (2) has had, for each of the last three financial years, 45 million monthly active end users established or located in the EU and more than 10,000 yearly active business users established in the EU. A company that meets the criteria to be designated a gatekeeper under the DMA has an additional two-month period in which to notify the Commission that it believes that it is a gatekeeper. Following that notification, the Commission has 45 working days to decide on the company's gatekeeper designation.

Once a provider has been designated as a gatekeeper, the provider will have six months to come into compliance with a number of obligations set out in Articles 5 and 6 of the proposed DMA. The DMA gives the Commission broad authority to conduct market investigations to determine whether to designate a provider as a gatekeeper and whether a gatekeeper is in full compliance with obligations under the DMA. If the Commission determines that a gatekeeper has "systemically infringed" obligations in Articles 5 and 6 of the proposed DMA and has "further strengthened or extended its gatekeeper position," the Commission may impose "any behavioral or structural remedies" that are proportionate to the infringement.

*Data Act*

The Commission proposed the Data Act on February 23, 2022, which applies to the transfer or "sharing" of business-to-business, business-to-consumer, and business to-government non-personal data that is stored within industrial applications (*e.g.*, robots, wind farms) and smart devices (*e.g.*, smart TVs, connected cars). The Data Act would regulate the rights of users (in many cases meaning the generators of such data, like the users of smart TVs or drivers of connected cars) to access data that these connected machines or devices generate. The Data Act would also mandate certain sharing of this data with third parties, including researchers, public sector bodies, and other private companies.

The United States is following with interest the Commission's proposed Data Act. As of December 31, 2022, the proposed Act was still working its way through the EU legislative process.

*Artificial Intelligence Act*

On April 21, 2021, the Commission proposed the EU Artificial Intelligence (AI) Act. The proposed legislation would employ a risk-based approach to regulating AI systems, and applies differentiated obligations to various actors, in an effort to include the AI systems' manufacturers, importers, and users. The AI Act's various regulatory requirements may impact AI exports from the United States to the EU. The AI Act could apply to such services as machine learning programs, translations programs, speech to text conversion, or forecasting and optimization programs. As of December 31, 2022, the legislation was still working its way through the EU legislative process. Negotiations between the European Parliament, the Council, and the Commission to finalize the text of the of the AI Act are expected to begin during the first half of 2023.

**Digital Services Taxation**

The United States and EU Member States are among the 137 member jurisdictions to have joined the October 8, 2021, OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy, which called for all Parties to commit not to introduce DSTs in the future. On October 21, 2021, the United States, Austria, France, Italy, Spain, and the United Kingdom (UK) issued a joint statement that describes a political compromise reached among these countries "on a transitional approach to existing Unilateral Measures while implementing Pillar 1." According to the joint statement, digital services tax (DST) liability that accrues to Austria, France, Italy, Spain, and the UK during a transitional period prior to implementation of Pillar 1 will be creditable in defined circumstances against future corporate income tax liability due under Pillar 1. In return, the United States terminated the existing Section 301 trade actions on goods of Austria, France, Italy, Spain, and the UK and committed not to take further trade actions against these countries with respect to their existing DSTs, provided that the country follows through on the agreement described in the joint statement, until the earlier of the date the Pillar 1 multilateral convention comes into force or December 31, 2023. USTR, in coordination with the U.S. Department of the Treasury,

is monitoring the implementation of the political agreement on the OECD/G20 Two-Pillar Solution as pertaining to DSTs, the commitments under the joint statement, and associated measures.

**Network Usage Fees**

The Commission launched consultations on EU telecommunications infrastructure on February 23, 2023. On May 2, 2022, the European Telecommunications Network Operators Association (ETNO) released a report urging the Commission to adopt new regulation that would require large Internet-enabled service suppliers to pay network usage fees to European telecommunications network operators in order to deliver traffic to their networks. ETNO contends that new legislation is needed to address the "asymmetric bargaining power favoring big tech." Further, the Commission could impose a system of arbitration to determine the network usage fees to be paid to its members by large Internet services firms.

The European Commission Executive Vice President for a Europe fit for Digital Age and Internal Market Commissioner have both expressed some support for ETNO's concerns and have indicated that they want to examine how content providers could help finance telecommunications infrastructure. However, a number of other stakeholders, including some EU Member States, have raised concerns with the ETNO proposal. On October 7, 2002, the Body of European Regulators for Electronic Communications (BEREC) adopted a report that concluded the ETNO proposal was unnecessary and "could be of significant harm to the Internet ecosystem."

## INVESTMENT BARRIERS

With few exceptions, EU law generally requires that any company established under the law of one Member State must receive national treatment in all other Member States, regardless of the company's ultimate ownership. Laws and regulations pertaining to the initial entry of foreign investors, however, are largely still the purview of individual Member States. As discussed below, the policies and practices of Member States can have a significant impact on U.S. investment.

*Member State Measures*

*Bulgaria*: The Offshore Company Act lists 28 activities that are prohibited for companies registered in offshore jurisdictions with more than 10 percent offshore participation, including government procurement, natural resource exploitation, national park management, banking, and insurance. The law, however, allows offshore companies to conduct such activities if the physical owners of the parent company are Bulgarian citizens and known to the public, if the parent company's stock is publicly traded, or if the parent company is a media publisher and has declared its physical owners in a prescribed manner. Some U.S. companies have reported that non-payment of contractual obligations by the Bulgarian government poses a deterrent to investment in Bulgaria.

*Croatia*: While Croatia generally affords foreign investors the same treatment as domestic investors, Croatian law restricts foreign ownership and control in certain sectors deemed strategic, such as inland waterways transport, maritime transport, rail transport, air to ground handling, freight-forwarding, publishing, ski instruction, and primary mandated healthcare.

*Cyprus*: Cypriot law imposes restrictions on the foreign ownership of real property and construction-related businesses. Non-EU residents may purchase no more than two independent housing units (apartments or houses) or one housing unit and a small shop or office. Exceptions are available for projects requiring larger plots of land, but are difficult to obtain and rarely granted. Only EU citizens have the right to register as construction contractors in Cyprus, and non-EU investors are not allowed to own a majority stake in a local construction company.

Non-EU entities are prohibited from investing in the production, transfer, and provision of electrical energy. Individual non-EU investors may not own more than 5 percent of a local television or radio station, and total non-EU ownership of a local TV or radio station is restricted to a maximum of 25 percent. The provision of healthcare services in Cyprus is also subject to certain investment restrictions, applying equally to all non-residents. Finally, the Central Bank of Cyprus's prior approval is necessary before any person or entity, whether Cypriot or foreign, can acquire more than 9.99 percent of a bank incorporated in Cyprus.

*Hungary*: In 2020, as part of the measures to offset the adverse economic consequences of the COVID-19 pandemic, the Hungarian Parliament passed a new law requiring the reporting of foreign investments to the government in strategic sectors, including transportation, healthcare, energy, tourism, defense, finance, and information technology. The Hungarian Government will grant approvals on the basis of the impact of the notified investment on the public interest, public safety, or public order, among other factors, but this process is separate from Hungary's national security-based investment screening mechanism, which was established in 2018. This legislation was to expire on December 31, 2022, but was extended in December 2021 without an expiration date.

*Italy*: U.S. companies have complained that unclear processes and lengthy delays have hindered their ability to apply for and obtain licenses for energy exploration and satellite services. Once licenses have been obtained, U.S. companies have faced legal and bureaucratic hurdles that have hindered their ability to get concessions.

*Latvia*: U.S. investors have reported that the judicial system in Latvia can present significant challenges, particularly in regard to insolvency proceedings that often take several years to resolve. There also have been reports of abuse by both insolvency administrators and bad-faith creditors who have used insolvency proceedings to seize control of assets and companies and to extract unwarranted settlements and fees. U.S. stakeholders also continue to voice similar concerns about civil cases.

In 2017, Latvia enacted amendments to its Law on Land Privatization in Rural Areas that, among other things, prohibit foreigners who do not possess a working knowledge of the Latvian language from purchasing agricultural land. In June 2020, the CJEU found that the law violated European law. Despite the CJEU decision, Latvia has taken no action to change the law.

*Poland*: U.S. investors report that the Polish tax system continues to be a problem because of its complexity, unpredictability, and generally short time periods between the announcement and entry into force of legislation.

Polish law limits non-EU citizens to 49 percent ownership of companies operating in air transport, radio and television broadcasting, and airport and seaport operations. In addition, the Polish Government has expressed a desire to increase the percentage of domestic ownership in some industries such as retail, which have large holdings by foreign companies, and has employed sectoral taxes and other measures to advance this aim.

*Portugal:* While Portugal generally affords foreign investors the same treatment as domestic investors, Portuguese law restricts foreign ownership of companies engaged in the production, transmission, and distribution of electricity; the production of gas; the pipeline transportation of fuels; wholesale services of electricity; retailing services of electricity and non-bottled gas; and, services incidental to electricity and natural gas distribution. Concessions in the electricity and gas sectors are assigned only to companies with their headquarters and effective management in Portugal.

*Slovenia*: Slovenia maintains certain limits on foreign ownership or control. Aircraft registration is only possible for aircraft owned by Slovenian or EU nationals or companies controlled by such entities. Slovenian law also forbids majority ownership by non-EU residents of a Slovenian-flagged maritime vessel unless the operator is a Slovenian or other EU national.

## SUBSIDIES

Various financial transactions and equity arrangements in the EU raise questions about the role of state funding in supporting or subsidizing private or quasi-private organizations, including in the manufacture of civil aircraft.

### Government Support for Airbus

In October 2019, after 15 years of litigation, the WTO authorized the United States to take $7.5 billion in trade countermeasures in the dispute against the EU, France, Germany, Spain, and the United Kingdom regarding their illegal subsidies for the Airbus consortium.

On June 15, 2021, the United States and the EU announced a cooperative framework to address the large civil aircraft disputes. The cooperative framework suspended each side's tariffs related to this dispute for five years. The United States and the EU also agreed to principles for government support in this sector, including their shared intent that any financing for the production or development of large civil aircraft be on market terms. The United States and EU further agreed to collaborate on jointly analyzing and addressing non-market practices of third countries that may harm our large civil aircraft industries.

Over many years, France, Germany, Spain, and, to a much lesser extent, Belgium, have provided subsidies to Airbus-affiliated national companies to aid in the development, production, and marketing of Airbus's large civil aircraft. These governments have financed from 33 percent to 100 percent of the development costs (launch aid) for all Airbus aircraft models. They have also provided other forms of support, including equity infusions, debt forgiveness, debt rollovers, marketing assistance, and research and development funding, and have applied political and economic pressure on purchasing governments. The cooperative framework affirms the EU's intent to provide future funding only on market terms.

In addition to these subsidies, the EU maintains aeronautics research programs that are driven significantly by a policy intended to enhance the international competitiveness of the EU civil aeronautics industry. EU Member State governments have spent hundreds of millions of euros to create infrastructure for Airbus programs.

The United States will monitor any government financing of Airbus closely.

## OTHER BARRIERS

*EU Imports of Hydrofluorocarbons*

The EU Fluorinated Greenhouse Gas Regulation (F-Gas Rule) places restrictions on the sale of certain refrigeration and air conditioning equipment, foams, and propellants that use fluorinated gases, with a view to reducing their environmental impact. In particular, the F-Gas Rule limits and, over time, progressively restricts the quantity of hydrofluorocarbons (HFCs) available for use in the EU using a quota system. The Commission has proposed an updated F-Gas Rule that is expected to go into force in 2025, presenting the possibility of additional restrictions relative to current 2030 targets. U.S. stakeholders have expressed concern that insufficient oversight and enforcement of the F-Gas Rule allows for widespread importation of HFCs that exceed, and otherwise are not accounted for under, the EU's quota system. These imports

negatively affect U.S. exporters of environmentally friendly alternative refrigerants and undermine stated EU F-Gas Rule environmental objectives. Additionally, U.S. stakeholders have expressed concerns that regulatory uncertainty resulting from differing approaches between the F-Gas Rule and REACH's forthcoming definition of Per- and polyfluoroalkyl substances (PFAS), which may include F-gases, could hinder important innovations that could help Europe reduce global greenhouse gas emissions and its dependence on Russian energy imports.

The United States and stakeholders are also concerned that HFCs are trafficked without the knowledge of customs officials, either hidden or falsely declared on customs forms, or they are imported unaccounted for when already integrated in equipment containing HFCs.

*EU Carbon Border Adjustment Mechanism*

The Commission in July 2021 presented a proposal for a Carbon Border Adjustment Mechanism (CBAM) regulation, which intends to protect EU firms that compete against firms in countries with weaker climate rules and to prevent the displacement of production or investment to such countries (*i.e.*, "carbon leakage"). The CBAM imposes a fee on embedded emissions of imports beginning in 2026, with the fee linked to the carbon price in the EU Emissions Trading System (ETS). Sectors initially covered would include cement, iron, steel, aluminum, fertilizer, electricity, and hydrogen. The United States is tracking the development of the EU CBAM proposal and has engaged with the Commission over the course of 2021 and 2022 in an effort to ensure that the CBAM will consider regulatory and other non-price mechanisms for reducing carbon emissions. Trilogue meetings begun in July 2022 and a provisional political agreement was reached between the European Council and Parliament in December 2022, which did not take non-pricing mechanisms into account. The Council and Parliament will have to formally adopt the final text in 2023. The CBAM will enter into force on October 1, 2023.

# GHANA

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

Ghana's average Most-Favored-Nation (MFN) applied tariff rate was 12.1 percent in 2021 (latest data available). Ghana's average MFN applied tariff rate was 15.8 percent for agricultural products and 11.5 percent for non-agricultural products in 2021 (latest data available). Ghana has bound 15.1 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 92.0 percent. Ghana has bound all agricultural tariffs in the WTO at an average rate of 96.6 percent, more than six times the average level of its MFN applied rates on agricultural goods. Nearly 99 percent of Ghana's tariffs on industrial goods are unbound at the WTO. Ghana has bound some selected agricultural goods, including milk and cream, eggs, tea, wheat, and oil cake at 15 percent. However, Ghana collects numerous duties and charges on imports in addition to the customs tariff.

Consistent with the Economic Community of West African States (ECOWAS) common external tariff (CET), Ghana applies five tariff bands: (1) zero percent duty on essential social goods (*e.g.*, medicine); (2) 5 percent duty on essential commodities, raw materials, and capital goods; (3) 10 percent duty on intermediate goods; (4) 20 percent duty on consumer goods; and, (5) 35 percent duty on certain goods that the Ghanaian Government elected to afford greater protection. The CET was slated to be fully harmonized by 2020, but, in practice, some ECOWAS Member States have maintained deviations from the CET beyond the January 1, 2020 deadline. Ghana is currently in the process of adopting the Harmonized Schedule 2022 changes to the CET tariff schedule.

*Taxes*

Imports are subject to a variety of fees and charges in addition to tariffs. Ghana's standard value-added tax (VAT) rate of 15 percent is applied to imports. Ghana is not currently imposing its 15 percent VAT on domestically assembled automobiles, although it is applying it to imports of automobiles. The Ghana Revenue Authority announced in April 2022 that, effective immediately, it will begin collecting the 15 percent VAT from non-resident companies or persons that conduct business transactions in Ghana via the electronic transmission of data over communications networks like the Internet. It will also apply a series of other charges to those transactions, with an effective tax rate of more than 22 percent. Like all ECOWAS countries, Ghana imposes a one percent ECOWAS levy on all goods originating from non-ECOWAS countries to finance the activities of the ECOWAS Commission and Community institutions. Ghana also imposes a 0.2 percent levy on imports from outside African Union (AU) Member States to fund its contribution to the AU.

Other duties and charges have proliferated in recent years. These taxes and charges can add significant costs for traders. Further, under the Ghana Export-Import Bank Act, 2017, Ghana imposes a 0.75 percent levy on all non-petroleum products imported in commercial quantities. Effective through 2024, Ghana imposes a special levy of two percent on all imports, except for machinery and equipment listed under Chapters 84 and 85 of the Harmonized Tariff System and some petroleum products and fertilizers.

Ghana imposes taxes on certain imported items such as rice, poultry, printed materials, and electricity—a 15 percent value-added tax, a 2.5 percent Ghana Education Trust Fund levy, a 2.5 percent National Health Insurance levy, and a 1.0 percent COVID-19 Health Recovery levy—but does not impose these taxes on

the same categories of domestically-produced goods. All four of these charges are imposed on most other imported items as well as their domestically-produced equivalents.

In April 2020, Ghana amended its customs law. The Customs (Amendment) Act, 2020 (Act 1014) increases the import duty on vehicles and parts from between 5 percent and 20 percent to 35 percent on some specified vehicles such as passenger cars, sport utility vehicles (SUVs), and light commercial vehicles. The increased import duty was scheduled to take effect in November 2020, but was delayed because of opposition by used vehicle importers. The local used vehicle importers association reportedly indicated in mid-2022 that the Government intended to implement the tariff increase by the end of 2022. Ghana reportedly is now proposing to apply the 35 percent tariff rate to vehicles that are under five years old, retaining the current lower tariffs on older vehicles. As of December 31, 2022, the government had yet to submit legislation to the Parliament with regard to the implementation, and the tariff increases have not gone into force. Ghana has not notified this tariff change to the WTO.

**Non-Tariff Barriers**

*Import Restrictions*

Ghana requires registration certificates for imports of food, cosmetics, pharmaceuticals, and agricultural goods. Since 2014, Ghana has banned the importation of tilapia and has limited the issuance of import permits for corn, poultry, and poultry products, although the government no longer enforces a domestic purchase requirement as a condition for import.

In 2018, the State Minister of Agriculture halted the issuance and renewal of poultry import permits for local traders in an effort to improve competitiveness and productivity in the domestic sector. The Ghanaian Government claims that traders import three to four times Ghana's annual consumption demand but has not provided supporting data. In 2019, the Ministry of Agriculture resumed the issuance and renewal of poultry import permits on an *ad hoc* basis, but the issuance and renewal application and approval processes lack transparency, leading to uncertainty for traders.

Under the Customs (Amendment) Act, 2020 (Act 1014), imports of vehicles older than 10 years will be prohibited. The government was reportedly planning to implement the ban by the end of 2022, but implementation appears to have been delayed.

Ghana announced a temporary ban on the importation of excavators to regulate their use in illegal mining, effective May 2019. Import exemptions are granted on an exceptional basis, but the issuance is often delayed.

*Foreign Exchanges Restrictions*

On November 17, 2022, the Bank of Ghana announced the temporary withdrawal of foreign exchange support for the importation of goods classified as "non-critical" or "non-essential." Affected goods include rice, poultry, vegetable oils, pasta, and fruit juice as well as ceramic tiles and toothpicks. This restriction is expected to remain in place until May 2023.

Ghana defends its action as part of efforts to ensure the country's foreign exchange reserves while encouraging domestic production and consumption of import substitutes; however, Ghana is far from self-sufficiency in poultry meat and rice production. This move may have unintended consequences on food security, especially as Ghanaians grappled with sharp increases in food prices in 2022. U.S. rice exports decreased from $3.9 million in 2021 to $194 thousand in 2022. U.S. poultry meat exports also decreased from $92.6 million in 2021 to $60 million in 2022.

*Customs Barriers and Trade Facilitation*

Ghanaian customs practices and port infrastructure continue to present major obstacles to trade. Officials have introduced risk-management approaches; however, the majority of imports are still subject to inspection on arrival. Anecdotal reports suggest between 60 percent and 80 percent of imports are still subject to physical inspection or scanning, causing delays. This is well beyond Ghana's announced goal of reducing inspections to roughly 10 percent of imports. Importers report erratic application of customs and other import regulations, lengthy clearance procedures, and corruption. The resulting delays can contribute to unnecessary demurrage charges and product deterioration, resulting in significant losses for importers of perishable goods. The short supply of foreign exchange in 2022 is affecting importers' ability to make timely payments on imports and clear out their shipments from the ports.

The Customs Division of the Ghana Revenue Authority (GRA) has taken on the inspection and valuation role once occupied by five licensed destination inspection companies. This has slightly reduced delays, although the high rate of physical inspections noted above remains an impediment. Ghana has launched several initiatives since 2017 to support online information and processing of trade transactions, including the development of a National Single Window. In September 2017, Ghana introduced electronic ("paperless") cargo clearance at ports to reduce clearance times. In June 2020, Ghana engaged a single service provider to replace the three vendors that had previously provided the single window trade facilitation system. The new Integrated Customs Management Systems (ICUMS) platform processes documents and payments through a single window that provides an end-to-end trade facilitation and automated customs operation and management service. The ICUMS fee is 0.75 percent of the Free On Board (FOB) value of imports. In addition, Ghana applies a one percent customs processing fee on all duty-free imports.

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

Although Ghana's Customs Act of 2015 (section 67) indicates that customs valuation should primarily be based on transaction value or the price actually paid or payable for goods imported into the country, in practice, the Ghana Revenue Authority reportedly often applies a benchmark to determine customs valuation for every imported product, or uses the higher of the benchmark or the transaction value. The Ghana Revenue Authority Customs Technical Services Bureau (CTSB), which was established in 2016, uses a customs valuation database including data from customs valuation databases of various tax authorities from other countries, such as India. The GRA CTSB subscribes to these data on an annual basis. Data from these entities, together with GRA's own data, are then used to determine the benchmark values. While there is a concern about under invoicing goods and under collecting duties, a system of risk management to assess transaction value trends of imported goods can identify real under invoicing, without imposing potential inaccurate benchmarking on all goods.

Imported vehicles in Ghana are subject to a customs examination fee of one percent. Section 60 of the Customs Act of 2015 indicates that valuation for purposes of the tariff and other duties and charges should be based on the first purchase price, then discounted by fixed amount by age. In practice, to establish the customs value of imported vehicles, the GRA Customs Division uses a system of online vehicle identification number information and age-based value benchmarking for each vehicle. This system tends to overvalue used vehicles, in particular. Imported used vehicles more than 10 years old incur an additional charge ranging from 12.5 percent to 20.0 percent of the cost, insurance, and freight (CIF) value.

Ghana ratified the WTO Trade Facilitation Agreement (TFA) in January 2017. Ghana has not yet submitted notifications related to: import, export, and transit regulations. This notification was due to the WTO on July 22, 2022, according to Ghana's self-designated TFA implementation schedule.

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

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

The Ghana Standards Authority (GSA) develops Ghanaian national standards and adopts international standards for most products. The GSA has over 3,356 national standards on, *inter alia*, building materials, food and agricultural products, household products, electrical goods, and pharmaceuticals. Ghana has adopted 29 ECOWAS standards. The Ghanaian Food and Drugs Authority (FDA) is responsible for enforcing standards for food, drugs, cosmetics, and health items.

Ghana classifies some imports as "high risk goods" (HRG) that must be inspected to ensure they meet Ghanaian or international standards. Since January 2019, the GSA ceded its responsibility of verifying a certificate of analysis or a certificate of conformance at Ghanaian ports to Bureau Veritas and Intertek. Under a new process called the EasyPASS Program, either Bureau Veritas or Intertek, after satisfactory verification, issues an EasyPASS Certificate (certificate of conformity), which is used to facilitate customs clearance. While exporters pay fees ranging from 0.35 percent to 0.50 percent of FOB to Bureau Veritas or Intertek, importers in Ghana are required to register with the GSA and pay an annual registration fee, ranging from $20 to $4,000, depending on the type of products they import. Upon arrival of goods at a port in Ghana, the GSA checks the validity of the EasyPASS Certificate before releasing a consignment for clearance.

The GSA classifies these HRGs into 11 broad groups (reduced from 20 in 2019 after ceding the inspection of food, cosmetics, pharmaceutical and household chemical products to the Ghanaian FDA), such as toys, sports equipment, electrical appliances, and chemical products. Stakeholders have found this classification system vague and confusing. According to GSA officials, they classify these imports as high risk because they pose "potential hazards," although that phrase remains undefined in law or regulation.

The GSA requires that all food products carry expiration and shelf-life dates. Expiration dates must extend at least to half the projected shelf life at the time the product reaches Ghana. Goods that do not have half of their shelf life remaining are seized at the port of entry and destroyed. The United States has questioned the requirement's legitimate objective given its inconsistency with the Codex Alimentarius Commission General Standard for Labeling of Pre-packaged Foods.

In August 2019, Ghana unveiled an Automotive Development Policy aimed at creating a domestic automotive industry as part of Ghana's industrialization plans. It is targeted at attracting automotive assembly manufacturers to invest in Ghana through tax incentives and other facilitation measures such as import incentives. The automotive policy could have a significant impact on U.S. exports. In 2022, the United States exported $186 million in new and used automobiles and vehicle parts to Ghana, representing 19.1 percent of U.S. total exports to Ghana.

In December 2019, Ghana also established new compulsory vehicle safety and emissions standards for both imported and locally produced vehicles. Ghana's standards were modeled broadly on the United Nations Regulations developed by the World Forum for Harmonization of Vehicle Regulations (1958 Agreement). The GSA noted in the issued standards that it would accept and publish other applicable standards not listed

as an amendment or revision after the establishment of their equivalence to the Ghana standards. Following U.S. advocacy with Ghana, the Ministry of Trade and Industry and the GSA incorporated amendments to include U.S. Federal Motor Vehicle Safety Standards self-certification and documentation from the U.S. Environmental Protection Agency. Effective January 2021, all vehicle importers are required to register with the GSA and present a motor vehicle emissions report, a road worthiness test report from an agency approved by the GSA, and a certificate of conformity. In the spring of 2022, Ghana notified to the WTO a new set of standards, a required vehicle safety inspection upon arrival, and other requirements specifically for used vehicles. As of December 31, 2022, Ghana had not published a list of the accredited bodies and vehicle dealerships for certification to these new requirements. Implementation of these standards has reportedly been delayed to mid-2023.

### Sanitary and Phytosanitary Barriers

Ghana prohibits the importation of meat with a fat content by weight greater than 25 percent for beef, 25 percent for pork, 15 percent for poultry, and 30 percent for mutton. Imported turkeys must have their oil glands removed. The United States continues to engage with Ghana on these import requirements, and to urge Ghana to follow science and risk-based approaches to these products.

## GOVERNMENT PROCUREMENT

U.S. suppliers of goods and services face difficulties accessing the Ghanaian procurement market. Some large public procurements are conducted with open tendering and allow the participation of foreign firms. However, despite recent government statements about reductions in single source procurements, single source procurements remain common. Guidelines that apply to current tenders open to international competitive bidding give a margin of preference of 7.5 percent to 20.0 percent to domestic suppliers of goods and services. In July 2020, the Ghanaian Government issued a directive to public institutions for preferential procurement of locally assembled vehicles. Notwithstanding the public procurement law, companies report that locally-funded contracts lack full transparency. Supplier or foreign government-subsidized financing arrangements appear in some cases to be a crucial factor in the award of government procurements. Allegations of corruption persist in the tender processes across ministries. The Ghanaian President fired the Chief Executive Officer (CEO) of Ghana's Public Procurement Authority in October 2020, following a 14-month investigation by the Commission for Human Rights and Administrative Justice into the CEO's conflicts of interest.

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

## INTELLECTUAL PROPERTY PROTECTION

Ghana has taken steps to update its intellectual property (IP) laws, including in the area of plant variety protection, and government officials periodically inspect import shipments and conduct raids on physical markets for counterfeit and pirated goods. However, concerns remain that IP enforcement activity is weak, and unreasonable delays in infringement proceedings discourage right holders from filing new claims in local courts.

## SERVICES BARRIERS

### Financial Services

The National Insurance Commission (NIC) imposes nationality requirements with respect to the board and senior management of locally incorporated insurance and reinsurance companies. At least two board

members must be Ghanaians and either the Chairman of the board of directors or the Chief Executive Officer (CEO) must be Ghanaian. If the CEO is not Ghanaian, the NIC requires that the Chief Financial Officer be Ghanaian. The NIC only permits the cross-border supply of reinsurance services after local options are exhausted.

The Payment Systems and Services Act, 2019 (Act 987) includes several requirements for payment service companies, including that each company: (1) must have "at least 30 percent equity participation of a Ghanaian company or person"; (2) must maintain an undefined and nontransparent amount of minimum capital within Ghana, leaving potential investors subject to uncertain terms; and, (3) must maintain a board of directors (five-person minimum) with at least three members residing in Ghana.

## INVESTMENT BARRIERS

Ghana's investment code excludes foreign investors from participating in eight economic sectors: petty trading; operation of taxi and automobile rental services with fleets of fewer than 25 vehicles; lotteries; operation of beauty salons and barber shops; printing of recharge scratch cards for subscribers to telecommunications services; production of exercise books and stationery; retail of finished pharmaceutical products; and, production, supply, and retail of drinking water in sealed pouches. Sectors where foreign investors are allowed limited market access include telecommunications, banking, fishing, mining, petroleum, and real estate.

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

### Mining

Ghana restricts the issuance of mining licenses based on the size of the mining operation. Pursuant to the Minerals and Mining Act, 2006 (Act 703), foreign investors are restricted from obtaining a small-scale mining license for mining operations of an area less than or equal to 25 acres (10 hectares). Non-Ghanaians may apply for a mineral right for industrial minerals only for projects involving an investment of at least $10 million.

The Minerals and Mining Act mandates compulsory local participation, whereby the government acquires a 10 percent equity stake in ventures at no cost. In order to qualify for a license, a non-Ghanaian company must be registered in Ghana, either as a branch office or a subsidiary incorporated under the Companies Act, 2019 (Act 992) or the Private Partnership Act, 2020 (Act 1039).

### Oil and Gas

The oil and gas sector is subject to a variety of state ownership and local content requirements. The 2016 Petroleum (Exploration and Production) Act mandates local participation. All entities seeking petroleum exploration and development licenses in Ghana must create a consortium in which the state-owned Ghana National Petroleum Corporation holds a minimum 15 percent participating carried interest, and a local Ghanaian firm or individual holds a minimum 5 percent interest. The interest of the local Ghanaian firm is not transferable to the non-indigenous Ghanaian company. The Petroleum Commission issues all licenses, but Parliament must approve all exploration licenses. Further, local content regulations specify in-country sourcing requirements with respect to goods, services, hiring, and training associated with petroleum operations—standards that many international companies describe as unattainable. These regulations also require mandatory local equity participation for all suppliers and contractors. The Minister of Energy must

approve all contracts, subcontracts, and purchase orders above $100,000, and notably has the authority to alter the requirements set by law for any specific contract. The criteria for the Minister's approval of local equity partners in commercial transactions remain unclear, which raises concerns of potential corruption and favoritism in the selection of local equity partners in government-approved concessions or contracts. Non-compliance with these regulations may result in a criminal penalty, including imprisonment for up to five years.

The Petroleum Commission applies registration fees and annual renewal fees on foreign oil and gas service providers, which, depending on a company's annual revenue, range from $70,000 to $150,000, compared to fees of from $5,000 to $30,000 for local companies.

**Local Content and Participation Requirements**

*Power Sector*

In 2017, Ghana introduced regulations requiring local content and local participation in the power sector. The Energy Commission (Local Content and Local Participation) (Electricity Supply Industry) Regulations, 2017 (L.I. 2354) specify minimum initial levels of local participation and ownership and 10-year targets.

The regulations also specify minimum and target levels of local content in engineering and procurement, construction works, post construction works, services, management, operations, and staff. All persons engaged in or planning to engage in the supply of electricity are required to register with the Electricity Supply Local Content and Local Participation Committee and satisfy the minimum local content and participation requirements within five years. Failure to comply with the requirements could result in a fine or imprisonment.

*Mining Sector*

There are specific provisions in Ghana's mining regulations that require mining entities to procure goods and services from local sources. The Minerals Commission publishes a Local Procurement List, which identifies items that must be sourced from Ghanaian-owned companies whose directors must all be Ghanaians. Under the Classification of New Services Under the Minerals and Mining (Support Services) Regulations, 2012 (L.I. 2174), only Ghanaian companies can provide Class B mining support services which include catering, camp management, and security services. All mine support services, providers, license holders, and dealers are expected to comply with this mandate. Non-Ghanaians are not permitted to enter into new contracts for the provision of such services with other mineral rights holders. Provision of even basic, occasional services by a foreign entity requires registration and establishment as a domestic company within Ghana.

Legislative Instrument 2431 (2020) on Minerals and Mining (Local Content and Local Participation) requires license holders to create a localization program for recruitment and training of Ghanaians and imposes quota limits on expatriate hires. It also establishes target levels and requirements for the procurement of local goods such as explosives, electrical cables, cement, and services that support the mining industry (including R&D, technical and engineering services, insurance, accounting, legal, and financial services as well as security, transport, fuel provision, etc.). License holders can only subcontract to surface drilling operators with full ownership and management by Ghanaians and subcontract to underground drilling operators with at least 30 percent ownership and management by Ghanaians. Finally, license holders can be required to list at least 20 percent of their equity on the Ghana Stock Exchange.

## OTHER BARRIERS

### Export Ban

Since 2013, Ghana's Ferrous Scrap Metals (Prohibition of Export) Regulations have banned the exportation of ferrous scrap metals.

In 2021, the government placed a temporary ban on the export of rice, corn and soybean that was expected to expire on September 30, 2022; however, as of December 31, 2022, no announcement had been made. Reliable information indicates that, though an extension to the temporary ban will not be announced by the government because of improved supply of the commodities in the current harvesting season, export permits will still be used to restrict the volume of exports.

# GUATEMALA

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

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

In addition, nearly all U.S. agricultural exports enter Guatemala duty free under the CAFTA–DR. Guatemala eliminated its remaining tariffs on rice on January 1, 2023 and is scheduled to eliminate tariffs on dairy products by 2025. In 2017, Guatemala eliminated its out-of-quota tariff for fresh, frozen, and chilled chicken leg quarters five years early. For certain agricultural products, tariff-rate quotas (TRQs) permit duty-free access for specified quantities during the tariff phase-out period, with the duty-free quantities expanding during that period. Guatemala will liberalize trade in white corn through continual expansion of a TRQ, rather than the reduction of the out-of-quota tariff. Guatemala is required under the CAFTA–DR to make TRQs available on January 1 of each year. Guatemala monitors its TRQs through an import licensing system, which the United States carefully tracks to ensure the timely issuance of these permits.

***Taxes***

Guatemalan tax law requires that some companies that purchase goods and services from other companies withhold 15 percent of the value-added tax (VAT) paid, and seek refunds for the VAT credit that they cannot offset after two years. This process is onerous, and timely refunds are not guaranteed.

### Non-Tariff Barriers

*Customs Barriers and Trade Facilitation*

U.S. companies have raised concerns that Guatemala's Tax Authority (SAT) uses an inaccurate reference price database to determine the value of imported goods, erroneously applies database values as minimums rather than as a reference, and compares imports to dissimilar products in the database. Further, when SAT performs investigations of declared values, the review process often results in the detention of the imported product for 20 or more days. Appeals involve a lengthy, opaque process that has lasted up to four years.

In 2022, the U.S. Government engaged with the Guatemalan Government to help introduce an automated system to provide more transparency and help clear shipments more quickly on bond.

Guatemala ratified the WTO Trade Facilitation Agreement (TFA) on March 8, 2017. Guatemala is overdue submitting one transparency notification related to providing contact information regarding enquiry points. This notification was due to the World Trade Organization on February 1, 2020, according to Guatemala's self-designated TFA implementation schedule.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

Guatemala requires product registration for food products (*e.g.*, dairy products) from every importer, as well as for animal feed and pet food. Importers are required to submit necessary documents to the Ministry of Public Health and Social Assistance (MSPAS) and receive approval before products are sold into the market, even if another importer has already registered that product. Industry has raised concerns that the process is burdensome and can delay the importation process by months. In addition, processed meat products require import permits from both MSPAS and the Ministry of Agriculture, Livestock, and Feed (MAGA).

### Sanitary and Phytosanitary Barriers

In response to a U.S. Government request for more transparent quarantine protocols at ports, in 2021 MAGA published Ministerial Decree 57-2021, which establishes official quarantine protocols for plant and animal health. In addition, in response to industry complaints that quarantine inspections break the cold chain, the Intraregional Organization for Plant and Animal Health (OIRSA), to which MAGA delegates quarantine inspection and fumigation services, now conducts inspections within refrigerated spaces at Quetzal Port. OIRSA also authorized construction of a cold room within Santo Tomas Port, which is expected to become operational in 2023. OIRSA's continued inspection of all imported fresh produce causes delays and the U.S. Department of Agriculture has asked MAGA to establish a risk-based inspection system.

## GOVERNMENT PROCUREMENT

Government institutions are required to use the online government procurement system, GUATECOMPRAS, to track Government of Guatemala procurement processes since March 2004. While GUATECOMPRAS initially improved the efficiency and transparency of government tendering processes, U.S. and Guatemalan company representatives have expressed reluctance to bid on Guatemalan public procurement tenders (goods, services, or infrastructure) published on GUATECOMPRAS because they view Guatemala's public procurement processes as designed to favor select, local companies with ties to government officials, municipal authorities, or congressional players. The Guatemalan congress is currently considering a new government procurement law that would create 24 different procurement modalities, of which only five modalities would appear to be competitive. The proposed reforms would also change GUATECOMPRAS to a system that could be used only as a record of historic information on government procurement. Experts have warned that the proposed reforms would weaken the use of GUATECOMPRAS as a transparency tool because each institution could arbitrarily decide what information to publish in the system for the non-competitive procurement modalities. The United States has engaged with Guatemala on these issues.

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

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

## INTELLECTUAL PROPERTY PROTECTION

Guatemala remained on the Watch List in the 2022 Special 301 Report. Although the country generally has a strong legal framework, and intellectual property (IP) protection appears to have improved slightly in 2022, concerns remain. IP enforcement activities remain limited and appear inadequate in relation to the scope of the problem due to resource constraints and poor coordination among law enforcement agencies. The production of counterfeit apparel with little interference or deterrence from law enforcement continues to be a significant concern. Other concerns include the sale of counterfeit pharmaceuticals and government use of unlicensed software. Major cable television providers and content distributors agreed in 2018 to not renew contracts to rebroadcast U.S. network signals due to signal piracy of U.S. broadcasted networks. However, cable signal piracy remains a problem and online piracy through Internet Protocol Television services is also a concern. The United States continues to urge Guatemala to ensure that its IP enforcement agencies receive sufficient resources and to strengthen enforcement, including with respect to criminal prosecution, administrative and border actions, and intergovernmental coordination to address widespread copyright piracy and commercial-scale sales of counterfeit goods. The United States will continue to engage Guatemala on these and other concerns, including through the Special 301 process, and will continue to monitor Guatemala's implementation of its IP obligations under the CAFTA–DR.

## SERVICES BARRIERS

### Professional Services

Foreign enterprises may provide licensed professional services in Guatemala only through a contract or other relationship with an enterprise established in Guatemala. Additionally, public notaries must be Guatemalan nationals.

## INVESTMENT BARRIERS

A number of U.S. companies operating in Guatemala complain that complex and unclear laws and regulations and inconsistent judicial decisions effectively operate as barriers to investment. Resolution of business and investment disputes through Guatemala's judicial system is extremely time consuming, and civil cases can take many years to resolve. In Guatemala, government executive and judicial branch representatives have taken arbitrary actions and well-connected parties have used judicial authorities against U.S. investors. For example, a U.S. investor reports it was subject to repeated intimidation and harassment by law enforcement. In another case, a U.S. company undergoing seven years of criminalized tax litigation has withheld $200 million in planned investments to expand its presence in Guatemala as a result, citing the lack of transparency and consistency in the legal system.

## SUBSIDIES

### Export Subsidies

The Law for the Promotion and Development of Export Activities and Drawback, as amended in 2016 to replace an earlier tax incentive program, provides tax exemptions with a narrower scope, applying only to

apparel and textile companies, as well as to information and communication technology service providers, such as call centers and business process outsourcing operations.

## LABOR

The U.S. labor enforcement case brought against Guatemala under Article 16.2.1(a) of the CAFTADR was formally concluded in 2017 with the issuance of the panel's final report. Nevertheless, labor concerns—including with respect to the right of association, the right to organize and bargain collectively, and acceptable conditions of work—persist in the port, agriculture, apparel, and agricultural processing sectors.

## OTHER BARRIERS

### Bribery and Corruption

The CAFTA–DR contains public sector anti-bribery commitments and anticorruption measures in government contracting, designed to ensure that U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of government entities.

U.S. stakeholders have expressed concerns that corruption in Guatemala constrains successful investment. The Ministry of Governance in Guatemala, which is responsible for security at ports, airports, and land borders in Guatemala operates through three police task force units known as DIPAFRONT (Ports, Airports, and Land Border Division), SGAIA (Anti-narcotics Analysis General Sub direction), and UCC (Container Control Unit). These units started operations in the middle of the pandemic, independently from the other operating authorities at ports, such as the MAGA and Guatemala's Customs authority, which have memoranda of understanding to carry out joint inspection. In response to a U.S. Coast Guard requirement, 100 percent of Guatemalan exports to the United States need to pass inspection by at least one of the three units. The Government of Guatemala is also subjecting imports to inspections by these authorities, and importers complain that inspectors are afforded unchecked discretion about which shipments to inspect and that inspections are not integrated into existing inspection processes, resulting in additional delays at already busy ports. As DIPAFRONT, SGAIA, and UCC have their own independent inspection ramps, importers report corruption at multiple steps to avoid shipments being sent through the secondary ramp.

# HONDURAS

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs

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

In addition, nearly all U.S. agricultural exports enter Honduras duty free under the CAFTADR. Honduras eliminated its remaining tariffs on rice and chicken leg quarters on January 1, 2023, and is scheduled to eliminate its remaining tariffs on dairy products by 2025. For certain agricultural products, tariff-rate quotas (TRQs) permit duty-free access for specified quantities during the tariff phase-out period, with the duty-free quantities expanding during that period. Honduras will liberalize trade in white corn through continual expansion of a TRQ, rather than by the reduction of the out-of-quota tariff. Honduras is required under the CAFTA–DR to make TRQs available on January 1 of each year. Honduras monitors its TRQs through an import licensing system, which the United States carefully tracks to ensure the timely issuance of these permits.

### Non-Tariff Barriers

*Discriminatory Tax*

Honduran Customs imposes a 15 percent sales tax on pork rib imports when the product description is in English. However, if the product description is in Spanish, based on Decree 05-2014, the pork ribs are considered basic necessities and are exempt from sales tax. The U.S. Government has asked the Ministry of Finance to revise Decree 05-2014 to treat pork cuts labelled in English the same as those labelled in Spanish.

*Local Content Requirements*

In June 2018 and June 2019, pork importers were required to purchase a quantity of Honduran live hogs from local producers at a price established by the Hog Producers Association. The established price per pound for live hogs was higher than the price of imported pork meat. Importers forced to purchase Honduran live hogs also faced costs for slaughtering and processing—costs they did not face in connection with imported pork meat. The quantity of live hogs that each importer had to purchase was based on the volume of pork that the importer brought into Honduras.

In 2020, approximately 80 percent of the hog farms in Honduras were lost due to hurricanes Eta and Iota, and domestic pork production could not meet domestic demand in 2020 or 2021. In 2022, after agreement between the Honduran producers and pork importers, the mandatory bilateral purchase agreement between producers and importers was lifted**.**

## SANITARY AND PHYTOSANITARY BARRIERS

### Sanitary Authorization for the Import of Raw Materials and Additives for Food and Beverage Production

On November 3, 2020, the Sanitary Regulation Agency (ARSA) implemented a new import requirement called the Sanitary Authorization for the Import of Raw Materials and Additives for Food and Beverage Production. This import requirement is redundant with the existing import permit mandated by the National Plant, Animal Health and Food Safety Service (SENASA) for cuts of meat that match ARSA's definition of raw materials for food consumption. Honduras notified this regulatory requirement to the World Trade Organization in April 2019. The U.S. Government continues to engage with ARSA to facilitate trade.

## INTELLECTUAL PROPERTY PROTECTION

The United States continues to have significant concerns regarding intellectual property (IP) protection and enforcement in Honduras, including with respect to online and software piracy, cable signal piracy, and the distribution and sale of counterfeit and pirated goods. The United States will continue to urge Honduras to fully enforce its IP laws. Additionally, the United States continues to urge Honduras to provide greater clarity regarding the scope of protection for geographical indications (GIs), particularly ensuring that all producers are able to use common food names, including any that are elements of a compound GI. The United States continues to monitor Honduras's implementation of its IP obligations under the CAFTA–DR.

## SERVICES BARRIERS

### Distribution Services

U.S. firms have reported challenges working with local distributors of products from the United States. Citing the 1977 Honduran Law on Agents, Distributors and Representatives of Domestic and Foreign Companies (Decree Law No. 549), Honduras has required foreign firms to enter into agreements with local distributors to supply local markets, and allowed distributors to register as the sole distributor of certain products or brands, which has at times resulted in U.S. exports being barred from import. The application of certain requirements under Decree Law No. 549 that restricted the ability of U.S. producers to distribute U.S. products in Honduras had been eliminated with the entry into force of the CAFTADR. However, U.S. firms raised concerns during 2022, under the CAFTADR, with certain restrictions being applied to U.S. exports.

## INVESTMENT BARRIERS

Honduran law places certain restrictions on foreign ownership of land within 40 kilometers of the country's coastlines and national boundaries. However, the law allows foreigners to purchase properties, with some acreage restrictions, in designated zones established by the Ministry of Tourism in order to construct permanent or vacation homes. Inadequate land title procedures have led to investment disputes, including complaints of fraud and official malfeasance, harming U.S. nationals who are landowners in Honduras.

## SUBSIDIES

Honduras currently provides tax exemptions to firms in free trade zones, and employs the following export incentive programs: Free Trade Zone of Puerto Cortes, Export Processing Zones, and Temporary Import Regime, providing a competitive advantage to qualifying companies.

## LABOR

The United States and Honduras continue to meet through their contact points, under Article 16.4.3 of the CAFTA–DR. This engagement includes reviewing Honduras' progress toward implementing specific recommendations from the United States that resulted from a U.S. Department of Labor (DOL) report and the United States–Honduras Labor Rights Monitoring and Action Plan. The DOL's report, published in 2015 in response to a submission from the public under the CAFTA–DR, raised significant concerns regarding labor law enforcement in Honduras, especially with respect to the right to freedom of association, the right to organize and bargain collectively, the minimum age for work and the worst forms of child labor, and acceptable conditions of work in various economic sectors, including apparel, automotive parts, and agriculture.

# HONG KONG

Hong Kong, China (Hong Kong) is a separate customs territory from mainland China, and the Hong Kong Basic Law states that Hong Kong can enter into international agreements in commercial, economic, and certain other matters. Hong Kong is a separate and founding Member of both the World Trade Organization and the Asia-Pacific Economic Cooperation forum.

On June 30, 2020, the Chinese Government in Beijing imposed a National Security Law (NSL) on Hong Kong. Among other provisions, Article 31 of the NSL stipulates that an incorporated or unincorporated body, which may include domestic corporations, international businesses, international non-governmental organizations, and media outlets, can be prosecuted for violating the NSL.

On July 14, 2020, following imposition of the NSL, as well as other actions taken by Beijing to undermine Hong Kong's autonomy, the U.S. President issued Executive Order 13936, reflecting a presidential determination that Hong Kong is no longer sufficiently autonomous to justify differential treatment in relation to China under the particular laws set out in the Executive Order, and that the situation with respect to Hong Kong constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. Accordingly, Executive Order 13936 directed U.S. Government agencies to suspend or eliminate certain policy exemptions under U.S. law that had given Hong Kong differential treatment in relation to China.

## INTELLECTUAL PROPERTY PROTECTION

Hong Kong generally provides strong intellectual property (IP) protection and enforcement, and for the most part, has strong IP laws in place. In June 2020, Hong Kong passed a Trade Marks Ordinance that will enable application of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks in Hong Kong. Implementation of an international trademark registration system is expected in 2023, at the earliest. Hong Kong also has a dedicated and effective enforcement capacity, a judicial system that supports enforcement efforts with deterrent fines and criminal sentences, and youth education programs that discourage IP-infringing activities.

Hong Kong's failure to modernize its copyright system has allowed it to become vulnerable to digital copyright piracy, particularly from streaming websites and illicit streaming devices, with negative ramifications for businesses and innovators. In 2011 and 2014, Hong Kong's Commerce and Economic Development Bureau (CEDB), the government entity in charge of IP policy, tried but failed to pass updated copyright legislation. In November 2021, CEDB reintroduced the 2014 Copyright Bill for a three-month public consultation period. Subsequently, Hong Kong published the draft bill in the government gazette in May 2022 and adopted the final Copyright (Amendment) Ordinance 2022 through publication in the gazette in December 2022, to come into operation on May 1, 2023. However, right holders are concerned that the new legislation does not introduce specific provisions to combat illicit streaming devices.

The Customs and Excise Department of Hong Kong investigates IP crimes and routinely seizes IP-infringing products arriving from mainland China and elsewhere. However, U.S. Government officials and private sector stakeholders report that counterfeit pharmaceuticals, luxury goods, and other infringing products continue to enter Hong Kong. These products are typically destined for both the Hong Kong market and markets outside of Hong Kong.

# INDIA

## TRADE AGREEMENTS

### The United States–India Trade Policy Forum

The United States and India launched the Trade Policy Forum (TPF) in July 2005 and signed an agreement in March 2010 that formally established the TPF as the primary mechanism for discussions of trade and investment issues between the United States and India. The U.S. Trade Representative and the Indian Minister of Commerce and Industry met in Washington, DC for the thirteenth TPF Ministerial in January 2023.

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

India's average Most-Favored-Nation (MFN) applied tariff rate was 18.3 percent in 2021 (latest data available), which was the highest of any major world economy, with an average applied tariff rate of 14.9 percent for non-agricultural goods and 39.2 percent for agricultural goods.

India maintains high applied tariffs on a wide range of goods, including vegetable oils (as high as 45 percent); apples, corn, and motorcycles (50 percent); automobiles and flowers (60 percent); natural rubber (70 percent); coffee, raisins, and walnuts (100 percent); and, alcoholic beverages (150 percent). In addition, India maintains very high basic customs duties, in some cases exceeding 20 percent, on drug formulations, including life-saving drugs and finished medicines listed on the World Health Organization's list of essential medicines. High tariff rates also present a significant barrier to trade in other agricultural goods and processed foods (*e.g.*, poultry, potatoes, citrus, almonds, pecans, apples, grapes, canned peaches, chocolate, cookies, frozen french fries, and other prepared foods used in fast-food restaurants).

India's bound tariff rates on agricultural products are among the highest in the world, averaging 113.1 percent and ranging as high as 300.0 percent. Given the large disparity between World Trade Organization (WTO) bound and applied rates, India has considerable flexibility to change tariff rates at any time, creating tremendous uncertainty for U.S. exporters. The Government of India took advantage of this tariff flexibility in the 2019/2020 budget by increasing tariffs without any notice or public consultation process on approximately 70 product categories, including those covering key U.S. exports in the agricultural, information and communication technology, medical devices, paper products, chemicals, and automotive parts sectors. In its 2020/2021 budget, India further raised tariffs for 31 product categories, including cotton, palm oil, and denatured ethanol for select end-use, and raised duties on solar inverters and solar lanterns. In its 2021/2022 budget, India further raised tariff rates on imported headphones, loudspeakers, and smart meters used by power distribution companies.

In June 2019, following the U.S. withdrawal of India's preferential tariff benefits under the Generalized System of Preferences (GSP) program, India implemented retaliatory tariffs ranging from 1.7 percent to 20 percent on 28 different products imported from the United States, including almonds, apples, walnuts, chickpeas, lentils, phosphoric acid, boric acid, diagnostic regents, binders for foundry molds, select steel and aluminum products, and threaded nuts. While the decision to implement these tariffs followed the U.S. withdrawal of India's GSP benefits, India had originally announced the intention to adopt the tariffs in June 2018 in retaliation against the U.S. decision to implement tariffs on U.S. imports of steel and aluminum

products under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. § 1862). The United States continues to urge India to address the common problem of excess capacity in the global steel and aluminum sectors, rather than maintaining the retaliatory tariffs. In July 2019, the United States launched a WTO dispute settlement proceeding against India challenging the retaliatory tariffs. A WTO panel was established in October 2019; the panel proceedings are ongoing.

*Taxes*

Since 2018, India has applied a 10 percent social welfare surcharge on imports, which is assessed on the value of other duties rather than the customs value of the imported product. Certain products are exempted from the surcharge pursuant to official customs notifications. India routinely changes the surcharge on a range of agricultural products. A landing fee of one percent is included in the valuation of all imported products unless exempted through separate notification.

**Non-Tariff Barriers**

India maintains various forms of non-tariff barriers on three categories of products: banned or prohibited items which are denied entry into India (*e.g.*, tallow, fat, and oils of animal origin); restricted items that require an import license (*e.g.*, certain livestock products and certain chemicals); and, items such as pharmaceuticals and corn under a tariff-rate quota that are importable only by government trading monopolies and that are subject to cabinet approval regarding import timing and quantity of imports.

While the Directorate General of Foreign Trade (DGFT) under the Ministry of Commerce and Industry (MOCI) maintains a list of restricted items on its website, India often fails to observe other transparency requirements, such as publication in the Gazette of India of the timing and quantity of restrictions, and notification to relevant WTO committees.

*Import Restrictions*

To manage domestic oversupply, the Indian Government began imposing restrictions on imports of various pulses in 2017, based on local supply and demand conditions. On February 11, 2022, India issued a notification to restrict the import of mung beans. With the issuance of MOCI notification no. 63/2015-2020 on March 29, 2022, imports of pigeon peas and black gram lentils are on India's unrestricted list until March 31, 2023, and imports are allowed without any quantitative restrictions.

India applies restrictions on boric acid imports, including arbitrary import quantity approval restrictions and other requirements that only apply to imports. Long periods of time can pass without the issuance of any import licenses. In addition, the import application specifies that non-insecticidal boric acid can only be imported directly by a domestic manufacturer, which prevents independent traders from importing boric acid for resale purposes. Meanwhile, domestic producers continue to be able to sell boric acid for non-insecticidal use, subject only to a requirement to maintain records showing they are not selling to end users who will use the product as an insecticide. India has cited state-level court cases in Kerala and Gujarat endorsing the legal rationale for applying the restriction on boric acid imports.

*Import Licensing*

India distinguishes between goods that are new and those that are secondhand, remanufactured, refurbished, or reconditioned when assessing whether import licenses are required. India allows imports of secondhand capital goods by end users without an import license provided the goods have a residual life of at least five years. India requires import licenses for all remanufactured goods because India does not recognize that remanufactured goods have typically been restored to original working condition and meet the technical

and safety specifications applied to products made from new materials. Refurbished items must be no more than seven years old and have a remaining life span of at least five years. In addition, U.S. stakeholders have reported that obtaining an import license for remanufactured goods is onerous. Stakeholders noted excessive details are required in the license application, quantity limitations are set for specific parts, and long delays occur between application submission and the grant of a license. A Chartered Engineer's Certificate is also required to import both refurbished goods and used manufactured goods.

*Customs Barriers and Trade Facilitation*

India's tariff rates, in addition to being announced with the annual budget, are modified on an *ad hoc* basis through notifications in the Gazette of India and are subject to numerous exemptions that vary according to the product, user, intended use, or specific export promotion program. This renders India's customs system complex and open to administrative discretion.

U.S. exporters have raised concerns regarding India's application of customs valuation criteria to import transactions. Indian customs officials sometimes reject the declared transaction value of an import, especially if it is a product for which India maintains benchmark prices, potentially raising the cost of exports beyond what is expected given India's applied tariff rates. U.S. walnut exporters have raised concerns that Indian importers are under-invoicing certain imported products, disadvantaging U.S. trade. U.S. companies have also faced extensive investigations related to their use of certain valuation methodologies when importing computer equipment. Companies have reported being subject to excessive searches and seizures of imports.

India's customs authority generally requires extensive clearance documentation, which leads to frequent and lengthy processing delays. India's complex tariff structure—including the provision of multiple exemptions that vary according to product, user, or intended use—also creates uncertainty and contributes to delays in customs approvals.

*Medical Device Price Controls*

In February 2017, India's National Pharmaceutical Pricing Authority (NPPA) issued an order to cap prices of coronary stents. Subsequently, knee implants were brought under price control under paragraph 19 of the Drugs (Prices Control) Order 2013 (DPCO) in August 2017. In 2019, NPPA moved knee implants to price monitoring under paragraph 20 of the DPCO, allowing for a 10 percent price increase, but subsequently reinstated the price ceiling in 2020. U.S. companies have raised concerns noting that price controls for cardiac stents and knee implants do not differentiate on the basis of the cost of production or technological innovation, which dissuades U.S. companies from serving the market.

*Ethanol Import Restrictions*

Despite ambitious targets for blending ethanol with gasoline, India prohibits the importation of ethanol for fuel use. In addition, in 2018, the DGFT amended Schedule I (Import Policy) of the Indian Trade Classification (Harmonized System, HS) of Import Items, 2017 through Notification 27/2015-2020, and restricted biofuel imports (HS 2207.20, HS 2710.20, and HS 3826) for non-fuel use to actual users. As of May 2019, MOCI Notification 6/2015-2020 requires an import license for importing biofuels (HS 2207.20, HS 2710.20, and HS 3826). The 2019 regulation also required that Indian importers obtain an import license from DGFT to import ethanol for non-fuel purposes.

*Agriculture Subsidies*

India provides a broad range of assistance to its large agricultural sector, including credit subsidies, debt waivers, crop insurance, and subsidies for inputs (such as fertilizer, fuel, electricity, and seeds) at both the central government and state government levels. These subsidies, which are of substantial cost to the government, lower the cost of production for India's producers and have the potential to distort the market in which imported products compete. In addition, producers of 25 agricultural products benefit from the government's Minimum Support Price (MSP) program, which helps ensure that farmers receive minimum prices that are announced before the planting season. Rice and wheat account for the largest share of products procured by the MSP and are distributed through India's public distribution system. For example, in crop year 2020/2021, the Indian Government purchased 1.6 million metric tons (9.19 million 170 kg bales) of cotton through announced MSP operations at a cost of nearly $3.6 billion. India's announcement of MSPs can have the effect of providing a subsidy to the entire crop by distorting market prices and bolstering planting decisions, resulting in overproduction and limited demand for imports. In addition, in certain years and for specific products, states have provided additional incentives in the form of "bonuses" above the MSPs announced by the Government of India.

India also maintains a large and complex series of programs that form the basis of its public food stockholding program. India maintains stocks of food grains not only for distribution to poor and needy consumers, but also to stabilize prices through open market sales. In the past, India has used export subsidies to reduce government-held stocks, and it has permitted exports of certain agricultural commodities (*e.g.*, wheat) from government public-stockholding reserves at below the government's costs.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

In addition to discussing technical barriers to trade matters with Indian officials through the TPF, the United States has discussed such matters at, and on the margins of, meetings of the WTO Committee on Technical Barriers to Trade (WTO TBT Committee).

*Polyethylene – Quality Control Order*

In January 2020, India notified the WTO about the Polyethylene Material for Moulding and Extrusion Quality Control Order (QCO). On April 15, 2021, the Ministry of Chemicals and Fertilizers published an order establishing an initial implementation date of October 15, 2021. The polyethylene QCO introduced and mandated labeling requirements based on the Indian Standard IS 7328:2020 for polyethylene material for molding and extrusion. The QCO requires manufacturers to label the smallest bag or individual unit package delivered to the customer with a "designation code" identifying a range of information about the packaged polyethylene product, such as grades, properties, and applications. This type of package labeling for polyethylene products, if implemented, would be unique to India. In March 2021, the U.S. Government and U.S. industry raised concerns over the polyethylene QCO at the WTO, highlighting specific concerns regarding the complexity of the labeling requirements and offered an alternative solution to meet the requirements. While the date of implementation has been postponed until April 3, 2023, as of December 31, 2022 the Ministry of Chemicals and Fertilizers had not modified the QCO. U.S. industry has expressed potential difficulties complying with the QCO in its current form.

*Food Safety Standards – Alcoholic Beverages*

In July 2019, the Food Safety and Standards Authority of India (FSSAI) published its Food Safety Standards (Alcoholic Beverages) Amendment Regulations, and notified the amendments to the WTO. The

amendments revised FSSAI's 2018 mandatory alcoholic beverage standards, which took effect in April 2019. In June 2020, the FSSAI issued a directive to operationalize certain provisions of the standards, including adding non-alcoholic beer as a separate product category and permitting the use of new colors and additives in distilled spirits. The FSSAI has not clarified the timeline for enforcement of its amended regulations. Although the FSSAI addressed several of the issues that the United States raised with India, some concerns remain, including: (1) the establishment of analytical parameters for a range of naturally-occurring components in distilled spirits; (2) minimum and maximum requirements for ethyl alcohol; (3) the lack of explicit protection for Bourbon, American Rye Whiskey, and Tennessee Whiskey as distinctive products of the United States; and, (4) a lack of clarity on definitions related to brand owners, date markings, non-retail containers, and multi-unit packs. The United States raised this issue through the TPF and submitted comments through the WTO TBT Committee.

*Foreign Facilities Registration*

On October 10, 2022, the FSSAI issued Order F. No. TIC-B02/2/2022-IMPORTS-FSSAI. The order requires the competent authorities of exporting countries to provide a list of exporters of milk and milk products; meat and meat products, including poultry and fish; egg powder; infant food; and, nutraceuticals to India in the mandated FSSAI format. India has not provided a complete list of HS codes for the affected products. The published FSSAI order appears to include onerous requirements for registration. The effective implementation date of the published FSSAI order was February 1, 2023. It appears that India did not take comments into account between WTO notice and the finalization of the measure.

*Dairy Products*

India imposes onerous requirements on dairy imports. India requires dairy products intended for food be derived from animals that have never consumed any feeds containing internal organs, blood meal, or tissues of ruminant origin, and that exporting countries certify to these conditions. India has explained that its requirement is based on religious and cultural grounds. This requirement, along with the 2022 dairy health certificate requirements, new facility registration requirements, and high tariff rates continue to hamper market access for U.S. milk and dairy product exports to India, one of the largest dairy markets in the world. The United States continues to press the Indian Government, including through the TPF, to provide greater access to the Indian dairy market.

*Mandatory Domestic Testing and Certification Requirements for Equipment*

In September 2017, India's Ministry of Communications, Department of Telecommunications, published the Indian Telegraph (Amendment) Rules, which require all telegraph equipment to undergo mandatory testing and certification. Under these rules, in 2019 India implemented the Mandatory Testing and Certification for Telecom Equipment (MTCTE) procedures, which require local security testing for telecommunication products. In May 2021, India's Telecommunication Engineering Center proposed new implementing procedures for the MTCTE program and then further expanded the scope in September 2021 to require mandatory testing for 175 products. U.S. industry remains concerned with the in-country testing and certification requirements. The United States, bilaterally through the TPF and multilaterally in the WTO TBT Committee, has urged India to reconsider its domestic testing and certification requirements; to accept test results from International Laboratory Accreditation Cooperation accredited labs; and, to adopt the use of the Common Criteria Recognition Arrangement.

The United States continues to raise concerns that U.S. electronics and information and communication technology manufacturers have expressed regarding the Ministry of Electronics and Information Technology's (MEITY) Compulsory Registration Order (CRO). The policy, which took effect in January 2014, mandates that manufacturers register their products and have them certified by laboratories accredited

by the Bureau of Indian Standards, even if the products have already been certified by accredited international laboratories. In October 2021, India increased the coverage of the CRO to 63 product categories and U.S. industry reports MEITY plans to continue to expand the CRO coverage. U.S. industry has cited the following as continued issues: lack of government testing capacity; a cumbersome registration process; canceled registrations due to administrative reasons that are unrelated to safety; and, additional compliance costs that can exceed tens of millions of dollars, including costs associated with factory-level and component-level testing.

The United States has recommended that the Indian Government recognize internationally accredited labs, harmonize labeling requirements with global practices, harmonize the validity period of test reports and certification, and eliminate retesting requirements. The United States raised this issue bilaterally, including during technical exchanges through the TPF, and multilaterally in the WTO TBT Committee.

**Sanitary and Phytosanitary Barriers**

The United States has raised concerns about India's sanitary and phytosanitary (SPS) related trade restrictions in bilateral and multilateral fora, including the TPF, the WTO Committee on Sanitary and Phytosanitary Measures (SPS Committee), and the Codex Alimentarius Commission. The United States will continue to make use of all available fora with a view to securing the entry of U.S. agricultural products, including dairy products, alfalfa hay, dried distillers' grains, fish feed, and pet food, among others, into the Indian market.

*Foods Derived from Biotechnology Crops*

Products derived from modern biotechnology must be approved by the Genetic Engineering Appraisal Committee (GEAC) before importation or domestic cultivation. The Food Safety and Standards Act of 2006 includes specific provisions for regulating food products derived from genetically engineered (GE) products. India's biotechnology approval processes are also slow, opaque, and subject to political influences. The uncertain approval process continues to hamper GE product registrations needed to facilitate trade in food and feed products.

*FSSAI Order on Non-Genetically Modified and Genetically Modified-Free Certificates*

In March 2021, the FSSAI implemented an order requiring a non-Genetically Modified (non-GM) origin and "Genetically Modified free" (GM-free) certificate for 24 listed products. Each consignment of these products entering India must be accompanied by (1) a non-GM origin and GM-free attestation on the phytosanitary or health certificate that contains the information specified in FSSAI's order of August 21, 2020, or (2) a non-GM origin and GM-free certificate issued by a regional (*i.e.*, state level) government authority of the exporting country. The 24 products include grains, oilseeds, fruits, and vegetable products, regardless of whether GE varieties of those crops are in commercial production or are being exported to India. India has not provided any scientific or risk-based justification for the requirement. The United States and several other countries have pressed India to rescind the requirement in comments submitted to the WTO TBT and SPS Committees, and continue to engage the Indian Government, including the FSSAI, on the order.

*Health Certificates*

On September 26, 2022, the FSSAI issued a clarification notice to its earlier notification F. No. 1829/Health Certificate/FSSAI/Imports (2021). The notice states that the FSSAI will require a health certificate for the import of milk and milk products, pork and pork products, and fish and fish products. This certificate must incorporate all FSSAI-mandated food safety related requirements/attestations necessary for import

clearance in India. While the original entry into force date was January 1, 2023, it was delayed until further notice following comments from trading partners, including the United States. The proposed certificate duplicates a number of attestations already required by the Department of Animal Husbandry, Dairying, and Fisheries, but also requires new attestations that are not relevant to food safety or based on science. India has continued to add additional commodities to the list of products that require the new certificate. If implemented as written, the measure is likely to cause unnecessary duplication, disrupt supply chains, increase costs for producers, and impede market access for these U.S. commodities.

*Distiller's Dried Grains with Solubles*

India's regulatory requirements on distiller's dried grains with solubles (DDGS) remain unclear. Since 2015, the GEAC has received at least 11 applications from Indian importers to import U.S. DDGS. Local feed companies, along with the U.S. Government, continue to advocate that DDGS be exempted from further regulatory requirements, noting that DDGS are a processed product, and pose no risk to the environment. In July 2018, the GEAC formed the Sub-Committee on Guidelines for Imports of Animal Feed to establish procedures for applications related to the imports of animal feeds, including DDGS. The Sub-Committee submitted recommendations for approval to the GEAC in November 2019. As of February 2023, the GEAC has not officially confirmed that it will not regulate DDGS as living modified organisms.

In addition, unclear jurisdiction for the approval process for animal feed continues to complicate the process. For example, in December 2019, the FSSAI published Direction 1-95, announcing new requirements for commercial animal feeds and feed materials that are manufactured, imported, or distributed in India. Prior to the publication of Direction 1-95, however, the FSSAI had not regulated the manufacture, import, or distribution of either commercial animal feeds or feed ingredients in India.

*Alfalfa Hay*

The United States continues to pursue market access for alfalfa hay. The U.S. Department of Agriculture Animal and Plant Health Inspection Service and India's Ministry of Agriculture and Farmer's Welfare held several rounds of technical discussions to address India's requirements. In 2021, India and the United States agreed to a framework for bilateral market access for several agricultural products, including conventional and GE alfalfa hay from the United States. In August 2022, the GEAC issued a "no objection" to imports of GE alfalfa hay from the United States, and referred the matter to the FSSAI. In October 2022, India's FSSAI raised concerns regarding the approval of GE animal feed imports, impeding additional progress on this issue.

*Poultry*

In 2012, the United States commenced WTO dispute settlement proceedings against India's import prohibitions on various agricultural products from the United States, including poultry and poultry products, ostensibly due to concerns regarding avian influenza. The WTO panel and Appellate Body issued reports in favor of the United States. In 2016, the United States requested authorization from the WTO Dispute Settlement Body (DSB) to suspend concessions or other obligations on the grounds that India had failed to comply with the DSB recommendations within the "reasonable period of time" to which the parties agreed. The U.S. request was referred to arbitration. In April 2017, India requested the establishment of a compliance panel, asserting that it had enacted a revised avian influenza measure that complied with India's WTO obligations. The proceedings have been ongoing since 2018. The United States and India have requested postponement of the issuance of the arbitrator's and compliance panel's decisions while the parties discuss potential resolution of the dispute. The United States continues to monitor market access issues related to poultry, such as overly burdensome testing requirements.

*Plant Health Issues*

India maintains zero-tolerance standards for certain plant quarantine pests, such as weed seeds and ergot, that do not appear to be based on risk assessments and that constrain U.S. grain and pulse exports. Bilateral discussions to resolve these issues, including at the senior official level, have achieved little success.

India requires methyl bromide (MB) fumigation at the port of origin as a condition for the importation of pulses. This type of fumigation is not permitted in the United States, so the United States requested that India permit entry of U.S. peas and pulses subject to inspection and fumigation at the port of arrival, to which India agreed. India has granted a series of extensions allowing MB fumigation on arrival but has offered no permanent solution. In April 2018, the Indian Government confirmed the extension of the fumigation-upon-arrival waiver for U.S. peas and pulses, including chickpeas, indefinitely until both parties come to an agreement on the U.S. systems-based approach. The U.S. walnut industry requested a change to India's fumigation protocol to allow sulfuryl fluoride and phosphine in place of MB. However, the United States is still awaiting official approval of such change through notification in the Indian Gazette. Similarly, the United States is seeking approval for an alternative treatment to MB fumigation for U.S.-origin in-shell pecans, recommending either a cold treatment or a hot water bath treatment for in-shell pecans. The United States is awaiting a response from the Indian Ministry of Agriculture & Farmers Welfare's Directorate of Plant Protection, Quarantine and Storage as well as approval through notification in the Indian Gazette.

## GOVERNMENT PROCUREMENT

India lacks an overarching government procurement policy and, as a result, its government procurement practices and procedures vary among the states, between the states and the central government, and among different ministries within the central government. India also provides preferences to Indian micro, small and medium-sized enterprises and to state-owned enterprises. In defense procurements, India's offset program requires companies to invest 30 percent or more of the acquisition cost of contracts above the threshold value in Indian-produced parts, equipment, or services; a requirement that continues to prove challenging for manufacturers of high-technology equipment to meet given changing rules and limited opportunities.

In June 2020, the Department of Promotion of Industry and Internal Trade issued the Public Procurement (Preference to Make in India) Order 2020, a revision to the 2017 procurement order mandating preferences for domestically manufactured goods. The rule was updated again in September 2020 and took immediate effect, instructing each ministry or department to draft a follow-on procurement order that favors domestic suppliers whose products contain 50 percent or more local content, and permitting ministries and departments to mandate higher local content percentages that could be used to benefit Indian suppliers. Products that contain less than 20 percent local content are categorized as "non-local suppliers."

The August 2020 changes to General Financial Rules section 161 state that global tender enquiries may not be accepted under $31 million and further reductions of the minimum local content requirement cannot be implemented without permission of an appropriate authority. Furthermore, companies must use a third-party or internal auditor to certify the amount of local content that will be used if the value is equal to or greater than 10 crore or 100 million rupees (approximately $1.22 million).

On September 23, 2020, the Ministry of New and Renewable Energy released an order reserving a list of 80 products, including solar cells, modules, wind turbines, and electrical equipment for hydro and biogas for bidding only by suppliers with 50 percent or more local content, irrespective of the purchase value. The Ministry of Power also reserved 78 products for local procurement through a similar order published on June 17, 2021.

In April 2020, MEITY issued a notification that entities must procure cellular mobile phones only from local suppliers meeting the local content requirement of 50 percent, irrespective of purchase value. A September 2020 MEITY notification specified the mechanism for calculation of local content for: (1) desktop PCs; (2) thin clients; (3) computer monitors; (4) laptop PCs; (5) tablets; (6) dot matrix printers; (7) contact and contactless smart cards; (8) LED products; (9) biometric access control/authentication devices; (10) biometric fingerprint sensors; (11) biometric iris sensors; (12) servers; and, (13) cellular mobile phones.

India is not a party to the WTO Agreement on Government Procurement but has been an observer to the WTO Committee on Government Procurement since February 2010.

## INTELLECTUAL PROPERTY PROTECTION

India remained on the Priority Watch List in the 2022 Special 301 Report due to lack of progress on long-standing intellectual property (IP) concerns raised in prior Special 301 Reports. The 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List) includes physical and online marketplaces located in or connected to India. The United States and India continue to engage on a range of IP challenges facing U.S. companies in India with the intention of creating stronger IP protection and enforcement in India.

In the field of copyright, policy uncertainty and ineffective enforcement remain concerns. Copyright holders continue to report high levels of piracy, particularly online. Court cases and government memoranda raise concerns that a broad range of published works will not be afforded meaningful copyright protection. Amending Section 31D of the Indian Copyright Act to permit statutory licensing of interactive transmissions, as recommended by a Parliamentary committee, would have severe implications for right holders who make their content available online. A law that criminalizes the illicit camcording of films is also absent. The granting of licenses under Chapter VI of the Indian Copyright Act and overly broad exceptions for certain uses have raised concerns regarding the strength of copyright protection in India. Amendments to the Indian Copyright Act needed to bring India's domestic legislation into alignment with international best practices are absent. India's decision in 2021 to abolish the Intellectual Property Appellate Board (IPAB) and redirect matters previously handled by the IPAB to courts has created uncertainty around adjudication of IP cases and copyright royalty rate setting.

In the field of patents, several factors negatively affect stakeholders' perception of India's overall IP regime, investment climate, and innovation goals. Patent applicants continue to face expensive and time consuming pre- and post-grant oppositions, long waiting periods to receive patent grants, and excessive reporting requirements. Concerns remain with respect to whether Indian authorities will treat as confidential sensitive business information that parties are still required to disclose on a revised "Statement of Working of Patents" (Form 27). The potential threat of patent revocations, lack of presumption of patent validity, and the narrow patentability criteria under the Indian Patents Act impact companies across different sectors. In the pharmaceutical sector, the United States continues to monitor the restriction on patent-eligible subject matter in Section 3(d) of the Indian Patents Act and its impacts. Pharmaceutical stakeholders continue to raise concerns as to whether India has an effective system for protecting against unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. Stakeholders also express concerns as to whether India has an effective mechanism for the early resolution of potential pharmaceutical patent disputes.

India's overall IP enforcement remains inadequate. U.S. brand owners also continue to report excessive delays in trademark opposition proceedings and a lack of quality in examination. Finally, U.S. and Indian companies have identified trade secret protection as a growing concern and expressed interest in eliminating

gaps in India's trade secrets regime, such as through the adoption of trade secret legislation that comprehensively addresses these concerns.

## SERVICES BARRIERS

The Indian Government has a strong ownership presence in major services industries such as banking and insurance. Foreign investment in businesses in certain major services sectors, including financial services and retail, is subject to limitations on foreign equity, and foreign participation in professional services is significantly restricted. In addition, barriers to digital trade and electronic commerce, such as those imposed on electronic payment providers, have knock-on effects on a wide variety of services.

### Audiovisual Services

The Telecommunications Regulatory Authority's regulations on content aggregation and distribution do not allow bundling of channels or certain types of distribution partnerships. Content aggregation is commonly used internationally, as it allows niche and foreign content to be bundled and sold by domestic partners without a large local presence or sales force. These regulations cause difficulties for small and international content providers because these companies must interact with each of the 60,000 local cable operators, radio broadcasters, and television broadcasters they seek to target.

There are also several limits on foreign ownership in the audiovisual and media sectors, namely cable networks (49 percent); FM radio (26 percent); head end in the sky (74 percent); direct-to-home (DTH) broadcasting (74 percent); teleports (74 percent); news broadcasting (26 percent); and, newspapers (26 percent). In August 2019, the Indian Government allowed foreign direct investment (FDI) of up to 26 percent for digital media firms that upload and stream news and current affairs.

### Distribution Services

India imposes certain restrictions on FDI in the retail industry. With respect to single-brand retail, foreign investments exceeding 51 percent are contingent on, among other things, a requirement to source at least 30 percent of the value of products sold from Indian sources, preferably from small and medium-sized enterprises. India has modified the requirements in recent years, including by allowing firms to offset the local sourcing requirement by sourcing products from India for global supply chains.

India caps foreign ownership in the multi-brand retail sector at 51 percent and leaves to each Indian state the final decision on whether to authorize such FDI in its territory. In addition, where FDI is allowed, it is subject to conditions, including: (1) a minimum investment of approximately $100 million, at least 50 percent of which must be in "back-end infrastructure" (*e.g.*, processing, distribution, quality control, packaging, logistics, storage, and warehousing); (2) a requirement to operate only in cities that have been identified by the relevant state government; and, (3) a requirement to source at least 30 percent of the value of products sold from "small" Indian enterprises whose total investments in plant and machinery are under $2 million each. The local sourcing requirements and other conditions on foreign investment diminish the commercial incentive for multi-brand retailers seeking to invest in India's retail sector.

India permits 100 percent FDI in business-to-business (or "marketplace-based") electronic commerce but prohibits foreign investment in business-to-consumer (or "inventory-based") electronic commerce. In February 2019, India implemented regulations that expressly prohibit subsidiaries of foreign-owned marketplace-based electronic commerce sites from selling products on their parent companies' sites. The rules also prohibit exclusivity arrangements by which electronic commerce retailers can offer a product on an exclusive basis. The only exceptions for FDI in inventory-based electronic commerce are for food-product retailing and single-brand retailers that meet certain conditions, including the operation of physical

stores in India. This narrow exception limits the ability of many electronic commerce service suppliers to serve the Indian market.

In 2016, after extensive advocacy by the U.S. Government and private industry, the Indian Government approved the Model Direct Selling Guidelines, which establish clear legal definitions for legitimate direct selling activities. However, in 2021, the Indian Government issued the Customer Protection (Direct Selling) Rules, which omit the Guidelines' definition of a "direct selling network." Industry has raised concerns that this exclusion creates uncertainty and may open stakeholders up to legal challenges.

**Financial Services**

*Banking Services*

Although India allows privately held banks to operate in the country, the banking system is dominated by state-owned banks, which account for approximately 72 percent of total market share and 84 percent of all Indian bank branches. Most privately owned banks are Indian owned, with foreign banks constituting less than 0.5 percent of the total bank branches in India. Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis and their ability to expand is hindered by non-transparent limitations established by the Indian Government on branch office expansion.

*Insurance Services*

In March 2021, India passed the Insurance (Amendment) Bill, 2021, which removed restrictions on foreign ownership and control of Indian insurance companies and increased the maximum foreign investment allowed from 49 percent to 74 percent. While this represented progress, the law instituted new "safeguard" requirements, such as calling for a majority of board members to be Indian residents, and, if an insurer is incorporated or domiciled outside of India, requiring that assets be held in an Indian trust with trustees resident in India, as well as maintaining a higher solvency requirement for foreign-invested insurers. This also applies to any insurer incorporated in India, in which at least 33 percent of its capital is owned by investors domiciled outside India or in which 33 percent of the members of the governing body are domiciled outside India.

In 2015, the Insurance Regulatory and Development Authority of India issued a revision to its regulations governing the provision of reinsurance services in India. The regulations afford Indian reinsurers a mandatory first order of preference (or right of first refusal) for reinsurance business in India. Such a requirement severely restricts the ability of foreign reinsurers to compete in the Indian market and decreases the interest of foreign reinsurers in establishing branches in India.

*Electronic Payment Services*

The United States has continued to raise concerns relating to informal and formal policies with respect to electronic payments services that appear to favor Indian domestic suppliers over foreign suppliers. In November 2020, the National Payments Corporation of India (NPCI), a state-owned company, announced a market share limitation of 30 percent (measured by transactions) for foreign electronic payment service suppliers processing online payments made through India's United Payment Interface (UPI), which is owned and operated by NPCI. NPCI stated that the policy would insulate the UPI system against systemic collapse should one of the market leaders experience a failure. Foreign digital payment companies were given until January 2023 to ensure their market share met the 30 percent limit. The United States also has expressed concern over plans to create a National Common Mobility Card (NCMC) that would use a domestic proprietary QR code standard, which could disadvantage foreign suppliers. India has also not yet

shared the domestic qSPARC standard, effectively prohibiting firms from participating in the roll-out of the NCMC.

**Professional Services**

*Legal Services*

Membership in the Bar Council of India (BCI), the governing body for the legal profession, is mandatory to practice law in India and is limited to Indian citizens. Foreign law firms are not allowed to open offices in India. The Advocates Act, which is administered by BCI, provides for foreign lawyers or law firms to visit India on a reciprocal basis for temporary periods to advise their clients on foreign and international legal issues.

*Accounting Services*

Foreign accounting firms face obstacles to entering the Indian accounting services sector. Only accounting firms structured as partnerships under Indian law may supply financial auditing services and only Indian-licensed accountants may be equity partners in an Indian accounting firm.

**Telecommunications Services**

*Satellite Services*

India's Ministry of Information and Broadcasting maintains a preference for Indian satellites to provide capacity for DTH subscription television services. In practice, DTH licensees have not been permitted to contract directly with foreign satellite operators and have encountered procedural delays when they have sought to do so. Rather, DTH licensees must procure satellite capacity through Antrix, the commercial arm of the Indian Space Research Organization (ISRO), which in turn only permits foreign procurements if it does not have available capacity on Indian satellites. When ISRO does permit the use of foreign satellite capacity, the foreign satellite operator must sell the capacity to ISRO, which in turn resells the capacity to the end-user with a surcharge. As a result, even when limited capacity is available, foreign satellite operators are prevented from developing direct relationships with DTH licensees, putting U.S. satellite operators at a competitive disadvantage. The United States continues to encourage India to adopt an "open skies" satellite policy to allow consumers the flexibility to select the satellite capacity provider that best suits their business requirements and to promote market access for foreign satellite service providers.

## BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

**Data Localization**

India has proposed and promulgated several data localization requirements that may restrict trusted cross-border data flows between the United States and India. These requirements, if implemented, would force the construction or use of local data centers in India. The requirements could be particularly challenging for smaller firms.

*Electronic Payment Services*

In 2018, the Reserve Bank of India (RBI) implemented a requirement that all payment service suppliers store all information related to electronic payments by Indian citizens on servers located in India. RBI announced this rule without advance notice or input from stakeholders. In 2019, RBI stated the requirement to store payments data locally also applied to banks operating in India. Foreign firms assert that requiring

local storage of all payment information is a disadvantage for them, as they are more likely to be dependent on globally distributed data storage and information security systems. They assert further that a domestic data storage requirement hampers the ability of service suppliers to detect fraud and ensure the security of their global networks.

*Digital Personal Data Protection Bill 2022*

On August 3, 2022, the MEITY requested the Indian Parliament withdraw the Personal Data Protection Bill, 2019, and announced the government would develop a new bill. On November 18, 2022, India released a new draft Digital Personal Data Protection Bill, 2022 for public comment. A number of U.S. concerns with previous versions of the bill have been addressed, but, if the bill is passed in its current form, there are a number of concerning provisions, such as an unspecified process to approve countries as lawful destinations for the transfer of data outside of India and unduly limited grounds for the processing of personal data outside of India.

**Internet Services**

In February 2021, the Indian Government published new regulations, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules), to govern a wide range of Internet-based service providers, particularly those that operate social media, messaging, and news and entertainment content in India. The IT Rules require compliance by "significant" social media intermediaries and platforms with five million registered users or more, which includes several U.S. firms. The IT Rules impose a number of requirements that U.S. firms have identified as concerning. For example, the IT Rules impose personal criminal liability on individual employees in cases where a firm is not in compliance with the rules. The IT Rules also include an obligation to identify the first originator of information, a requirement to appoint a local compliance officer, and imposition of impractical compliance deadlines and take-down protocols. In recent years, U.S. firms have been subject to an increasing number of takedown requests for content and user accounts related to issues, often political, of domestic concern.

*Digital Services Taxation*

In 2017, India began assessing a six percent "equalization levy," a withholding tax on foreign online advertising platforms, with the ostensible goal of "equalizing the playing field" between resident service suppliers and non-resident service suppliers. However, its provisions do not provide credit for tax paid in other countries for the service supplied in India. The current structure of the equalization levy represents a shift from internationally accepted tax principles, which generally hold that mechanisms should be developed to prevent double taxation. The Fiscal Year 2020-2021 budget included an expansion of the equalization levy, adding a two percent digital services tax on foreign electronic commerce and digital services providers. These changes were enacted without prior notification or an opportunity for public comment. Technology firms raised concerns that the definitions of "electronic-commerce operator" and "electronic-commerce supply or services" are broad in scope and are likely to cover many digital transactions, including the sale of data.

In June 2020, the Office of the U.S. Trade Representative (USTR) initiated a Section 301 investigation of India's two percent equalization levy or digital services tax (DST). In January 2021, USTR issued findings that India's DST, as well as taxes adopted by other countries, discriminated against U.S. companies, were inconsistent with prevailing principles of international taxation, and burdened or restricted U.S. commerce. The United States and India, along with 135 other jurisdictions, have joined the October 8, 2021, OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy, which called for all Parties to commit not to introduce DSTs in the future. On November 24, 2021, the United States and India issued

statements reflecting a political agreement on a transitional approach to India's DST during the implementation period of Pillar 1 of the Two-Pillar solution. Under this agreement and in defined circumstances, the liability from India's DST that American companies accrue in India during the interim period will be creditable against future taxes accrued under Pillar 1 of the OECD agreement. The period during which the credit accrues will be from April 1, 2022, until either the implementation of Pillar 1 or March 31, 2024, whichever is earlier. In return, the United States committed to terminate the Section 301 trade action on goods of India and not to impose further trade actions against India with respect to its existing DST until the earlier of the date the Pillar 1 multilateral convention comes into force or March 31, 2024. USTR, in coordination with the U.S. Department of the Treasury, is monitoring the implementation of the political agreement on the OECD/G20 Two-Pillar Solution as pertaining to DSTs.

## OTHER BARRIERS

### Transparency

Traders continue to be negatively affected by a lack of transparency with respect to new and proposed laws and regulations and the lack of uniform notice and comment procedures and inconsistent notification of these measures to the WTO. This, in turn, inhibits the ability of traders and foreign governments to provide input on new proposals or to adjust to new requirements. U.S. stakeholders continue to report that new requirements are issued with inadequate public notice and comment periods and/or inadequate consultation or notification at the WTO. This lack of transparency imparts a lack of predictability to the Indian market, diminishing the ability of U.S. companies to enter or operate in India. The U.S. Government continues to raise concerns regarding uniform notice and comment procedures with the Indian Government bilaterally through the TPF and multilaterally in the WTO and other fora.

# INDONESIA

## TRADE AGREEMENTS

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

The United States and Indonesia signed a Trade and Investment Framework Agreement (TIFA) on July 16, 1996. The TIFA is the primary mechanism for discussions of trade and investment issues between the United States and Indonesia.

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

Indonesia's average Most-Favored-Nation (MFN) applied tariff rate was 8.1 percent in 2021 (latest data available). Indonesia's average MFN applied tariff rate was 8.7 percent for agricultural products and 8.0 percent for non-agricultural products in 2021 (latest data available). Indonesia has bound 96.1 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 37.3 percent.

Over the last decade, Indonesia has increased its applied tariff rates for a range of goods that compete with locally manufactured products, including electronic products, milling machines, chemicals, cosmetics, medicines, wine and spirits, iron wire and wire nails, and a range of agricultural products. Most Indonesian tariffs on non-agricultural goods are bound at 35.5 percent, although tariff rates exceed 35.5 percent or remain unbound on automobiles, iron, steel, and some chemical products. In the agricultural sector, tariffs on more than 1,300 products have bindings at or above 35.5 percent.

In 2020, Indonesia issued Minister of Finance (MOF) Regulation 199/2019 to lower the price threshold for import duty exemptions on imported consumer goods (known as "consignment goods") from $75 to $3. Certain types of books, bags, garments, and footwear are exempted from the regulation.

U.S. stakeholders have asserted that Indonesia continues to apply tariffs in excess of its WTO bound rates for certain categories of information and communication technology (ICT) products. Since at least 2020, Indonesia appears to be applying a 10 percent duty for certain categories of the Harmonized Tariff System subheading 8517.62, which includes switching and routing equipment.

*Taxes*

U.S. companies continue to express concerns that the MOF's Directorate General of Taxes' tax assessment process is arbitrary. Such concerns include a discretionary and cumbersome auditing process, heavy fines for administrative mistakes, lengthy dispute mechanisms, and a lack of legal precedent within the Tax Court.

In 2018, Indonesia issued MOF Regulation 110/2018, increasing "withholding tax" rates for 1,147 imported products, including consumer and luxury goods. The stated objective for this policy was to decrease Indonesia's current account deficit by reducing imports of these goods.

Luxury goods, imported or locally produced, may be subject to a luxury tax of up to 200 percent. As of January 2023, there are no luxury goods subject to the 200 percent rate, and the applied luxury tax rates generally range from 10 percent to 95 percent. Motorcycles with an engine displacement over 500 cc (a size which is not produced in Indonesia) are subject to a 95 percent luxury tax. Under MOF Regulation 141/2021, the MOF reformulated the sales tax for luxury motor vehicles based on fuel efficiency and emissions levels, with the aim of reducing emissions and encouraging the use of energy-efficient and less polluting motor vehicles. The luxury motor vehicle sales tax varies based on the cylinder capacity of the motor vehicle (up to three liters; three to four liters), type of motor vehicle (electric and non-electric), fuel efficiency rate, and emissions level. This luxury tax applies to both locally-produced and imported vehicles.

Although Indonesia has eliminated its luxury tax on imported distilled spirits, the current excise tax regime imposes higher excise tax rates on imported spirits than on domestic spirits. The excise tax rates for imported products are 150 percent on spirits and 90 percent on wine.

MOF Regulation No. 41/2022, effective April 1, 2022, increased the number of imported items that are subject to a prepayment of income tax at the time of import under Income Tax Article 22. The regulation adds Harmonized System (HS) codes for 716 categories of imported goods subject to income tax at a rate of 10 percent of the transaction value. The regulation lists 1,188 HS codes subject to income tax of 7.5 percent and seven HS codes with a tax rate of 0.5 percent. Stakeholders have previously raised concerns that the process of claiming a return of excess pre-paid income tax at the time of import can take multiple years and considerable effort.

MOF Regulation No. 114/2022, issued on July 11, 2022, extended Article 22 income tax exemptions for 72 business sectors until December 31, 2022.

**Non-Tariff Barriers**

*Import Licensing*

Indonesian importers must comply with numerous and overlapping import licensing requirements that impede market access. The Ministry of Trade (MOT) requires all importers to obtain an import license as either an importer of goods for further distribution (API-U) or as an importer for their own manufacturing (API-P), but importers are not permitted to obtain both types of licenses. An API-P import license allows companies to import finished products for market testing, after sales service purposes, or for "completing a product line", as long as the goods are new, consistent with the company's business license, and meet import requirements. Under Government Regulation (GR) 29/2021, importers must also obtain a business identification number (NIB) through the Online Single Submission, a new online processing system intended to streamline business license issuance. A NIB can also serve as a valid import license.

On April 1, 2021, MOT issued Regulation 20/2021 (amended by MOT Regulation 25/2022), which aims to synthesize all import-related regulations and serve as an "umbrella" regulation for the management of Indonesia's import policies. The regulation also sets forth a requirement that import licenses for certain commodities be issued based on their "commodity balance".

On February 21, 2022, Indonesia enacted Presidential Regulation No. 32/2022, which further provides for a "commodity balance" policy. The commodity balance policy appears to make the issuance of import licenses subject to an Indonesian Government assessment of supply and demand for a commodity. It was initially implemented for 2022 import licenses for five commodities (sugar, rice, fish, meat, and salt) at the end of 2021. The policy was expanded to cover nineteen additional commodities in 2023. Stakeholders have expressed concern regarding the Coordinating Ministry of Economic Affairs' (CMEA) lack of consultation with market participants on this policy and reported that import license requirements for

printers were subjugated to this policy, such that printer import licenses now require Ministry of Industry (MOI) approval, in addition to the existing MOT approval.

MOT Regulation 20/2021 on import policy, which was amended by Regulation 25/2022, imposes additional burdensome import licensing requirements for cell phones, handheld computers, and tablets. (*For further information, see the Services Barriers section.*)

Under MOT Regulation 68/2020 and its amendment, Regulation 78/2020, Indonesia requires import approvals and stringent reporting requirements for footwear, electronic devices, and bicycles (except such products imported for market testing or after sales service purposes) with the stated goal of reducing the volume of consumer goods entering Indonesia in favor of local production.

*Import Licensing for Agricultural Products*

Indonesia continues to maintain unjustified and trade-restrictive licensing regimes for the importation of horticultural products, animals, and animal products, despite amending its import licensing regimes several times. In 2013, the United States challenged Indonesia's restrictions under the WTO's dispute settlement procedures because Indonesia repeatedly failed to address U.S. concerns. On December 22, 2016, the WTO issued the panel report, finding for the United States and co-complainant New Zealand on all 18 claims and finding that Indonesia is applying import restrictions and prohibitions that are inconsistent with WTO rules. On November 9, 2017, the WTO Appellate Body rejected Indonesia's appeal and upheld the panel's findings. On August 2, 2018, the United States requested authorization from the WTO to take countermeasures. On August 14, 2018, Indonesia objected to the U.S. request, referring the matter to arbitration. Since 2018, the United States has paused the arbitration to give the parties the opportunity to work towards a solution to the dispute and to increase market access for U.S. agricultural products.

Indonesia has amended its import licensing requirements several times since the Appellate Body ruling. Through the issuance of Minister of Agriculture (MOA) Regulation 2/2020, imports of horticultural products from countries with a food safety system recognized by MOA are exempt from the requirement to provide certain quality and safety certificates. Nevertheless, Indonesia continues to subject imports, including all horticultural products, to its import licensing regime. This regulation also extends the validity of horticultural product import licenses for 60 days into the following calendar year.

In 2020, Indonesia enacted the "Job Creation Omnibus" (Law 11/2020), which amends import licensing provisions contained in the Food Law, Animal Husbandry and Animal Health Law, Farmer Protection and Empowerment Law, and the Horticulture Law and served as the basis for the commodity balance policy. Law 11/2020 requires a general business license for imports of horticultural, feed, meat, and dairy products, and appears to remove the legal basis for requiring MOA import recommendations and MOT import licenses for horticultural products. A Constitutional Court ruling on November 25, 2021, found that the passage of the Omnibus Law was unconstitutional due to the opaqueness of the process by which the law was created, including that proposed revisions were not fully shared with the public. The court ordered lawmakers and the Jokowi administration to revise the law within two years, specifying that if no revisions are made by that deadline, the law will become defunct. The ruling stipulates that the Indonesian Government should not issue new regulations of a strategic nature related to the law until improvements are made to the current law.

Nonetheless, on May 18, 2022, MOA issued Regulation 5/2022 affirming the requirement for imported horticultural products to have an import recommendation (RIPH). However, MOT Regulation 25/2022, provides that the issuance of import licenses does not require RIPH and will instead be issued on the basis of available supply and demand data if the commodity balance has not been determined.

In 2023 agricultural products subject to licensing by government-determined commodity balances include sugar, rice, fish, meat, salt, and corn. Indonesia has not provided a comprehensive list of agricultural products that will be subject to this policy. Businesses report that they need to adapt constantly to changing, and often conflicting, implementing regulations from numerous Ministries.

*Pharmaceutical Market Access*

The pharmaceutical industry has raised concerns regarding the opportunity for meaningful stakeholder engagement in the Indonesian pricing and reimbursement system. Stakeholders report a lack of clarity regarding how pharmaceutical products are selected for listing on the Indonesian online public procurement catalog system, how price caps are determined, and whether and for how long such products will remain listed. The United States will continue to engage Indonesia on this issue and has requested that the Ministry of Health (MOH) and the National Public Procurement Agency discuss these issues with U.S. stakeholders.

The United States continues to have concerns about barriers to Indonesia's market for pharmaceutical products and medical devices. MOH Regulation 17/2017 mandates that the pharmaceutical and medical devices industries prioritize the use of domestic raw materials. MOI Regulation 16/2020, which went into force in June 2020, defines local content values for pharmaceutical products as including manufacturing, raw ingredients, research and development, and packaging. It also sets out a process for the issuance of local content certificates and requires priority be given in the national health insurance system to products with certified local content value when available. Companies are required to self-assess the local content of their products, further verified by independent assessors appointed by the MOI. Businesses are concerned that the regulation will prioritize drugs with higher local content over imported versions of equivalent efficacy and safety.

Additionally, MOH Regulation 1010/2008 requires a foreign pharmaceutical company either to manufacture locally or to entrust another company that is already registered as a manufacturer in Indonesia to obtain drug approvals and import permits on its behalf. This regulation also mandates local manufacturing in Indonesia of all pharmaceutical products that are five years past patent expiration and contains a technology transfer requirement. A subsequent pair of regulations, MOH Regulation 26/2018 and National Agency of Drug and Food Control (BPOM) Regulation 16/2015, provide additional information about the application of these local manufacturing requirements.

Presidential Regulation 10/2021 reserves retail pharmaceutical business and class A health equipment for micro, small, and medium-sized enterprises (MSMEs), while traditional medicine is limited to domestic ownership only. MOH Regulations 1010/2008 and 1120/2008 state that all foreign pharmaceutical companies operating in the country must manufacture medicines locally or form a partnership with a local manufacturer in order to register or trade their own products. MOH Regulations 1010/2008 and 1120/2008 remain significant barriers to market access.

*Import Bans and Other Restrictions*

Indonesia tightly controls and regulates imports of sugar and other food commodities, including through annual quantitative import limits based on domestic production and consumption forecasts. Sugar refineries are permitted to import raw sugar based on annual allocations intended to offset idle refining capacity. Some food and beverage companies are permitted to import limited volumes directly, but there remains an expectation to first utilize refined domestic sugar. These import restrictions increase the price of sugar (and other commodities) across the domestic economy.

Indonesia limits the quantity of imported wines and distilled spirits. Companies must apply to be designated as registered importers authorized to import alcoholic beverages, with an annual company-specific quota

set by MOT; that quota has not changed since its enactment in 2009. Currently there are approximately 14 registered importers of alcoholic beverages in Indonesia.

*State Trading*

Presidential Regulation 66/2021 established Indonesia's National Food Agency (BAPANAS). BAPANAS is a minister-level institution that directly reports to the President and has the authority to coordinate all food and agriculture related ministries and agencies, such as the Ministry of Agriculture, Ministry of Trade, Ministry of Industry, and the state-owned procurement body, the Bureau of Logistics (BULOG). The main role of BAPANAS is to coordinate, formulate, and determine food availability policies. BAPANAS is also tasked with ensuring food price stabilization, food diversification, and overall food security. BAPANAS bears the responsibility of developing a food information system. On September 27, 2022, BAPANAS authorized BULOG to procure soybeans in order to stabilize the soybean market by selling them with a 1,000 IDR per kg subsidy. BAPANAS also regulates the minimum buying and selling reference prices for several commodities. There are currently nine staple commodities under the authority of BAPANAS: rice, corn, soybean, sugar, onion, eggs, beef, poultry meat, and chilies.

Indonesia imposes restrictions on feed corn imports, limiting the right to import to BULOG. However, some corn imports intended for starch manufacturing are allowed. As Indonesia's sole importer of feed corn, BULOG prioritizes corn distribution to small-holder poultry farmers. The import volume is set based on the level of domestic feed production. Feed millers other than the small-holders who receive corn from BULOG are obligated to use locally-produced feed corn. They have expressed concern that they are unable to obtain feed corn in quantities sufficient to maintain the poultry industry's growth.

BULOG also maintains exclusive authority to import standard unbroken rice. Indonesia has cited food security and price management considerations as the principal objectives of this policy. BULOG is not allowed to import rice before, during, or immediately after the main harvest period. Private firms are only allowed to import broken rice for processing or specialty rice varieties, such as basmati and jasmine rice, for retail and food service. Importers of broken and specialty rice must obtain a special MOA importer identification number. Since 2014, Indonesia has refused to issue import recommendations for japonica rice to private traders, although permitted under MOT regulations.

In 2016, BULOG was appointed as Indonesia's sole importer of feed corn, plantation white sugar, and buffalo meat (carabeef). Additionally, through MOT Regulations 57/2017, 7/2020, and 6/2022, the Indonesian Government sets farmer-level and consumer-level reference prices for corn, soybeans, sugar, shallots, beef, chicken, eggs, and cooking oil, respectively. According to these regulations, BULOG and other state-owned enterprises (SOEs) can intervene in the market when prices are above or below threshold targets.

*Customs Barriers and Trade Facilitation*

Indonesia notified its customs valuation legislation to the WTO in 2001 but has not responded to the Checklist of Issues describing how the WTO Customs Valuation Agreement (CVA) is being implemented. U.S. firms continue to report that Indonesian customs relies on a schedule of reference prices to assess duties on some imports rather than using transaction values as the primary basis of valuation as required by the CVA. Indonesia's Directorate General of Customs and Excise reportedly makes a valuation assessment based on the perceived risk status of the importer and the average price of a same or similar product imported during the previous 90 days.

MOT Regulation 20/2021, which was amended by MOT Regulation 25/2022, requires pre-shipment verification by designated companies (known in Indonesia as "surveyors") for a broad range of products

(including electronics, textiles and footwear, toys, food and beverage products, and cosmetics). The verifications are conducted at the importer's expense and impede the entry of imports to designated ports and airports. As of December 31, 2022, Indonesia had yet to notify these measures to the WTO pursuant to the WTO Agreement on Pre-shipment Inspection.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Standards and Testing Requirements*

MOI Regulation 24/2013 (as amended by MOI Regulations 55/2013 and 29/2018) requires that imported toys be tested by a laboratory with a mutual recognition agreement with one of Indonesia's product certification bodies. The United States is not aware of any existing mutual recognition agreements, leaving imported toys subject to mandatory testing in Indonesia to obtain certification. U.S. stakeholders have expressed concern about the discriminatory frequency of testing under these regulations, which is required on a per-shipment basis for imports, but only every six months for domestically produced products. In 2018, MOI issued Regulation 29/2018, introducing an alternative procedure that allows importers to obtain a certification through product testing and an audit of production processes. Indonesia notified this measure to the WTO in November 2018. U.S. manufacturers remain concerned by the lack of clarity on how products can enter the market under the alternative procedure.

In February 2021, Indonesia issued GR 28/2021. The measure includes requirements governing conformity assessment to Indonesian national standards (SNI) for a wide variety of consumer goods including toys, electronics, and home appliances. U.S. stakeholders report that testing laboratories and conformity assessment bodies have been told to halt certification until MOI issues implementing guidance for GR 28/2021. This standstill has resulted in the halting of imports that use the SNI scheme that requires testing per shipment. Additionally, GR 28/2021 requires that all steps of product testing be conducted by an Indonesian national residing in Indonesia, further complicating product sample collection for products that use a per-shipment testing scheme. Indonesia has not yet notified this measure to the WTO. The United States will continue to raise its concerns regarding GR 28/2021 with Indonesia.

*Halal Certification*

Under Law 33/2014 on Halal Product Assurance, halal certification is mandatory for food, beverages, pharmaceuticals, cosmetics, medical devices, biological products, genetically engineered products, consumer goods, and chemical products sold in Indonesia. All business processes, including production, storage, packaging, distribution, and marketing, are required to comply with this law, which also requires non-halal information to be placed on packaging for non-halal products. In 2017, the Indonesian Government officially established the Halal Product Assurance Agency (BPJPH) under the Ministry of Religious Affairs (MORA) to lead the implementation of halal certification.

MORA continues to develop regulations to implement Law 33/2014. U.S. stakeholders are concerned that Indonesia has finalized many of these regulations without sufficient notice and adequate time to submit comments as required under the WTO Agreement on Technical Barriers to Trade and as more specifically recommended by the WTO Committee on Technical Barriers to Trade (WTO TBT Committee). MORA Regulation 26/2019 initially set out the transition period for halal requirements to go into force. MORA Decree 748/2021 outlines a broad range of products requiring halal certification. Indonesia notified these measures to the WTO in October 2019 and July 2021, respectively. In December 2021, MORA issued Decree 1360/2021, which was notified to the WTO in January 2022. This decree provides an extensive list

of ingredients or materials that are not required to obtain halal certification. This list is also known as the halal positive list.

GR 39/2021, a revision of the Implementing Regulations (first published in 2019), maintains the original timeline for phasing in mandatory halal certification: for food and beverage products by October 2024; for traditional medicines and food supplements, cosmetics, chemical products, and genetically modified organisms, wearable clothing items, household appliances, office products, and class A medical devices by October 2026; for over-the-counter medicines and class B medical devices by October 2029; and, for prescription medicines and Class C medical devices by October 2034. Vaccines, biological engineering products, and class D medical devices will be regulated under a future presidential decree.

In accordance with MORA Regulation No. 2/2022 on International Cooperation on Halal Product Assurance, U.S.-based halal certifying bodies (HCBs) are eligible to apply directly to BPJPH for permanent recognition, which is required for HCBs to continue issuing halal certificates for U.S. exports. So far, only one U.S. HCB has been assessed in person by BPJPH, and the other four are waiting for their assessments to be scheduled. The final step to obtaining recognition is for each HCB to conclude a Mutual Recognition Agreement with BPJPH.

The United States continues to raise concerns with the implementing regulations for Law 33/2014 at the WTO TBT Committee and bilaterally.

*Product Testing*

BPOM sets out requirements for testing of heavy metals in cosmetics in its Regulation 12/2019. This Regulation revokes previous Regulation 17/2014. A 2016 BPOM Circular Letter provides further guidance on these requirements, which is fulfilled through a certificate of analysis that is valid for one year. In practice, Indonesian customs requires each shipment to provide a separate test in addition to the certificate. This measure appears intended to limit imports. U.S. stakeholders have expressed concern that the pre-market testing requirement goes against the intent of the Association of Southeast Asian Nations (ASEAN) Cosmetics Directive, which stipulates that monitoring of heavy metals should be undertaken via post-market surveillance.

**Sanitary and Phytosanitary Barriers**

*Facility Registration for Animal-Derived Products*

Indonesia's animal health and husbandry law (Law 18/2009, as amended by Law 41/2014) requires companies that export animal-derived products, such as meat, dairy and eggs, to Indonesia to complete a pre-registration process with MOA. The law allows imports of these products only from facilities that Indonesian authorities have individually approved. MOA Regulation 15/2021 maintains this requirement and adds a new provision requiring raw materials used for the manufacturing of animal-derived products to originate from facilities that have already been approved by Indonesia.

Under GR 35/2016, MOA requires that all animal product establishments seeking to export to Indonesia undergo inspections to obtain eligibility certificates. As part of this process, MOA charges fees for a desk audit of application materials, an on-site facility inspection, and a post-audit desk review. Dairy production facilities are only required to pass desk audits, while other facilities (*i.e.*, meat and rendering) are required to undergo on-site facility inspections and post-audit desk reviews. Indonesia charges for transportation and lodging costs for MOA officials that conduct inspections in the United States. In total, companies seeking to export to Indonesia could pay up to $10,000 for each inspection.

*Fisheries*

The Ministry of Marine Affairs and Fisheries (MMAF) Regulation 11/2019 requires the completion of a health certificate for all fishery products imported into Indonesia after February 1, 2021. The health certificate must follow MMAF's guidelines, and a failure to follow them will result in the product's detainment. However, the U.S. competent authorities issuing export certification for fisheries products, the U.S. Department of Commerce National Oceanic and Atmospheric Administration and the U.S. Department of Agriculture Animal and Plant Health Inspection Service, have reached an agreement with MMAF to resolve potential issues stemming from this requirement.

## GOVERNMENT PROCUREMENT

Indonesia grants special preferences to encourage domestic sourcing and to maximize the use of local content in government procurement. It also instructs government departments, institutes, and corporations to utilize domestic goods and services to the maximum extent feasible. Presidential Regulations 54/2010 (as amended by Regulation 16/2018) and 38/2015 both require procuring entities to maximize local content in procurement, use foreign components only when necessary, and to designate foreign contractors as subcontractors to local companies. Both regulations provide general minimum requirements for local content and service provision. Depending on the sector or nature of the project, ministries with authority over the project may impose additional restrictions or requirements. In addition, the 2020 Job Creation Omnibus requires the central and local governments to allocate at least 40 percent of government procurement to local MSMEs, in addition to cooperatives.

Indonesia's 2012 Defense Law and Presidential Regulation 76/2014 mandate priority for local materials and components and require defense agencies to use locally produced goods and services whenever available. In addition, when an Indonesian Government entity procures from a foreign defense supplier due to lack of availability from an Indonesian supplier, there is a requirement for "trade balancing" offsets, including by incorporation of local content, production offsets, technology transfer, or a combination thereof.

In June 2021, the Indonesian Government had suspended imports of 79 medical device product categories from the government's electronic-catalog (e-Katalog) with minimal notice and without prior stakeholder consultation. Since that time, U.S. medical device manufacturers frequently raised concerns about their products being withheld from public hospital purchase under the e-Katalog and requested the Indonesian Government to allow a sufficient grace period for the transition to local production to assure patient access to safe and high-quality medical devices. In response, Indonesia offered limited exceptions to mitigate possible disruptions, but has not issued guidelines companies can use to request exception.

Presidential decree No. 2/2022, published on March 30, 2022, mandated that the Indonesian Government use local products to improve the national economy. Subsequently, in August 2022, the National Public Procurement Agency (LKPP) reported that approximately 13,600 imported products had been suspended in the "e-Katalog" to encourage purchase of local products.

In August 2022, the LKPP announced plans to draft a bill related to government procurement of goods and services, as requested by the President. In preparation for the new procurement laws, the President has asked the Ministry of State-Owned Enterprises (BUMN) to prepare SOEs to produce goods and services that are currently imported.

Indonesia is not a Party to the WTO Agreement on Government Procurement but has been an observer to the WTO Committee on Government Procurement since October 2012.

## INTELLECTUAL PROPERTY PROTECTION

Indonesia remains on the Priority Watch List in the 2022 Special 301 Report. Although Indonesia has recently taken steps to improve intellectual property (IP) protection and enforcement, including establishing an IP enforcement task force and increasing efforts to address online piracy, significant concerns remain.

Widespread copyright piracy and trademark counterfeiting (including online and in physical markets) are key concerns. The Mangga Dua Market in Jakarta continues to be listed in the 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List), along with multiple online Indonesian marketplaces. Lack of enforcement remains a problem, and the United States urges Indonesia to utilize the new enforcement task force to increase proactive interagency coordination and to provide deterrent-level penalties for IP infringement in physical markets and online. The United States also continues to encourage Indonesia to provide an effective system for protection against the unfair commercial use, in addition to unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. The United States remains concerned with Indonesia's law regarding geographical indications.

Indonesia addressed certain issues related to local manufacturing and use requirements through the 2020 amendments to the 2016 Patent Law. Indonesia is in the process of further amending the Patent Law, and the United States continues to urge Indonesia to address remaining concerns, including with respect to the patentability criteria for incremental innovations and disclosure requirements for inventions related to traditional knowledge and genetic resources.

The United States and Indonesia finalized a bilateral IP work plan in 2018 to improve IP protection and enforcement in Indonesia, and the United States will continue to work with the Indonesian Government to address deficiencies in IP protection and enforcement and to promote public education and outreach.

## SERVICES BARRIERS

### Audiovisual Services

Indonesia's 2009 Film Law, as amended by the 2020 Omnibus Law, imposes a 60 percent local content requirement for local exhibitors (movie theaters and TV stations), prohibits local exhibitors from dedicating more than 50 percent of their total screen time to content from a single film production business, film distribution business, or film import business over a period of six consecutive months, prohibits the dubbing of foreign films, and prohibits foreign companies from distributing or exhibiting films. In 2019, the Minister of Education and Culture issued Regulation 34/2019, which if enforced, would implement these provisions of the Film Law. However, the regulation is reportedly not being enforced.

### Distribution Services

Logistics services generally are subject to a maximum 49 percent foreign ownership, except for freight forwarding, warehousing and storage services, and distribution, which are capped at 67 percent foreign ownership.

### Express Delivery Services

Indonesia maintains restrictions on the provision of postal services, broadly defined to include courier, express delivery, and other logistics services. Indonesian law requires that postal service suppliers be majority-owned by Indonesians and that foreign suppliers limit their activities to provincial capitals with international airports and seaports. Under Customs Regulation 11/2020, logistic services companies are

required to include a Tax ID Number (NPWP) or designated identification numbers of Indonesian consignees or consignors in the manifest of all inwards and outwards shipments to and from Indonesia. Indonesian customs have since relaxed the requirement by allowing a phone number to be used in lieu of a NPWP on the manifest. However, as of December 31, 2022, the Customs Directorate had not yet issued a written regulation for this relaxation of the policy and industry fears the lack of legal certainty will cause future obstacles for shipping.

**Financial Services**

Generally, no single investor, foreign or domestic, may own more than 40 percent of an Indonesian bank. In certain cases, the Indonesian Financial Services Authority (OJK) may grant exceptions to this general rule. Based on OJK regulation No. 12/POJK.03/2021 issued in August 2021, OJK increased the foreign equity cap for commercial banks to 99 percent with prior assessment from the banking supervisor unit at OJK. OJK also raised local and foreign banks' minimum core capital requirements to IDR 3 trillion (approximately $0.2 billion), and raised the minimum capital requirement for the establishment of a new bank to IDR 10 trillion (approximately $0.68 billion), effective on December 31, 2022. Separately, Indonesia's central bank, Bank Indonesia (BI), restricts foreign ownership in private credit reporting firms to 49 percent under BI Circular Letter No. 15/49/DPKL.

OJK Regulation 77/2016 on peer-to-peer (P2P) lending introduces various guidelines, obligations, and restrictions for P2P lending services, and the organization of P2P lending service providers. This regulation caps foreign ownership of P2P services at 85 percent and imposes overly broad restrictions on cross-border data transfers. Nonbank financial service suppliers may do business in Indonesia as a joint venture or be partially owned by foreign investors but cannot operate in Indonesia as a branch or subsidiary of a foreign entity. Indonesia issued a moratorium in October 2021 on P2P lending licenses, to combat illegal platforms. Under OJK Regulation 13/2018, financial technology companies must register with OJK and implement a regulatory sandbox to test new services and business models.

Under BI Regulation 18/40/PBI/2016 on payment transaction processing operations, BI limits foreign ownership of payment companies to 20 percent (but exempts existing investments that exceed this foreign equity limitation) and imposes overly broad restrictions on cross-border data transfers.

BI Regulation 19/08/2017 on the National Payment Gateway (NPG) requires all domestic retail debit and credit transactions to eventually be processed through NPG switching institutions located in Indonesia and licensed by BI. The regulation imposes a 20 percent foreign equity limitation on firms that wish to obtain a switching license to participate in the NPG, preventing wholly foreign-owned companies from supplying switching services, and prohibiting the cross-border supply of electronic payment services for domestic retail debit and credit transactions. As of December 31, 2022, BI had not applied this requirement to credit transactions. BI Regulation 19/10/PADG/2017 mandates that foreign firms form partnership agreements with licensed Indonesian NPG switches in order to process domestic retail transactions through the NPG. BI must approve such agreements, and the regulation makes approval contingent on the foreign partner firm supporting development of the domestic industry, including by technology transfer. The United States continues to raise concerns with respect to these policies.

Under BI Regulation 21/2019, Indonesia established national standards (termed QRIS, or Quick Response Code Indonesian Standard) for all payments using QR codes in Indonesia. U.S. companies, including payment providers and banks, noted concern that during BI's QR code policymaking process, foreign companies were neither informed of the nature of the potential changes, nor given an opportunity to explain their views on such a system, including how it might be designed to interact most seamlessly with existing payment systems.

Indonesia issued regulation No. 22/23/PBI/2020, effective July 1, 2021, to implement BI's 2025 Payment System Blueprint. The "umbrella" regulation establishes a new risk-based categorization of payment system activities and a licensing system. The regulation implemented an 85 percent foreign ownership cap for "non-bank payment service operators", also known as "front-end" payment companies. However, foreign investors may only hold 49 percent of voting shares. The foreign ownership cap for "payment system infrastructure operators", or "back-end" companies, remains at 20 percent. Existing investors are grandfathered into the old requirements so they may continue to have higher amounts of foreign equity. BI Regulations No. 23/6/PBI/2021 for front-end payment companies and No. 23/7/PBI/2021 for back-end payment companies went into effect July 1, 2021, and continue to apply foreign ownership rules in accordance with BI regulation No. 22/23/PBI/2020. Stakeholders have expressed concern regarding BI's lack of consultation with market participants prior to issuance of regulations.

U.S. payment systems companies have stated that the new regulations could further limit access to Indonesia's financial services market. Prior regulations required authorization, clearing, and settlement to be processed onshore. The new regulations add initiation of a payment as an onshore processing requirement. The regulations do not specify requirements by product. While the regulations provide for offshore processing if certain requirements are met, offshore processing is subject to BI approval. The regulations also give BI greater authority to regulate pricing, including for fees between payment companies and their client banks and banks' fees to consumers. U.S. payment companies have expressed concern about the expanded authority of BI to set prices that could disrupt business decisions and future investment, particularly for credit card transactions. Concerns persist about BI creating its own set of local standards, which make it difficult to bring in global products to Indonesia.

**Health Services**

Presidential Regulation 10/2021 (as amended by Presidential Regulation 49/2021) eliminated caps on foreign ownership in and location restrictions for general hospitals, private specialist clinics, dental clinics, and specialized nursing services. Nevertheless, problematic sectoral regulations remain in place, including regulations that require foreign hospitals to have a minimum number of inpatient beds that is higher than the minimum number of inpatient beds required for domestic hospitals, and impose restrictions for foreign doctors who can work in Indonesia. Foreign ownership is prohibited for private maternity hospitals, general medical clinics, residential healthcare, and basic health services facilities as these sectors are reserved for domestic micro, small, and medium-sized businesses.

**Insurance Services**

The 2014 Insurance Law limits foreign investment in domestic insurance companies to the acquisition of publicly traded shares. Under GR 14/2018 (GR 14), as amended by GR 3/2020, Indonesia limits foreign equity in insurance companies to 80 percent. GR 14 exempts companies with foreign ownership higher than 80 percent at the time of the GR 14's issuance, but limits these companies' foreign ownership to their 2018 levels. GR 3/2020 strengthened the grandfathering provisions of GR 14 by specifically allowing foreign investors to inject new capital in growing investments in order to maintain their existing (2018) capital share, and also by repealing the obligation under GR 14 for a local shareholder to make a corresponding 20 percent capital injection in the event of such a capital increase.

Previously, OJK Regulation 14/2015 and OJK Circular Letter 31/2015 required insurance companies operating in Indonesia to cede to domestic reinsurance companies 100 percent of the reinsurance for many common types of policies, such as life, accident, auto, and health insurance policies, and up to 50 percent of reinsurance for other lines, such as certain property and casualty policies. However, OJK regulation No. 39/2020 phased out the requirement for domestic reinsurance for simple risks in 2020, and for non-simple risks in 2022.

## Professional Services

*Legal Services*

Only Indonesian citizens may be licensed as lawyers in Indonesia. Foreign lawyers may work in Indonesia as legal consultants with the approval of the Ministry of Law and Human Rights. A foreign law firm seeking to enter the market must establish a partnership with a local firm.

*Audit and Accounting Services*

A foreign public accounting firm must be affiliated with a local public accounting firm to conduct business in Indonesia. A foreign accounting firm must use the name of its local affiliate in addition to the foreign firm's name in presentations and disclosures. Indonesia allows a maximum of 10 percent foreign national staff for each level of management in the affiliated local accounting firm. In affiliated accounting firms, the ratio of foreign audit signing partners to local signing partners cannot exceed one to four.

## Transportation Services

Under Indonesia's public service obligation (PSO) initiative, SOEs are responsible for transporting essential goods to less populated areas of Indonesia, limiting transportation investment opportunities to foreigners. Indonesia Regulation 10/2021 replaced the 2016 Negative Investment List and does not include freight transportation, warehouse, or port services. Law 17/2008 on shipping requires all vessels operating in Indonesian waters to be Indonesian-flagged and limits foreign ownership of Indonesian-flagged vessel to 49 percent. However, the Indonesian shipbuilding industry does not have the capacity to build the variety of specialty ships its economy requires and is unlikely to have such capacity in the near to medium term. Full implementation of the law would be particularly problematic for foreign investors in Indonesia's energy and telecommunications sector, which would no longer be permitted to bring in the sophisticated rigs and specialized vessels needed to develop large upstream projects or service undersea cables. The 2020 Job Creation Omnibus appeared to address this problem by permitting foreign ships to operate in Indonesia for special activities (excluding passenger and goods transport) if there is no Indonesian vessel available; however, the implementing regulations introduce inconsistencies and legal uncertainty. Minister of Transportation Regulation 2/2021 details activities that foreign ships are permitted to perform: oil and gas survey; drilling; offshore construction; offshore operational support; dredging; salvage and underwater works; electricity activities done by power plant vessels; terminal construction; and, pier development and construction activities. Foreign ship usage must obtain approval from the Ministry of Transportation, which is valid for six months. A foreign ship with more than a two-year contract will be required to be nationalized. However, recently enacted GR 31/2021, which allows foreign entities to establish a ship crew agency in Indonesia by forming a joint venture with a local shipping company, does not appear to address utilization of foreign vessels for the above-mentioned activities.

## Construction, Architecture, and Engineering Services

Under Construction Services Law 2/2017, as amended by Law 11/2020, foreign construction service companies must partner with a locally-owned company and their participation is limited to high-risk, high-tech, and high-value projects. Separately, the National Construction Services Development Board certifies foreign entities as construction companies, consulting companies, or integrated (engineering, procurement, and consulting) companies. A foreign entity may have only one of these designations.

### Franchising and Retail Distribution Services

Under MOT Regulation 71/2019 retail companies are required to "prioritize" the use of domestic goods and services unless domestic products do not meet a franchisor's "quality standards." MOT Regulation 23/2021 requires modern shops to set aside "promotion" areas for products produced by MSMEs and requires business owners with more than 150 stores to franchise their business.

### Telecommunication Services

Indonesia has issued a number of measures that make it difficult to import cellular and Wi-Fi equipped products. To support the Commodity Balance policy, MOT issued Regulation 20/2021 (as amended by MOT Regulation 25/2022). MOT also revoked several import-related regulations, including MOT Regulation 82/2012, and incorporated one import policy for all sectors and commodities. Under these two regulations, all import license requests must be submitted through the national single window system. These regulations maintain burdensome requirements for imports. Additionally, importers are required to become a "registered importer" to sell directly to retailers or consumers. To qualify for a MOT import license, Indonesia requires confirmation that importers are working with at least three distributors, and requires importers to provide evidence of contributions to the development of the domestic device industry, or evidence of cooperation with domestic manufacturing, design, or research firms. Companies seeking to import 4G and beyond technology-enabled devices may only do so under a "producers license" (API-P), which is generally held by importers of unfinished goods intended for use in the manufacturing process, limiting the ability of foreign producers to sell these devices in Indonesia. Importers are also required to submit product identification numbers and a corresponding certificate from the Ministry of Communications and Information Technology (MCIT). Industry stakeholders claimed that the new policies have created uncertainty as it takes months to get a decision on license requests.

U.S. companies have reported that, in some cases, MOI is informally limiting import quantities under existing licenses (issued under MOI Regulation 108/2012) to protect locally-manufactured cell phones, handheld computers, and tablets. Importers of any type of cell phone, handheld computer, or tablet are also subject to MOI Regulation 68/2016, which requires importers to obtain a MOI recommendation to establish themselves as registered importers of such devices. A recommendation is only available for local manufacturers, importers in a joint venture with a local manufacturer, or importers of "specialized items." Altogether, Indonesia's licensing practices impose significant barriers on the importation of cellphones, handheld devices, and other electronic devices.

## BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

### Data Localization Requirements

Under GR 71/2019 (GR 71), private sector electronic system operators (defined as persons, business entities, or communities that operate an electronic system) are permitted to transfer, process, and store data outside of Indonesia. GR 71, however, requires data localization for public sector electronic system operators (defined as state institutions or other institutions appointed by a state institution that operate an electronic system), requiring such operators to process and store data in Indonesia.

Under GR 71, financial service regulators are permitted to "further regulate" the treatment of financial sector data in a manner consistent with GR 71. In 2020, OJK issued Regulations 13/2020 and 38/2020, amended by Regulation 4/2021, which appear to allow some but not all data to be transferred and stored outside of Indonesia for commercial banks and insurance companies. OJK requires that core banking and insurance systems must be maintained onshore. The United States continues to expect that all existing regulations affecting transfer and storage of financial services data will be amended to comply with GR 71,

such that all financial services data can be transferred and stored outside of Indonesia. OJK Regulation No. 11/2022 requires data center and/or disaster recovery center electronic systems for banks to be located in Indonesia unless OJK approves their placement outside of Indonesia.

GR 71 also requires private sector electronic system operators (ESOs) to facilitate supervision by government agencies, including by granting access to electronic systems and data for monitoring and law enforcement purposes. MCIT issued implementing regulations for GR 71, Regulation 5/2020 and Regulation 10/2021, which require private sector ESOs, including those providing services on a cross-border basis, to register with MCIT by July 20, 2022 or be subject to blocking. Failure to comply with government takedown orders for a potentially broad category of "prohibited electronic information" can also result in blocking. The industry voiced concerns over the lack of clarity of content classifications that fall within the scope of prohibited content, lack of an appeal and adjudication mechanism, and limited turnaround time for ESOs to respond to MCITs takedown request. MCIT intends to impose administrative sanctions under GR 71, which will be further regulated under the Draft GR on Non-Tax State Revenue (RPP PNBP).

Indonesia enacted Personal Data Protection Law No. 27 on October 19, 2022, providing for a two-year transition time. This law imposes requirements for data collection, processing, and transfer, as well as criminal and administrative penalties for violations, and may restrict cross-border data flows.

A Data Protection Authority (DPA) is estimated to be operational by the end of April 2023. The DPA will report to the President and will be responsible for drafting the implementing regulations. Recently alleged data breaches in several ministries and agencies have raised concerns over personal data protection and may have prompted the acceleration of the enactment of the law.

**Digital Products**

In 2018, the MOF issued Regulation 17/2018, which established five HS lines at the eight-digit level for digital products transmitted electronically, including applications, software, and video and audio content. The regulation sets import duty rates at zero percent. On January 14, 2023, the MOF issued Regulation No. 190/PMK.04/2022 which requires entities importing digital products covered by the five HS lines to file a customs declaration within 30 days of receiving payment for the digital products. The customs declaration requires information including country of origin, sender information, and importer information.

Despite the zero percent duty rate, companies have expressed concern over these new reporting requirements. Stakeholders have raised concerns that this regulation will apply to a wide range of entities, including small and medium-sized enterprises (SMEs), that transmit files through the Internet to entities within Indonesia. Since no other country has taken similar steps to attempt to apply to digital products on electronic networks the rules and processes for the collection of customs duties on physical goods at the physical border, there are significant unanswered questions concerning how Indonesia will define the "border" on electronic networks and what steps Indonesia would take to "inspect" digital products. The potential answers to these questions raise cybersecurity, privacy, and data protection concerns.

As Indonesia has stated its intention to impose customs duties on digital products in the future, this regulation also raises concerns that as a next step Indonesia will impose a non-zero tariff on digital products. In particular, this action would raise serious concerns regarding Indonesia's longstanding WTO commitment not to impose duties on electronic transmission, renewed on a multilateral basis in June 2022, until the next WTO Ministerial Conference.

### Digital Services Taxation

Under Law 2/2020, Indonesia introduced a series of changes to its tax code, including an expansion of the definition of permanent establishment for purposes of Indonesia's corporate income tax, and a new electronic transaction tax (ETT) that targets cross-border transactions where tax treaties prohibit Indonesia from taxing corporate income from the transaction. The MOF would need to issue additional legal measures for these new taxes to go into effect.

The United States opposes proposals by any country to single out digital companies. Indonesia has refrained from implementing an ETT and is among the 137 member jurisdictions, including the United States, to have joined the October 8, 2021, OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy, which called for all Parties to commit not to introduce DSTs in the future. As the G20 president in 2022, Indonesia has supported the ongoing work on Pillar 1 of the OECD consensus on reallocation of taxation rights. The Indonesian Government has called on the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting to finalize Pillar 1 and sign a multilateral convention in the first half of 2023.

### Internet Services

Indonesia has issued measures intended to regulate the electronic commerce sector. In 2019, Indonesia issued GR 80/2019, which applies to a diverse range of domestic and foreign online merchants, electronic commerce companies, and intermediaries that facilitate electronic transactions between independent merchants and customers. Companies have expressed concern that GR 80/2019 overlaps with other regulations in the areas of data privacy and requires companies to utilize a ".id" web address. In 2020, Indonesia issued MOT Regulation 50/2020 to implement GR 80/2019, which establishes requirements for electronic commerce business activities. Foreign electronic commerce operators that have 1,000 transactions or 1,000 packages delivered to Indonesia per year are required to appoint a representative in Indonesia and/or to register for a foreign business license for electronic commerce. Both foreign and local electronic commerce actors have voiced concerns over the opaque drafting and stakeholder input process for these regulations.

## INVESTMENT BARRIERS

In contrast to previous regulations, Presidential Regulation 10/2021 (as amended by Presidential Regulation 49/2021) establishes that all business sectors are open for investment unless stipulated otherwise. The regulation establishes conditions or restrictions on foreign investment for two categories of sectors: (1) sectors reserved for MSMEs and cooperatives or foreign investors that partner with them; and, (2) sectors that are open with certain requirements (*i.e.*, with caps on foreign ownership or special permit requirements). Defense-related investment remains under the sole purview of the central government.

## SUBSIDIES

In 2019, for the first time in over twenty years, Indonesia filed a subsidy notification under the WTO Agreement on Subsidies and Countervailing Measures. Indonesia's notification only covered subsidy programs in the fisheries sector.

According to the WTO Secretariat Report on the 2020 Trade Policy Review, Indonesia continues to provide fiscal and non-fiscal incentives for manufacturing and exports in connection with its export processing zones and special economic zones programs. These include incentives related to corporate income tax, property tax, import duty, value-added tax, excise and luxury taxes, and local taxes, in addition to assistance

on land acquisition, licensing, investment, and labor. Non-tax incentives in the form of loans and interest rate subsidies continue to be available mainly to MSMEs. Additionally, Indonesia provides various forms of official export financing, insurance, and guarantees through the state-owned Indonesia Exim bank and Asuransi Ekspor Indonesia. The United States will continue to urge Indonesia to submit a WTO notification for all of its subsidy programs.

## OTHER BARRIERS

Although the Indonesian Government and the Corruption Eradication Commission investigate and prosecute high-profile corruption cases, many stakeholders continue to view corruption as a significant barrier to doing business in Indonesia. Other barriers to trade and investment include: poor coordination within the Indonesian Government; limited access to financing; the slow pace of land acquisition for infrastructure development projects; poor enforcement of contracts; an uncertain regulatory and legal framework; arbitrary tax assessments; and, lack of transparency in the development of laws and regulations. U.S. companies seeking legal relief in contract disputes have reported that they are often forced to litigate spurious counterclaims and have raised growing concern about the criminalization of contractual disputes.

### Export Restrictions

Indonesia's 2009 Mining Law requires companies to process ore locally before shipping it abroad. Implementing regulations of this law ban the export of over 200 types of mineral ore, including nickel and bauxite. Under GR 1/2017, companies with existing work contracts are required to convert to special mining business licenses, divest 51 percent of their shares to Indonesian parties over a period of 10 years, and build a domestic smelter by January 2022, in order to obtain a license to export mineral concentrates (the 2020 Mining Law updates this requirement to build a smelter by 2023). U.S. stakeholders have expressed serious concern about these measures.

As part of the implementation of the 2009 Mining Law, Indonesia prohibits the export of nickel ore, one of several recent measures restricting the export of key steelmaking raw materials. The United States has expressed concern about the impact this measure will have on global nickel supply and prices, in addition the impact on the production and exportation of stainless steel, which Indonesia is producing in rapidly increasing volumes well in excess of its domestic consumption. On December 11, 2019, the United States requested to join consultations initiated by the European Union concerning the consistency of Indonesia's export ban with Indonesia's WTO obligations and participated in the subsequent panel proceedings as a third party. The panel report in this dispute was circulated on November 30, 2022, in which the panel found Indonesia's export ban on nickel ore to be inconsistent with its WTO obligations. Indonesia filed a notice of appeal on December 12, 2022.

In the oil and gas sector, Ministry of Energy and Mineral Resources Regulation 42/2018 requires all oil and gas contractors to sell their production to state-owned Pertamina in an attempt to reduce Pertamina's crude oil imports. In addition, production-sharing contracts and gross split contracts in Indonesia contain a standard clause specifying that 25 percent of all production must be sold to domestic refineries for domestic consumption. The policy, known as the Domestic Market Obligation, also requires companies to sell the crude oil to domestic refineries at a heavily discounted rate. BI Regulation 13/2011 (as amended by BI Regulation 14/2012) subjects export earnings to Indonesian banking law and regulations, despite production-sharing contracts that allow companies to remit such earnings abroad.

### Local Content

Indonesia imposes local content requirements across a broad range of sectors, including telecommunications, mobile technology, energy, agriculture, retail, and franchising. These requirements

are mandatory, and goods failing to meet those requirements cannot be imported into or sold in Indonesia. Indonesia has stated its intentions to create new local content requirements and to increase existing mandated local content levels. The United States continues to press Indonesia to remove these prohibitions.

In the mobile technology sector, MCIT Regulation 13/2021 requires all 4G-LTE and 5G enabled devices to contain 35 percent local content and all 4G-LTE and 5G base stations to contain 40 percent local content. MOI Regulation 29/2017 provides a formula for calculating "local content."

In the telecommunications sector, MCIT Regulations 7/2009 requires that equipment used in certain wireless broadband services contain local content of at least 30 percent for subscriber stations and 40 percent for base stations, and that all wireless equipment contains 50 percent local content. MCIT Regulation 4/2019 requires all TV and set-top boxes based on digital video broadcasting-terrestrial second generation and internet protocol set-top boxes to contain at least 20 percent local content. MCIT Regulations 9/2019 and 10/2019 require wavelength division multiplexing and internet protocol network devices to comply with local content requirements. Industry continues to voice concerns over MOI's refusal to discuss LCR policies with stakeholders.

In the textile sector, Indonesia enacted local content requirements in 2019, which effectively banned imports of finished textile products classified in 430 Harmonized System Codes. U.S. carpet tile manufacturers reported that the sudden implementation of the measures resulted in disrupted contracts with customers in Indonesia and has hindered their ability to bid on relevant new tenders. In November 2021, the U.S. textile industry reported that the 2019 local content requirements had been revoked and replaced with MOT Regulation 20/2021(amended with MOT Regulation 25/2022). According to industry, the new regulation allows finished textile products to be re-exported to Indonesia, but requires that importers apply for an import license that is valid for one calendar year. Industry continues to seek further details on MOT Regulation 20/2021.

*Energy and Mining*

Over the past decade, the Indonesian Government has introduced regulatory changes, including local content in the energy and mining sectors. The regulatory changes have raised questions about the sanctity of contracts already in force between private companies and the Indonesian Government.

In the oil and gas sector, GR 79/2010 (as amended by GR 27/2017) allows the Indonesian Government to change the terms of certain existing production-sharing contracts, eliminate the tax deductibility of certain expenses, change the terms and criteria for cost recovery, and place limits on allowable costs for goods, services, and salaries. Contractors in the upstream oil and gas sector are required to prioritize the use of domestic services, including energy-related services, in addition to domestic technologies, and engineering and design capabilities. U.S. companies have noted that these local preference policies severely undermine their ability to operate in the Indonesian market.

Indonesia's oil and gas regulator also maintains stringent rules relating to how local content is measured with respect to oil and gas projects, which are intended to achieve an average of 91 percent local content by 2025. Goods and services supplied by companies without majority Indonesian shareholding cannot qualify as local content, which places foreign energy service companies at a disadvantage.

# ISRAEL

## TRADE AGREEMENTS

### The United States–Israel Free Trade Agreement

The United States–Israel Free Trade Agreement (FTA) entered into force on August 19, 1985. Israel implemented phased tariff reductions culminating in the complete elimination of duties on all non-agricultural products by January 1, 1995. While Israel has eliminated tariffs on non-agricultural goods as agreed, tariff and non-tariff barriers continue to affect a significant number of key U.S. agricultural product exports.

To address the differing views between the two countries over how the FTA applies to trade in agricultural products, in 1996, the United States and Israel signed an Agreement on Trade in Agricultural Products (ATAP), which established a program of gradual and steady market access liberalization for food and agricultural products effective through December 31, 2001. The United States and Israel completed negotiation and implementation of a successor ATAP in 2004, which granted improved access for select U.S. agricultural products. Originally scheduled to last through December 31, 2008, the 2004 ATAP has been extended 15 times, most recently through December 31, 2023, to allow time for the negotiation of a successor agreement. The current ATAP provides U.S. food and agricultural products access to the Israeli market under one of three categories: unlimited duty-free access, duty-free tariff-rate quotas (TRQs), or preferential tariffs, which are set at least 10 percent below Israel's Most-Favored-Nation (MFN) rates.

The United States and Israel meet regularly to review the implementation and functioning of the FTA and to address outstanding issues. The United States–Israel Joint Committee is the central oversight body for the FTA, and last met on December 2, 2020.

## IMPORT POLICIES

### Tariffs

*Agriculture*

U.S. agricultural exports that do not enter duty free under World Trade Organization (WTO), FTA, or ATAP provisions face barriers, such as high tariffs and a complicated TRQ system. These products include higher-value goods that are sensitive for the Israeli agricultural sector, such as dairy products, fresh fruits, fresh vegetables, almonds, wine, juice, and some processed foods. Stakeholders estimate that full market access in agriculture could result in significant increases in U.S. exports to Israel of a variety of products, including cheese, processed foods, apples, pears, cherries, frozen vegetables, and stone fruits.

## GOVERNMENT PROCUREMENT

Israel has offset requirements that it implements through international cooperation (IC) agreements. Under IC agreements, foreign companies that have been awarded government contracts are required to offset foreign goods or services provided under the contracts by agreeing to localization commitments that require one of the following: (1) investment in local industry; (2) co-development or co-production with local companies; (3) subcontracting to local companies; or, (4) purchasing from Israeli industry.

Israel is a Party to the WTO Agreement on Government Procurement (GPA).

Since January 1, 2009, the IC offset percentage for procurements covered by Israel's GPA obligations has been 20 percent of the value of the contract; for procurements excluded from GPA coverage, the offset is 35 percent; and, for military procurements, the offset is 50 percent. Under the revised GPA, which entered into force in 2014, Israel began phasing out offsets in 2020 and will eliminate offsets by 2029.

U.S. suppliers have indicated that they believe that the size and nature of their offset proposals can be a decisive factor in close tender competitions, despite an Israeli court decision that prohibits the consideration of offset proposals in determining the award of a contract. Small and medium-sized U.S. exporters often are reluctant to commit to make purchases in Israel in compliance with the IC agreements, and, as a result, their participation in Israeli tenders is limited.

In addition, the inclusion of unlimited liability clauses in many government tenders discourages U.S. firms from competing. When faced with the possibility of significant legal costs for unforeseeable problems resulting from a government contract, most U.S. firms choose to insure against the risk, which raises their overall bid price and reduces their competitiveness, as compared to bids from Israeli firms.

The United States–Israel Reciprocal Defense Procurement Memorandum of Understanding (MOU) is intended to facilitate defense cooperation, in part by allowing companies from both countries to compete on defense procurements in both countries on as equal a basis as possible, consistent with national laws and regulations. The MOU, which has benefited Israeli defense industries by opening up the U.S. procurement market to Israeli products, has not significantly opened the Israeli market for U.S. suppliers interested in competing for Ministry of Defense procurements. Tenders open to U.S. suppliers require the company to have a local agent or bank account to be able to transact in New Israeli Shekels (NIS).

## INTELLECTUAL PROPERTY PROTECTION

The United States remains concerned with certain issues involving Israel's protection and enforcement of intellectual property (IP) rights. On copyright protection, although Israel is a signatory to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty, it has not ratified either. U.S. industry has raised concerns regarding the adequacy of the protection Israel provides against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

## BARRIERS TO DIGITAL TRADE

Data protection in Israel is governed primarily by the Protection of Privacy Law (5741-1981) and the guidelines of the Israeli regulator, the Privacy Protection Authority. Similar to the European Union General Data Protection Regulation, Israeli law restricts the cross-border transfer of personal data of Israelis unless certain specific criteria are met, such as the use of standard contract clauses. The United States remains committed to working with Israel to ensure continuity in trusted cross-border data flows and privacy protection.

# JAPAN

## TRADE AGREEMENTS

The United States–Japan Trade Agreement (USJTA) and the United States–Japan Digital Trade Agreement (USJDTA) entered into force on January 1, 2020. Under the USJTA, more than 90 percent of U.S. agricultural exports to Japan are duty free or receive preferential tariff access. The USJDTA includes high-standard provisions, including provisions that: prohibit the application of customs duties or other discriminatory measures to digital products; ensure trusted cross-border transfer of information; and, address the mandatory use of local computing facilities.

The United States continues to urge Japan to remove a broad range of barriers to U.S. exports, including barriers at the border as well as other barriers to entering and expanding the presence of U.S. products and services in the Japanese market.

## IMPORT POLICIES

### Tariffs

Japan's average Most-Favored-Nation (MFN) applied tariff rate was 4.2 percent in 2021 (latest data available). Japan's average MFN applied tariff rate was 14.9 percent for agricultural products and 2.5 percent for non-agricultural products in 2021 (latest data available). Japan has bound 99.7 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 4.6 percent.

While Japan's average MFN applied tariffs are relatively low for non-agricultural products, certain high tariffs have a negative impact on a range of U.S industrial goods exports to Japan, such as chemicals, fish, wood products, and jewelry.

Japan is the fourth largest single-country market for U.S. agricultural products, with U.S. exports valued at approximately $14.6 billion in 2022, despite the existence of tariff and substantial non-tariff market access barriers. While the USJTA removed or reduced tariffs on approximately 90 percent of U.S. food and agricultural exports, there are several important products for which tariffs remain high and limit U.S. market access, including rice and rice products, certain dairy products, beverages including mineral waters and fruit juices, processed foods and pet food, table grapes, frozen blueberries, sugar, chocolate, and sweetened cocoa powder.

*Fish and Seafood*

U.S. fish and seafood exports to Japan in 2021 totaled $708 million in 2022. However, tariffs of 3.5 percent to 10.0 percent on several fish and seafood products, such as pollock, herring, salmon, whiting, cod, and fish oil, hamper U.S. exports and reduce margins of Japanese importers who rely on U.S. raw product for their processing operations. Other market access issues include Japan's import quotas on Alaska pollock, cod, Pacific whiting, mackerel, sardines, squid, Pacific herring, pollock roe, cod roe, and surimi. While Japan has reduced tariffs, increased import quota volumes, and eased the administrative burdens associated with those quotas, the remaining import quotas and tariffs continue to present barriers to U.S. exports, and U.S. companies report that the process of obtaining quota allocation is expensive and subject to frequent delays. The United States has urged Japan to take further action to reduce and eliminate obstacles to U.S. exports of fish and seafood.

*Leather and Footwear*

Japan maintains high tariffs on leather, footwear, and travel goods, ranging from 3.5 percent to an *ad valorem* equivalent of approximately 130.0 percent on certain footwear imported from the United States. For example, Japan continues to apply tariff-rate quotas (TRQs) to a limited and tightly controlled volume of leather footwear imports. The tariffs on out-of-quota imports are either 30 percent or ¥ (yen) 4,300 (approximately $31) per pair, whichever is higher. These tariffs can more than double the cost of imports and negatively affect market access for U.S.-made footwear. Japan also applies TRQs on some raw hides and skins. The United States continues to seek improved market access for U.S. exports in this sector.

**Non-Tariff Barriers**

*Rice Import System*

Japan's highly regulated and nontransparent system of importation and distribution for rice limits the ability of U.S. exporters to have meaningful access to Japan's consumers. Japan has established a global TRQ of 682,200 metric tons (on a milled basis) for imported rice. The Grain Trade and Operations Division of the Ministry of Agriculture, Forestry, and Fisheries (MAFF) Crop Production Bureau manages the TRQ through periodic ordinary minimum access (OMA) tenders and through simultaneous-buy-sell (SBS) tenders. Imports of U.S. rice under the OMA tenders are destined almost exclusively for government stocks. MAFF releases these stocks exclusively for non-table rice uses, such as industrial food processing, animal feed, and re-export as food aid. Under SBS tenders, only a small amount of U.S. rice imported into Japan actually reaches Japanese consumers while still identifiable as U.S. rice. In recent years, SBS tenders have not been filled due partly to the non-market-based markup MAFF imposes on TRQ imports.

Although Japan asserts that the markup is set using supply and demand figures and world pricing, it has not changed the markup since 2018. U.S. rice exports currently make up only about four percent of all rice consumed in Japan. The United States will continue to monitor Japan's rice import system in light of Japan's WTO import commitments and engage with Japan on its SBS markup for rice.

*Wheat Import System*

Japan requires food wheat to be imported through the Grain Trade and Operations Division of MAFF's Crop Production Bureau to secure the lowest tariff rate. The Crop Production Bureau resells the wheat to Japanese flour millers at prices substantially above import prices by imposing a markup. The United States continues to carefully monitor Japan's operation of its state-trading entity for wheat and its potential to distort trade.

*Pork Import Regime*

U.S. pork exports to Japan are subject to a trade-distorting "gate price mechanism" that functions as a variable levy. To prevent lower-priced imports from competing with Japanese pork, the mechanism levies progressively higher duties on lower-priced imports. For instance, chilled and frozen pork are subject to a specific duty of up to ¥125 per kg (approximately $0.89 per kg) based on the difference between the actual import value and a government-established reference price. This duty is in addition to an *ad valorem* duty that is charged on all chilled and frozen pork regardless of import value. With the implementation of the USJTA, the variable levy under the pork gate price mechanism will be reduced over time for U.S. pork, but not eliminated.

*Ethanol*

On May 23, 2022, Japan pledged to take all available measures to double demand for bioethanol, including for sustainable aviation fuel and on-road fuel, by 2030. Yet Japan's annual transport biofuels target of 500 million liters of crude oil equivalent has not changed since 2017 despite Japan's commitment to reduce greenhouse gas emissions in the transportation sector. In addition to the static biofuel target, Japan limits its use of U.S. corn-based ethanol through restrictions on feedstock type. The United States urges Japan to increase its annual biofuels target and eliminate any cap on corn-derived ethanol.

*Customs Barriers and Trade Facilitation*

Japan's *de minimis* threshold is ¥10,000 (approximately $71). U.S. stakeholders have contended that the level is too low. Expanding Japan's advance rulings system to address more customs issues would also improve transparency and predictability for U.S. exporters. The United States also has certain concerns about unequal customs treatment between Japan Post Express Mail Service (EMS) and private express delivery companies. The United States continues to urge Japan to improve the speed of customs processing and to reduce the complexity of customs and border procedures. (*For further information, see the Services Barriers section.*)

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Radio Device Technical Standards Compliance Certification*

Imported radio devices must receive "*giteki*" certification from the Ministry of Internal Affairs and Communications (MIC), verifying compliance with design and technical standards, in order to be sold legally in Japan. U.S. companies report that the process to obtain the "technical conformity mark" is lengthy. U.S. Federal Communications Commission certification is not recognized for *giteki* purposes, and some certified testing labs have refused to analyze U.S. applicant products. U.S. companies say information about the certification process is difficult to obtain and often incomplete, and test methods are not updated.

### Sanitary and Phytosanitary Barriers

### Food Safety

*Proposed Shift in Regulatory Oversight*

As part of an overall effort to streamline management of issues relating to health and infectious disease, the Government of Japan is considering shifting oversight of food safety matters (under the Food Sanitation Act) from the Ministry of Health, Labour and Welfare (MHLW) to the Consumer Affairs Agency (CAA). Implementation of any legislation for that purpose that might be passed by the Diet in 2023 is expected as early as 2024. Currently, three divisions within the MHLW Pharmaceutical Safety and Environmental Health Bureau, which are staffed with experts experienced in regulating foodstuff imports to meet Japan's food security needs, oversee food safety standards, approvals, and enforcement of technical issues such as food additives, chemical residues, and food products derived from biotechnology. The United States will monitor deliberation regarding any legislation and implementing regulations to ensure continued science-based regulatory decision-making and a level playing field for export of food products to Japan.

*Pre- and Post-Harvest Fungicides*

Japan classifies fungicides applied pre-harvest as pesticides and classifies fungicides applied post-harvest as food additives. These different classifications based on the time of application lack a discernable science-based rationale. Because post-harvest fungicides are classified as food additives, Japan requires products treated with them to be labeled at the point of sale with a list of fungicides used. This requirement does not have a significant impact on domestic producers because Japanese farmers generally apply fungicides prior to harvest. The requirement may disadvantage U.S. products, however, because it wrongly suggests that competing Japanese products have not been treated with fungicides.

*Maximum Residue Limits*

Japan's procedures for enforcement of maximum residue limits (MRLs) result in uncertainty for shippers, including those who have never violated Japan's standards. Japan imposes enhanced surveillance on all imports from an exporting country following one MRL violation by one producer. If a second violation is detected during the enhanced surveillance period, Japan will detain and test all shipments of that product from the exporting country, holding shipments until residue testing proves compliance. A violation by a single producer from one country is not indicative of violations by other producers from that same country. The United States continues to urge Japan to adopt a risk-based, violator-specific approach to addressing MRL violations.

*Beef and Beef Products*

On May 17, 2019, Japan eliminated age-related restrictions on the cattle from which U.S. beef and beef product exports to Japan are derived, thereby allowing use of cattle that are 30 months of age and older. However, Japan maintained the requirement that U.S. exporters must hygienically remove those tissues Japan defines to be specified risk materials (SRMs). Japan's definition of SRMs is more restrictive than the World Organisation for Animal Health (WOAH) guidelines provide for countries with a negligible risk for bovine spongiform encephalopathy (BSE), as well as the U.S. Department of Agriculture Food Safety and Inspection Service (FSIS) regulations. Specifically, Japan requires that all parts of the head, other than tongues, cheek meat (Masseter muscle), and skins, be removed. Notably, this excludes head meat, which is allowed under WOAH guidelines and FSIS regulations. This restriction has necessitated the retention of an extra-regulatory third-party verification program, as FSIS does not verify the removal of the additional tissues. At the time Japan eliminated its age-related restrictions, the United States pressed Japan to align its SRM definition with WOAH guidelines for countries with a negligible risk for BSE. The United States continues to seek Japan's alignment with international guidelines.

**Plant Health**

*Potatoes*

U.S. potato exports to Japan are currently limited to chipping potatoes. In March 2020, the United States submitted an official request to Japan for market access for table-stock potatoes. In September 2020, Japan provided its preliminary pest lists for table-stock potatoes, which the United States commented on in February 2021. The United States continues to engage with Japan on this market access request.

*Apples*

In 2017, the United States submitted an official request to export apples to Japan under a systems approach, which would provide Japan with the same level of phytosanitary protection and eliminate costly pest-

mitigation requirements for U.S. exporters. The United States will continue to engage with Japan and provide capacity building on the requested systems approach.

*Stone Fruit*

In August 2021, Japan granted market access for U.S.-grown Japanese plum varieties, but Japan continues to impose costly fumigation requirements even though without them an appropriate level of phytosanitary protection can be provided to Japan. The United States will continue to engage with Japan on phytosanitary topics related to U.S. stone fruit, including co-fumigation of U.S. plums and nectarines, and the U.S. market access request for peaches.

## GOVERNMENT PROCUREMENT

Japan is a Party to the WTO Agreement on Government Procurement (GPA).

Japan is obligated to open its government procurement covered under the GPA to goods, services, and suppliers from the United States and other GPA Parties. U.S. companies in several sectors have expressed concern that the Japanese Government sometimes uses technical specifications that could exclude U.S. products and services, and in some cases may exert pressure on various entities to select domestic companies for procurement opportunities. The United States has expressed these concerns to Japan as they have arisen and will continue to engage with Japan to address these concerns.

## INTELLECTUAL PROPERTY PROTECTION

Japan generally provides strong intellectual property (IP) protection and enforcement, although a number of concerns remain.

### Copyright

In January 2022, an amendment to Japan's Copyright Act created a presumption that when a right holder enters into a license agreement authorizing a broadcast or cablecast (linear broadcast rights) of a copyrighted work, the agreement will be presumed to also grant so-called "simulcast" rights to the broadcaster (allowing transmissions of the broadcasted content for one week on other platforms, such as Internet streaming) unless a contrary intention is clearly indicated at the time the rights are originally granted to the broadcaster. This presumption is a departure from the typical operation of copyright law, where express permission for the additional transmission is required from the copyright owner.

Japan's Agency for Cultural Affairs has drafted a bill on an extended collective licensing (ECL) system under which a user of a copyrighted product would pay a fee to legally acquire copyrighted material from a central point. While this system would make it easier for users of copyrighted products, critics contend it would infringe on IP rights and are advocating for an opt-out option to the ECL system. The Japanese Government stated it plans to limit the scope of the ECL system to orphan works and non-commercial works. The Diet is expected to consider the draft ECL bill during the January to June 2023 ordinary Diet session.

### Enforcement

On October 1, 2022, an amendment to Japan's Trademark Act came into force that addresses concerns over Japan's personal use exemption for imported goods, which had been used increasingly to send counterfeit items to individuals in Japan via postal and courier services. Pursuant to the amendment, items imported from "overseas vendors" for personal use fall within the scope of the Trademark Act, such that counterfeits

imported in this manner are subject to seizure. The United States will monitor implementation and enforcement of the amendment to determine whether it reduces the import of counterfeit goods into Japan.

### Geographical Indications

Japanese and foreign products are eligible for geographical indications (GI) protection in Japan. Japan also has recognized numerous GIs pursuant to international agreements. Exchanges of lists of terms pursuant to international agreements have resulted in Japan granting certain terms automatic protection as GIs without sufficient transparency or due process. The United States continues to monitor implementation of Japan's GI system, as well as implementation of its recent agreements with the European Union and other trading partners with respect to GIs.

## SERVICES BARRIERS

### Japan Post Holdings and Related Companies

Japan Post Holdings (JP Holdings) is a parent company created to replace the former state-owned enterprise Japan Post. Its subsidiary companies include the new Japan Post Company (Japan Post Co.), which runs post offices, postal services, and express delivery; Japan Post Insurance (JP Insurance); and, Japan Post Bank (JP Bank). The Japanese Government still owns a little over one third of JP Holdings, which is the minimum amount stipulated in Japan's Postal Privatization Law. As of December 31, 2022, JP Holdings owned approximately 89.0 percent of JP Bank and approximately 49.9 percent of JP Insurance.

### Express Delivery

The United States remains concerned by unequal conditions of competition between Japan Post Co. and international express delivery suppliers. Private U.S. express carriers are required to declare all shipments for customs clearance and calculate duties and consumption taxes based on cost. Different procedures apply to Japan Post Co., as duty assessment is based on EMS shipment rules. Further, companies report that Japan customs officials may not consistently apply Japan's *de minimis* standards to Japan Post Co. EMS shipments, thereby allowing some EMS packages to avoid inspections and duty tax calculations that would otherwise be due.

Japan Post Co. is regulated by a single agency, the MIC, whereas private express delivery companies are subject to rules imposed by various ministries, including the Ministry of Finance; the Ministry of Health, Labour, and Welfare; the MAFF; and, the Ministry of Land, Infrastructure, Transport, and Tourism. The United States continues to urge Japan to equalize customs procedures and requirements.

### Insurance Services

Japan's insurance market is the third largest in the world, after those of the United States and China, with a premium volume of $403.6 billion in 2021 (latest data available). In addition to the offerings of Japanese and foreign private insurers, insurance cooperatives (*kyōsai*) and JP Insurance also provide substantial amounts of insurance to consumers.

*Postal Insurance and Banking*

The United States has longstanding concerns about JP Insurance's negative impact on competition in Japan's insurance market and continues to closely monitor the implementation of reforms. The United States has long urged Japan to take steps to address a range of level-playing-field concerns.

The United States continues to urge Japan not to allow JP Bank and JP Insurance to expand the scope of their operations before a level playing field is established. Restraints on the scope of JP Insurance operations, including a cap on the amount of insurance coverage and limits on the types of financial activities and products JP entities can offer, have helped to limit harm to private insurance companies. In April 2019, Japan raised the per-customer deposit cap to ¥26 million (approximately $185,700). The United States continues to monitor these increases, which do not require legislative changes to be enacted.

*Insurance Cooperatives*

*Kyōsai* hold a substantial share of the insurance business in Japan. Some *kyōsai* are regulated by their respective agencies of jurisdiction (*e.g.*, MAFF or MHLW) instead of by Japan's Financial Services Agency (FSA), which regulates all private sector insurance and financial services companies. These separate regulatory schemes create a nontransparent regulatory environment and afford *kyōsai* critical business, regulatory, and other advantages over their private sector competitors. The United States remains concerned about limited FSA supervisory authority over *kyōsai*.

**Professional Services**

*Legal Services*

Japan imposes cumbersome and time-consuming procedures for the registration of foreign lawyers to provide international legal services in Japan and prohibits lawyers from establishing branch offices in Japan without first incorporating in Japan.

*Educational Services*

Japan does not treat foreign universities' Japan campuses as equivalent to Japanese higher education institutions for tax, scholarship, and research grant purposes. This has harmed the ability of degree-granting campuses to compete for students and faculty and deterred other U.S. universities from launching full four-year degree programs. Despite extensive consultations with authorities, no U.S. university has been able to satisfy all the legal requirements to be granted "educational corporation" (*gakkō hōjin*) status, which would confer the same tax benefits enjoyed by Japanese universities. The requirement that such corporations be "independently administered" (*i.e.*, not subject to direct administration by the parent university in the home country) is a particularly difficult legal hurdle to overcome. Lack of *gakkō hōjin* status also means foreign satellite universities are excluded from participation in Japanese Government grant programs that promote international exchange and provide financial support for study abroad, and their faculty are excluded from applying for government-funded and other research grants on the same basis as faculty at other Japanese universities.

**Telecommunications Services**

*Telecommunications Business Act*

U.S. and foreign services operators in Japan, including those offering only streaming and cloud-based services, became subject to regulation under Japan's Telecommunications Business Act (TBA) in April 2021. Businesses that intermediate communications with users in Japan, including providers of cross-border services, must register as telecommunications providers with MIC, appoint a representative or agent physically domiciled in Japan, and comply with regulations imposed on domestic operators under the TBA, including disclosure and reporting obligations. U.S. stakeholders have noted such requirements could be particularly burdensome for foreign small and medium-sized enterprises (SMEs).

Of particular concern is compliance with the TBA's "secrecy of communications" provision, which, when extended to digital services, requires user consent to access or transmit communication content and metadata in any electronic commerce, streaming, search, e-mail, messenger, cloud, or payment service deemed by the MIC to intermediate two-party communications. The MIC has flagged user consent policies that require users to relinquish their right to secrecy of communications in order to access the service as "inappropriate," even when services are provided free of charge or do not require the actual identity of the user. The MIC, in the process of drafting implementing ordinances, has signaled that blanket consent and the exceptions for automated communication are unlikely. Additionally, mandatory reporting of service outages may be overly burdensome if they are triggered by very low levels of service disruption.

*Spectrum Auctions*

Unlike most advanced economies, Japan does not use auctions to allocate spectrum for commercial mobile services. Allocation decisions are at the discretion of the MIC, based on consultation with the Radio Regulatory Council and consideration of plans submitted by the operators. The factors that the MIC uses to evaluate applications have raised questions about the fairness of the allocation process. On March 31, 2022, the MIC released an interim report on the use of auctions to allocate spectrum for a limited number of frequency bands. On November 25, 2022, MIC released a summary of discussions held with an advisory council, laying out a policy direction introducing a "conditional auction" for allocation of millimeter wave bands or frequency bands that need to be shared with other wireless systems, in addition to the current allocation system. The conditional auction would still allow the MIC discretion to account for certain conditions such as area coverage when allocating spectrums.

*Remote Keyless Entry Systems*

Japan is the only country that does not use 433.92MHz for remote keyless entry systems for automobiles. U.S. automakers continue to express concern about Japan's use of 315 MHz for these systems, which requires foreign automakers to modify their systems in order to sell automobiles in Japan, posing a significant non-tariff barrier.

*Handset Pricing*

In 2019, the Diet passed an amendment to the TBA that: (1) prohibits the bundling of handset purchase and carrier service contracts; (2) sets a cap on allowable discounts for handset prices; and, (3) specifies criteria allowing exemptions for retailers to discount "non-performing" inventory. The revisions were part of a government effort to improve contract transparency and lower prices for consumers by removing operators' justifications for high subscription charges based on a need to recover handset subsidies.

One exemption related to inventory raises questions about discriminatory treatment of devices. If 24 months have passed since the last procurement of a device, a carrier or reseller may discount any unsold devices by 50 percent. However, for devices no longer in production, the 50 percent discount is permitted after only 12 months since the last procurement, and the allowable discount increases to as much as 80 percent after 24 months. These exceptions to the discount restriction reward Japanese companies, who tend to produce an abundance of cheaper, limited-life devices, and harm foreign companies, including U.S. companies, who create higher-quality devices that retain their functionality and value over time. The United States continues to push for rules that will enable a level playing field.

**Renewable Energy Services**

Renewable energy growth in some regions of Japan has been constrained by lack of grid capacity. Laws implemented in 2020 require the legal unbundling of the transmission and distribution business from the

power generation and retail business, but incumbent transmission utility companies still own and operate most of the transmission and distribution grids in Japan through wholly owned subsidiaries. These utility companies reportedly overstate actual grid usage and understate available capacity to prevent competition from new entrants. Many of the utility companies are also holding unused space on the grid for long-idled nuclear power reactors. Incumbent transmission utilities are required to allow power producers to connect to their power facilities unless they have a justifiable reason to deny the request. Given real grid capacity constraints in some regions, utilities have begun offering renewable generation "non-firm" transmission contracts, which allow generators to connect to the grid and use available grid capacity in exchange for a higher risk of curtailment during times of congestion. In order to ensure that renewable energy is used to the fullest extent possible, the Ministry of Economy, Trade, and Industry (METI) is considering changes to the curtailment order that would favor renewable energy generation.

## BARRIERS TO DIGITAL TRADE

In September 2019, a new advisory board, the Digital Market Competition Headquarters (DMCH), was created under the Cabinet Secretariat to lead the coordination of competition policy in the digital market. U.S. unions and companies have expressed concern with regard to the enforcement of Japan's existing competition laws in digital market and technology sectors in which Japanese companies are significant participants.

### Interactive Computer Services

*Specified Digital Platform Providers*

In February 2021, the Act on Improving Transparency and Fairness of Digital Platforms (the Transparency Act) went into effect, which provides the DMCH and METI with the authority to designate certain providers of digital services with obligations to provide increased transparency, including with regard to the terms and conditions of use of their service. The Transparency Act's provisions apply only to digital companies "larger than a certain size in areas that are particularly important parts of society" and "for which the state of transactions has been clearly ascertained through surveys."

In April 2021, METI designated several large providers of online electronic commerce services, including the Japanese companies Rakuten and Yahoo! Japan, as well as the Japanese subsidiaries of Amazon, Google, and Apple) as "specified digital platform providers" under the Transparency Act. U.S. companies have raised concerns about the handling of company information in the monitoring review process. The U.S. Government has noted with concern a November 11, 2022 public disclosure by a leading Japanese newspaper of METI administrative actions under the law directed toward specific companies while in the draft stage (prior to final decision by the ministry).

On April 26, 2022, the DMCH released two interim reports evaluating competition for mobile operating systems and for voice assistants and wearables, with the eventual goal of possible regulation under the Transparency Act. U.S. industry flagged several concerns related to the drafting process for these reports, including a short public comment period that coincided with a major national holiday, and a lack of opportunities to provide information to the DMCH during the drafting process despite repeated requests. The United States will continue to monitor the situation to ensure transparency as the DMCH prepares final reports and potential regulation.

On October 3, 2022, METI designated several digital advertising service providers (including Google, Meta, and Yahoo! Japan) as "specified digital platform providers" in the digital advertising sector under the Transparency Act, following an earlier Japan Fair Trade Commission (JFTC) market study report citing Google's market position in digital advertising. U.S. industry expressed concern over the same above-

mentioned issues related to the drafting of the market study. The United States engaged with Japan in 2022 to address these concerns and will continue to monitor the situation to ensure a fair process as the DMCH prepares final reports and potential regulation.

*Digital Platform Guidelines*

In December 2019, the JFTC released guidelines on applying the Antimonopoly Act (AMA) to transactions between digital platform operators and consumers. In these guidelines, the JFTC asserts that platform companies are in "a superior bargaining position" when customers have no choice but to provide their data to use the services and platform companies may commit an abuse of that position when use of personal data is not fully and accurately disclosed or protected. After receiving input from stakeholders concerned about insufficient guidance, the JFTC provided several examples of practices that would or would not constitute abuse of superior bargaining position.

The United States will continue to monitor these developments and encourage transparency in the process.

## SUBSIDIES

Japan maintains numerous support programs at the national, prefectural, and municipal levels that may favor domestic logs and wood products over imports. To increase the supply of domestic wood products from 31 million cubic meters in 2019 to 42 million cubic meters in 2030, Japan allocated ¥49.5 billion (approximately $350 million) for the Emergency Measures to Strengthen International Competitiveness and Product Supply Capability of the Wood Industry from the 2021 MAFF supplemental budget. Furthermore, in 2022 Japan allocated ¥171 billion (approximately $1.2 billion) under the Forest Management Project to support domestic thinning and selective logging operations. In addition, Japan has provided funding for local governments to manage unprofitable forestlands. Starting in 2024, Japan will begin to collect the Forest Environment Tax from each Japanese household to cover the cost of this program (approximately ¥60 billion, or $425 million, per year). The United States is monitoring the disbursement of these funds and other support programs.

## ANTICOMPETITIVE PRACTICES

*Improving Anti-Monopoly Act Compliance and Deterrence*

Japan's AMA provides for both administrative and criminal sanctions against cartels and administrative sanctions for non-cartel anticompetitive conduct. Criminal prosecutions, which have the strongest deterrent effect against anticompetitive behavior, have been limited, and penalties against convicted company officials have been weak, although the JFTC has routinely imposed sizable civil "surcharges" against cartelists. The United States has continued to urge Japan to take steps to maximize the effectiveness of enforcement against cartel and bid rigging violations of the AMA to ensure open and competitive markets.

*Abuse of Superior Bargaining Position*

U.S. stakeholders in Japan continue to express concern regarding JFTC investigations under the "unfair trade practices" clause of the AMA because ambiguous standards for liability in this area may make good faith efforts to comply with the AMA difficult. Stakeholders have called for further clarification of each of the forms of abuse listed in the Abuse of Superior Bargaining Position Platform Guidelines to minimize the uncertainty for companies and users.

*Limited Attorney-Client Privilege*

In 2020, the JFTC introduced protections for certain attorney-client communications, a departure from Japan's general absence of such protections. However, the scope of protected confidential attorney-client communications is extremely limited, protecting only legal advice under the AMA regarding alleged antitrust cartels, which involve price-fixing, market allocation, and bid rigging. In principle, only an external lawyer's advice is protected. An in-house lawyer's advice might be protected only if the in-house lawyer is working independently from the enterprise itself. In addition, only legal advice by lawyers qualified in Japan is protected. Legal advice from foreign lawyers (even if they are registered in Japan as a Registered Foreign Lawyer) is not protected, as a result of Japanese limitations on the practice of law in Japan. The rules further protect communications only for documents that are carefully segregated from other unprotected documents. The United States will continue to monitor developments and advocate for fuller recognition of attorney-client privilege by the JFTC.

## OTHER BARRIERS

### Transparency

*Advisory Groups*

Advisory councils and other government-commissioned study groups enjoy significant power in Japan's regulatory process that sometimes goes beyond providing advice and recommendations. The United States continues to urge Japan to follow good regulatory practice to ensure transparency with respect to the formation and operation of advisory councils and other groups convened by Japan by adopting new requirements to ensure ample and meaningful opportunities for those not on advisory councils and study groups to participate in, and directly provide input to the regulatory process.

*Public Comment Procedure*

The United States remains concerned about inadequate implementation of public comment procedures by Japanese ministries and agencies. In 2022, stakeholders flagged several instances where comment periods for regulations or guidelines were non-existent, unnecessarily short, or occurred at the same time as major national holidays. In other cases, comments did not appear to have been adequately considered given the brief time between the end of the comment period and the issuance of a final rule or policy. The United States has stressed the need for Japan to improve the system, such as by lengthening the standard public comment period for rulemaking.

### Automotive

The United States has expressed strong concerns with the overall lack of access to Japan's automotive market for U.S. automotive companies. A variety of non-tariff barriers impede access to Japan's automotive market, and overall sales of U.S.-made vehicles and automotive parts in Japan remain low. Non-tariff barriers include the non-acceptance of U.S. Federal Motor Vehicle Safety Standards certification as providing an equivalent level of protection as the Japanese vehicle safety standards; unique standards and testing protocols; unique spectrum allocation for short-range vehicle communications systems; a lack of opportunities for input by interested persons throughout the process of developing regulations; and, hindrances to the development of distribution and service networks.

Japan aims to transition to 100 percent clean energy vehicles, including electric vehicles, hybrid vehicles, and fuel cell electric vehicles (FCVs), sold in Japan by 2035. Japan provides a purchase subsidy of up to ¥850,000 (approximately $6,071) for traditional battery electric vehicles (BEVs). However, FCVs, which

are primarily produced by Japanese companies, receive a much higher subsidy than BEVs, of up to ¥2.55 million (approximately $18,214), depending on the size of the vehicle. Until May 2022, Toyota had a 100 percent market share in Japan for FCVs, making this subsidy almost entirely directed toward one Japanese company.

Japan provides another incentive of up to ¥250,000 (approximately $1,786) for vehicles equipped with power feeding technology that allows vehicles to send stored power back into a home in the event of power outages. This subsidy was implemented on March 31, 2022 with little lead time, but few non-Japanese companies produce vehicles equipped with this specific technology, giving a competitive advantage to Japanese automotive manufacturers.

**Medical Devices and Pharmaceuticals**

Over a decade ago, the Japanese Government started streamlining regulatory approval timelines and improving the predictability of the reimbursement pricing system. However, in recent years, Japan has frequently introduced reimbursement adjustments in ways that stakeholders argue is non-transparent, increasing the unpredictability of the system's operation.

Japan's Price Maintenance Premium (PMP) system, introduced in 2010, adds price premiums to innovative new drugs and protects this price throughout the patent life of a medicine. In the 2018 pricing cycle, Japan made several changes to its PMP rules that have significantly reduced the number of innovative products and companies that receive the full benefit of the PMP. Several criteria introduced in 2018 for use in PMP calculations appear to make it easier for Japanese companies to qualify for top premiums and are unrelated to the degree of innovation of the individual product under consideration. Reimbursement outcomes suggest that U.S. companies, especially SMEs, are at a disadvantage compared to Japanese companies. Although Japan made minor changes during the 2020 and 2022 pricing cycles, U.S. industry asserts that the eligibility criteria were not adequately revised.

U.S. industry has also raised serious concerns regarding the lack of transparency and predictability in government decision-making. For example, the scope of the pharmaceutical annual price cut policy implemented in 2021 went far beyond any options put forward by the MHLW, and there was no opportunity for public comment prior to its formal announcement. In addition, in recent years, the MHLW has been consolidating medical device product functional categories for price determination with little explanation and little time for key stakeholders to respond. U.S. industry is concerned about the lack of more frequent and meaningful opportunities to provide input regarding Japan's reimbursement rules, as well as other policies of critical importance to the biopharmaceutical and medical device industries.

The United States continues to urge Japan to solicit and consider the input of all stakeholders, including U.S. stakeholders, when developing any measures related to reimbursement policies, and to follow transparent processes in the present and future development of any new policies and measures. The United States also continues to urge Japan to take into account international standards in the development of its regulations in clinical development, multiregional clinical trials, and risk management.

**Nutritional Supplements**

Japan regulates nutritional supplements as a part of a loosely defined "health food" subcategory of foodstuffs, unlike in the United States, where "dietary supplements" are regulated by the U.S. Department of Health and Human Services Food and Drug Administration (FDA) under different regulations than "conventional" foods. Japan has taken steps to streamline import procedures and to improve access in this market. However, significant market access barriers related to Japan's health claim system remain.

Japan's CAA establishes three categories for both domestic and imported products under the Food with Health Claims system: Food with Function Claims (FFC); Foods for Specified Health Uses (FOSHU); and, Foods with Nutrient Function Claims (FNFC). Most U.S. nutritional supplement products are unable to obtain either FOSHU approval or FNFC designation due to FNFC's standards and specifications, which limit the range of nutritional ingredients such as vitamins and minerals that can qualify as FNFC. Vitamin and mineral products designated under the FNFC system are excluded from the FFC system.

**Quasi-Drugs**

Japan has not adopted a monograph system, intended to expedite the registration of products known as quasi-drugs under Japan's Pharmaceutical and Medical Devices Act. As a result, products that contain active ingredients that are already approved for specific uses in Japan, such as in anti-dandruff shampoos and skin care, may still require six months to receive approval for market placement. The MHLW has committed to work with industry stakeholders and local prefectural governments to develop a monograph system, known as "Quasi-Drug Additives Spec Codex", which lists the approved uses for previously reviewed ingredients and claims. Such a Codex would speed up approval times and bring consistency to the reviews of products by the MHLW and local governments.

# JORDAN

## TRADE AGREEMENTS

### The United States–Jordan Free Trade Agreement

The United States–Jordan Free Trade Agreement (FTA) entered into force on December 17, 2001. Under the FTA, as of January 1, 2010, Jordan provides duty-free access to nearly all U.S. exports, with exceptions for a few product lines, such as alcoholic beverages. The United States and Jordan meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

## IMPORT POLICIES

### Taxes

Jordan's General Sales Tax law allows the government to impose a special tax at the time of importation in addition to the general sales tax. For example, Jordan currently imposes a 15 percent special tax on carbonated drinks. Jordan also imposes a special tax on imported vehicles that varies according to the type of engine. Cars with conventional fuel engines are taxed within a range of 67 percent to 94 percent, electric-powered cars are taxed within a range of 10 percent to 15 percent, and hybrid vehicles are taxed at 50 percent. The United States continues to work with Jordan to promote transparency and predictability.

### Non-Tariff Barriers

*Import Licensing*

Import licenses are required for specific food products by the Ministry of Health and for raw agricultural goods by the Ministry of Agriculture. The approval process can be time-consuming and, at times, lacks transparency. U.S. exporters have raised concerns about the difficulty of obtaining import licenses from the Ministry of Agriculture for U.S.-origin chicken leg quarters and live dairy cattle. The United States has worked with Jordan's Ministry of Agriculture and Ministry of Industry, Trade and Supply (MOITS) and has an agreement in principle with the Minister of MOITS to eliminate import licensing. The United States continues to engage with Jordanian authorities to address this issue.

Jordan requires that importers of commercial goods be registered traders or commercial entities. The MOITS occasionally issues directives requiring import licenses for certain goods or categories of goods and products in newly emerging or protected sectors. Jordan requires a special import license prior to the importation of telecommunications and security equipment.

*Customs Barriers and Trade Facilitation*

Jordan ratified the WTO Trade Facilitation Agreement (TFA) in February 2017. Jordan is overdue in submitting four transparency notifications related to: (1) import, export, and transit regulations; (2) the use of customs brokers; (3) customs contact points for the exchange of information; and, (4) details on the operation of the single window. Three notifications were due on February 22, 2017 and notification for details on the operation of the single window was due on December 31, 2022, according to Jordan's self-designated implementation schedule.

## TECHNICAL BARRIERS TO TRADE

### Corn Import Sampling Procedures

Jordan's Ministry of Agriculture does not comply with the sampling technique guidance for grain issued by the Jordan Standards and Metrology Organization, and Jordan's poor sampling techniques have resulted in the rejection of shipments of U.S.-origin corn, according to U.S. stakeholders. The United States has worked with Jordan to improve sampling and inspection procedures, but problems persist. U.S. exports of corn to Jordan have essentially stopped as a result. U.S. corn exports to Jordan were valued at approximately $59 thousand in 2022. The United States has worked with Jordan's Ministry of Agriculture and the MOITS and concluded an agreement in principle with those Ministries to accept certificates of inspection from the U.S. Department of Agriculture Grain Inspection Service as to the quality of corn shipped from the United States. The United States continues to work with Jordan to resolve this issue.

## GOVERNMENT PROCUREMENT

Jordan is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since March 2000. In 2002, Jordan commenced the process of acceding to the GPA with the submission of its initial offer. Jordan subsequently submitted several revised offers in response to requests by the United States and other GPA Parties for improvements to market access. Negotiations on Jordan's accession have been inactive since 2014.

On September 8, 2022, the Jordanian Cabinet adopted Government Procurement Bylaw No. 8, which grants priority to a domestic bid over a foreign bid if the bids are equivalent in terms of requirements, specifications, and price. Additionally, Jordan offers domestic companies a preferential rate of 15 percent in all government tenders based on a 2013 cabinet decision, which has been renewed annually.

## INTELLECTUAL PROPERTY PROTECTION

Jordan continues to take steps to provide more comprehensive protection of intellectual property (IP) rights. However, challenges regarding IP protection and enforcement persist. As seen throughout the region, online and physical copyright infringement is widespread. For example, the Spider company is listed in the 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List) for supplying Spider-branded piracy devices through online and physical stores across Europe, the Middle East, and North Africa. The National Library, the primary IP authority in Jordan, has noted that challenges to combatting this type of piracy include a lack of adequate resources and a lack of initiative from IP rights holders. Despite past efforts by law enforcement officials to crack down on pirated and counterfeit products, enforcement efforts need to be strengthened, particularly with respect to utilizing *ex officio* authority to pursue criminal investigations. The U.S. Government continues to engage with the Government of Jordan on these issues.

## BARRIERS TO DIGITAL TRADE

Information and communication technology firms operating in Jordan are, in many cases, required to maintain a local presence and to contract with local service suppliers. Local presence requirements can hamper the ability of firms to supply services on a cross-border basis.

## SUBSIDIES

On January 4, 2022, Jordan launched the National Industries Support and Development Fund, which provides financial support in the form of grants to industrial companies that meet requirements related to

performance, outputs, and operation. The MOITS estimates that 230 small, medium, and large companies will benefit from the support and that the program will provide needed job opportunities. Jordan intends the Fund to be a WTO-compliant alternative to its non-compliant subsidy and incentive scheme abolished in December 2021.

# KENYA

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

Kenya's average Most-Favored-Nation (MFN) applied tariff rate was 13.2 percent in 2021 (latest data available). Kenya's average MFN applied tariff rate was 20.4 percent for agricultural products and 12.1 percent for non-agricultural products in 2021 (latest data available). Kenya has bound 16.3 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 93.8 percent.

Kenya applies the East African Community (EAC) Customs Union's Common External Tariff (CET), which the EAC expanded in July 2022 to four tariff bands: (1) zero percent duty for raw materials and inputs; (2) 10 percent duty for processed or manufactured inputs; (3) 25 percent duty for finished products; and, (4) the new 35 percent band that went into effect in July 2022 for a list of products the EAC concluded would promote regional integration and domestic industrial sectors. Among the imports that are impacted by the new 35 percent fourth tariff band are U.S. exports of second-hand clothing and improved clean cooking products. In addition to CET duties, for products and commodities deemed sensitive, Kenya continues to apply *ad valorem* rates above 35 percent. This includes rates of 60 percent for most milk products, 50 percent for corn and corn flour, 75 percent for rice, 60 percent for wheat flour, 100 percent for sugar, and 50 percent for textiles.

When deemed necessary, the Kenyan Government has temporarily waived agricultural tariffs to stabilize prices when domestic agricultural prices exceeded certain levels. When the Kenyan Government has taken such action, the EAC has granted an exception from the CET.

Under its Exemptions Regime, the EAC had exempted all solar and wind energy products from import duties. In June 2016, the EAC amended its Exemptions Regime to only include products related to the development and generation of solar and wind energy. The duties were subsequently imposed on spare parts and accessories to solar equipment. Kenya has not uniformly applied the duties, and some stakeholders have voiced concern that this amendment does not adequately define the term "spare parts and accessories."

*Taxes*

The 2013 Value Added Tax (VAT) Act reduced the number of VAT-exempt items from 400 to 27, to simplify tax administration, enhance tax compliance, and eradicate a backlog of refunds. The 2013 Act went into effect with few specific guidelines, resulting in uncertainty surrounding the application of VAT rules. Amendments to Kenya's VAT Act adopted between 2013 and 2016 clarified some items that are VAT-exempt, including: aircraft engines and aircraft parts, plastic bag biogas digesters, parts for the assembly of primary school laptop tablets, and goods for use by the Kenya Film Commission or in the construction of industrial and recreational parks subject to specified conditions. These amendments also made clear that VAT refund claims must be submitted within 12 months of purchase. VAT Regulations issued in 2017 further clarified the implementation of the 2013 VAT Act, reducing the number of VAT refund claims. VAT-exempt companies, including importers, still experience lengthy wait times in receiving their VAT refunds.

Since 2018, the Kenya Revenue Authority (KRA) has imposed the VAT on raw materials for the manufacture of garments and leather imported to Export Processing Zones to protect local livestock keepers and producers of raw materials used in tanneries. In 2020, the KRA rescinded VAT exemptions on helicopters and certain aircraft parts, as well as the hiring, leasing, and chartering of helicopters. At least one U.S. company in Kenya that sells small planes, helicopters, and parts has been negatively impacted by the removal of this exemption.

**Non-Tariff Barriers**

In 2017, the EAC approved the EAC Elimination of Non-Tariff Barriers Act, which aims to prohibit Member States from engaging in discriminatory trade practices. However, citing Member States' slow implementation and weak enforcement of the Act, companies have complained that non-tariff barriers remain a significant barrier to intra-regional trade.

*Quantitative Restrictions*

In instances where domestic agricultural production exceeded projections, the Ministry of Agriculture has imposed quotas to limit imports and stabilize domestic prices.

*Customs Barriers and Trade Facilitation*

Kenya ratified the WTO Trade Facilitation Agreement in December 2015. In June 2021, Kenya presented its notification on arrangements for the provision of technical assistance support. In January 2022, Kenya also submitted its transparency notification on: (1) the operation of its single window; (2) the use of customs brokers; and, (3) customs cooperation.

U.S. companies have raised concerns about the length of time required for Kenyan Customs to release shipments, as well as the use of excessive formalities. Many U.S. companies have commented that Kenya's one stop customs clearance system does not operate as intended, and that pre-arrival processing of electronic documents is ineffective. Other U.S. companies have raised concerns about the inconsistent application of classification and valuation decisions, as well as unnecessary transit inspections.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

**Technical Barriers to Trade**

*Verification* of *Conformity to Standards Procedures*

In 2019, Kenya issued the *Standards (Verification of Conformity to Standards and Other Applicable Regulations of Imports) Regulations*, which subjects all imports to the Pre-Export Verification of Conformity (PVoC) program, except those meeting certain exemption criteria. The PVoC program requires pre-shipment inspection of most imports, in their country of origin, to ensure compliance with applicable Kenyan standards and regulations. Under the PVoC program, an importer must obtain a Certificate of Conformity (CoC) from a PVoC inspection agent designated by the Kenya Bureau of Standards (KEBS). The PVoC inspection agent assesses what, if any, testing is required to meet Kenyan standards and regulations. Kenya asserts that the program is necessary to address health, environmental, and security concerns, but U.S. industry has raised concerns that the program's testing, certification, and labeling requirements deviate from international standards without providing an additional measure of safety.

Certain products, such as human and veterinary pharmaceutical products, aircraft, marine craft, pesticides, plants, seeds and planting materials, and live animals, are exempt from the PVoC program.

Goods arriving at the port of entry without having undergone an inspection through the PVoC program to obtain a CoC are subject to inspection by KEBS. The cost of this inspection is five percent of the customs value of the shipment, and the goods may be rejected. After obtaining a CoC or undergoing inspection at the port of entry, the importer must also purchase from KEBS an Import Standardization Mark label that must be affixed to each imported article or its retail packaging.

**Sanitary and Phytosanitary Barriers**

*Agricultural Biotechnology*

On October 3, 2022, Kenya lifted a 10-year ban on the import and commercialization of genetically engineered (GE) products, opening a path to cultivation and import of GE food and feed. However, the lifting of the ban is on hold pending the outcome of domestic legal challenges.

*Animal Genetics*

In January 2020, Kenya's Office of the Director of Veterinary Services (DVS) and the U.S. Department of Agriculture Animal and Plant Health Inspection Service agreed on veterinary requirements and certificate attestations for the importation of bovine embryos from the United States. However, in May 2020, DVS proposed additional requirements that went beyond those previously agreed by the two agencies. Kenya imposes standards that are overly restrictive for bovine semen imports, precluding actual market access for most U.S. bovine semen for dairy cattle, leaving the largest share of the market to the domestic producers who do not meet the same criteria. Technical work is ongoing.

*Import Permits*

Kenya maintains complex, non-transparent, and costly requirements for the importation of all meat, dairy, and poultry products, including a "Letter of No Objection to Import Permit" (no-objection letter) from DVS under the Ministry of Agriculture, Livestock, and Fisheries. Before issuing a no-objection letter, which requires several attestations including animal and public health statements, DVS requires an importer to explain the reason for importation through a "Letter of Application to Import" and to specifically address the market need the import would meet. DVS issues the no-objection letter for meat, dairy, and poultry products at its discretion on a case-by-case basis. Importers have reported that DVS has at times provided them with non-sanitary-related grounds for denying permits, such as the local availability of a similar product. DVS does not provide written justification for not issuing the letter.

*Plants and Plant Products*

Kenya subjects imported and domestically produced corn to a total aflatoxin limit of 10 parts per billion (ppb) and a 13.5 percent maximum moisture content. As a result, most U.S. exports are denied permits for importation. Under special circumstances, such as food shortages, Kenya has allowed higher moisture content for imported corn, which must then be dried and milled immediately upon arrival to reduce the risk of aflatoxin contamination. For U.S. corn exports that are permitted under special circumstances, the costs associated with the additional processing requirements make U.S. corn exports largely uncompetitive.

**GOVERNMENT PROCUREMENT**

Since May 2015, an initiative dubbed "Buy Kenyan Build Kenya" has required Kenyan state ministries, departments, and agencies to procure at least 40 percent of their supplies locally. For example, government

entities are required to give an exclusive procurement preference to motor vehicles and motorcycles produced by companies that have assembly plants in Kenya.

The 2016 Public Procurement and Asset Disposal Act (PPADA) reserves procurement preferences for Kenyan-owned firms and goods manufactured or mined in Kenya. For tenders funded entirely by the government with a value of less than KES 50 million (approximately $416,000), the preference for Kenyan firms and goods is exclusive. Where the procuring entity seeks to contract with non-Kenyan firms or procure foreign goods, the PPADA requires a report detailing evidence of an inability to procure locally. In April 2020, the National Treasury issued implementing regulations for the PPADA, which mandate that tender proposals include skills and knowledge transfer to Kenyan citizens, a 75 percent set-aside of employment opportunities for Kenyans, and a local content plan.

U.S. firms have had very limited success bidding on Kenyan Government tenders. There are widespread reports that corruption often influences the outcome of public tenders, and many of these tenders are challenged in the courts. Foreign firms, some without proven track records, have won government contracts when partnered with well-connected Kenyan firms or individuals. As of January 2019, all tenders and procurements are required to be undertaken through the Kenyan Government's electronic procurement system, the Integrated Financial Management Information System (IFMIS). U.S. companies have expressed concerns about IFMIS due to insufficient connectivity and technical capacity in county government offices, apathy from county government officials, central control shutdowns, and security gaps that render the system vulnerable to manipulation and hacking.

In 2021, Kenya joined the U.S. Trade and Development Agency's Global Procurement Initiative (GPI), becoming the 14th partner to enter the program that will train its procurement officials virtually on international best practices and the integration of best value methodologies in public procurement.

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

## INTELLECTUAL PROPERTY PROTECTION

Kenya's introduction of a new, complex customs recordation system has raised concerns about the ability of U.S. importers to bring products containing intellectual property into Kenya. Widespread availability of counterfeit and pirated goods remains an issue. Stakeholders also have raised concerns regarding distribution of copyright infringing content online and the need for Kenya to join the World Intellectual Property Organization (WIPO) Internet Treaties, which deal particularly with copyright and related rights in the digital environment.

## SERVICES BARRIERS

### Insurance Services

Kenya requires that a minimum of one-third of the equity of an insurance company be held by Kenyan persons or citizens of another EAC Member State. In addition, Kenya requires that local insurers offer at least 20 percent of their treaty reinsurance contracts to the state-owned Kenya Reinsurance Corporation (Kenya Re). Although regulatory approval can be sought, Kenya generally prohibits cross-border Difference-in-Conditions and Difference-in-Limits insurance, which is an important type of insurance for facilitating U.S. investment in countries such as Kenya because it covers unique risks faced by U.S. firms.

### Telecommunications Services

Licensed telecommunications service providers are required to maintain 30 percent ownership and control by Kenyan persons within three years from the issuance of a license. Additionally, participants in the telecommunications services market report long delays in the licensing process, creating an unpredictable regulatory environment for foreign investors.

## BARRIERS TO DIGITAL TRADE

### Data Localization Requirements

Kenya's 2019 Data Protection Act (DPA) includes unclear provisions governing the cross-border transfer of personal information. The DPA requires that data controllers provide proof that personal data will be secure as a condition for transferring the data outside Kenya but does not describe what would constitute proof. The DPA also requires consent of the data subject as a condition for the cross-border transfer of any "sensitive personal data," a broad category of information. Additionally, the Act empowers the Data Commissioner to prohibit the cross-border transfer of certain categories of data, creating uncertainty for businesses operating in Kenya that depend on cross-border data flows. The 2021 Data Protection (General) Regulations require the processing of personal data "for the purposes of actualizing a public good" to be processed through a server and data center located in Kenya, or that at least one copy of the personal data be stored in a data center located in Kenya.

### Internet Services

In August 2020, Kenya published the November 2019 National Information, Communications, and Technology (ICT) Policy, which updated a 2006 policy. This ICT Policy is intended to facilitate universal access to ICT infrastructure and services. The provisions include a local equity requirement that mandates that firms licensed to provide ICT services must have at least 30 percent Kenyan ownership as well as preferences and incentives for Kenyan-owned ICT manufacturers.

*Digital Services Taxation*

In accordance with the 2021 Finance Act, Kenya applies a 1.5 percent digital services tax (DST) to non-resident businesses. The DST taxes gross revenue accrued through any "digital marketplace," defined as "an online platform which enables users to sell or provide services, goods, or other property to other users." Kenya has engaged in discussions with the Organization for Economic Cooperation and Development (OECD) and other partners on the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting, but has not endorsed or adopted it and continues to apply its unilateral DST.

## INVESTMENT BARRIERS

### Limitations on Foreign Equity Participation

Kenya imposes foreign ownership limitations in several sectors, often in combination with local content requirements. For example, the Communications Authority, Kenya's telecommunications regulator, requires 30 percent Kenyan shareholding within three years of receiving a license. The 2016 Private Security Regulation Act restricts foreign participation in the private security sector by requiring that Kenyans hold at least 25 percent of shares in private security firms. Additionally, since 2015, Kenya has imposed regulations requiring that Kenyans own at least 15 percent of the share capital of derivatives exchanges.

The 2016 Mining Act imposes a variety of restrictions on foreign participation in the mining sector. Among other restrictions, the Mining Act reserves acquisition of mineral rights for Kenyan companies; requires 60 percent Kenyan ownership of both mineral dealerships and artisanal mining companies; and, requires large-scale mining operations to offer 20 percent equity on the Nairobi Securities Exchange within three years of commencing operations, while also offering 10 percent "free-carried interest" (free equity stake in capital operations) to the Kenyan Government.

**Local Content Requirements**

When making initial investments, foreign investors with foreign staff are required to submit plans for the gradual phase out of non-Kenyan employees. In considering an application for investment, the Kenya Investment Authority reviews the extent to which such investment or activity will contribute to employment creation, acquisition of new skills or technology, and government revenue.

In the construction sector, foreign contractors (defined as companies incorporated outside Kenya or with more than 50 percent ownership by non-Kenyan citizens) are subject to local content restrictions. Foreign contractors are required to enter into subcontracts or joint ventures to ensure that at least 30 percent of the contract work is done by local firms. Foreign contractors are also required to hire from the local labor market unless the National Construction Authority determines that the necessary technical skills are unavailable locally.

**Real Estate Restrictions**

The 2010 Kenyan Constitution prohibits foreigners from holding freehold land title anywhere in the country, permitting only leasehold titles of up to 99 years. While the process for leasing developed land and property is clear and established, the process for obtaining clear title of undeveloped land is opaque and unreliable.

For undeveloped land, investors risk receiving fake title deeds or leasing a plot with multiple titles and unauthorized sales.

The 2019 Land Value (Amendment) Act guides compensation for eminent domain land acquisitions. The value of compensation is based on market rates and tax returns for the land in question, however, that data is often non-existent for community land.

## STATE-OWNED ENTERPRISES

The Kenyan Government wholly owns the National Oil Corporation and the Kenya Pipeline Corporation, and limits competition with these companies. Other state-owned enterprises (SOEs), including Kenya Electricity Generating Company, Kenya Electricity Transmission Company, Kenya Power (formerly Kenya Power and Lighting Company), and the Geothermal Development Company dominate the electricity generation, transmission, and distribution segments of the energy sector. Kenya Power's internal procurement rules require that 80 percent of supplies be sourced from Kenyan-registered companies to encourage foreign suppliers to establish manufacturing facilities in the country.

Certain SOEs have enjoyed preferential access to markets. Examples include Kenya Re, which enjoys a guaranteed re-insurance market share; Kenya Seed Company, which has fewer marketing barriers than its U.S. competitors; and, the National Oil Corporation, which benefits from retail market outlets developed with government funds. Some SOEs have also benefited from easier access to government loan guarantees, subsidies, and credit at favorable interest rates.

## OTHER BARRIERS

Disputes over tariffs and taxation are resolved through the judicial system, which is subject to delays and uncertainty. Since June 2015, the KRA has offered an alternative dispute resolution mechanism to help taxpayers resolve some tax disputes more quickly. U.S. companies have expressed concerns with the delay experienced in tax dispute resolutions through this established mechanism.

### Bribery and Corruption

Corruption remains a substantial barrier to doing business in Kenya. U.S. firms continue to report challenges competing against foreign firms that are willing to ignore legal standards or engage in bribery and other forms of corruption. Corruption is widely reported to affect government procurements at the national and county levels. Kenya has not effectively implemented its anticorruption laws. U.S. firms routinely report direct requests for bribes from all levels of the Kenyan Government.

Despite efforts to increase efficiency and public confidence in the judiciary, the backlog of cases and continued corruption undermine the judicial system's credibility and effectiveness. While judicial reforms are moving forward, bribes, extortion, and political considerations continue to influence court cases. As such, foreign and local investors risk lengthy and costly legal procedures.

### Export Barriers

The 2013 Agriculture, Fisheries and Food Authority Act prohibits exports of raw agricultural produce such as macadamia nuts, *Bixa orellana*, cashew nuts, and pyrethrum without authorization from the Kenyan Cabinet Secretary for Industry, Trade, and Cooperatives.

# KOREA

## TRADE AGREEMENTS

### United States–Korea Free Trade Agreement

The United States–Korea Free Trade Agreement (KORUS) entered into force on March 15, 2012. Korea immediately eliminated duties on nearly 80 percent of bilateral trade in industrial and consumer goods. Duties on most other such goods were phased out in stages over 10 years and have been eliminated as of January 1, 2021. The United States and Korea reached agreement in 2018 to modifications and amendments to KORUS and a related letter exchange. The United States and Korea meet regularly to review the implementation and operation of KORUS and to address outstanding issues.

## IMPORT POLICIES

### Tariffs

Under KORUS, Korea has eliminated tariffs on nearly all U.S. industrial goods exports. Tariffs continue to be phased out for certain seafood products, which are scheduled to be eliminated in 2026. Korea has eliminated tariffs on the majority of U.S. agricultural products, while maintaining tariff-rate quotas (TRQs) on a handful of U.S. agricultural exports.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Chemicals*

Four laws and their respective implementing regulations form the basis of Korea's chemical management system: the Act on the Registration and Evaluation of Chemicals (last revised in April 2021); the Occupational Safety and Health Act (last revised in August 2021); the Consumer Chemical Products and Biocides Safety Control Act (last revised in May 2021); and, the Chemical Substances Control Act (last revised in August 2021). U.S. chemical exporters regularly raise concerns with aspects of all of these laws and their implementing regulations, focused on lack of guidance from the regulators on how to implement the regulations, insufficient protection for confidential business information, and inadequate transparency regarding the selection of chemicals to be tested and the testing methodology. The United States has discussed these concerns with Korea in the KORUS Technical Barriers to Trade (TBT) Committee and the WTO TBT Committee.

*Packaging Materials and Labeling Regulations*

U.S. firms remain concerned about the lack of clarity relating to the calculation method for packaging space ratios used by Korean Government authorities under the Act on the Promotion of Saving and Recycling of Resources (Recycling Act). While not yet passed, proposed amendments to the Recycling Act in August 2020 and November 2020 would mandate pre-launch testing of packaging materials and labeling of small electronic products to ensure compliance with specified packaging requirements. Stakeholders have raised concerns that the amendments would delay product releases, particularly when not provided with sufficient time to find alternative solutions to adapt to new requirements.

**Sanitary and Phytosanitary Barriers**

*Agricultural Biotechnology*

Korea's regulatory system for agricultural biotechnology continues to present challenges to U.S. agricultural exports. The approval process for new biotechnology products is onerous and protracted due to inefficiencies, which include redundant reviews and excessive data requests. The regulatory approval is managed across five different agencies, each with its own process and data submission requirements. While there is no clear mechanism to address the inefficiencies of Korea's regulatory process, Korea has indicated a willingness to continue discussing potential reforms to its regulatory process. The United States and industry stakeholders have provided ideas on how to improve the process and developed pilot projects to test a streamlined process for biotechnology product reviews. These initiatives have had little impact, however, because Korea's Living Modified Organisms (LMO) Act mandates participation by the five agencies, limiting the potential for streamlining the system without legislative changes. The United States had multiple discussions with the Ministry of Trade, Industry, and Energy (MOTIE) and other relevant agencies throughout 2022 and will continue to engage with Korea on improving its approval process for agricultural biotechnology products.

In 2022, MOTIE proposed a draft revision of the LMO Act to include a policy on products of innovative biotechnologies (*e.g.*, genome editing). Korea proposed to classify genome-edited products as LMOs, but also introduced a pre-review system to exempt certain products from a full risk assessment under certain conditions. Once the LMO Act revision is finalized, Korea will develop regulations to implement the pre-review system and establish approval procedures for products that are not exempted. The United States has engaged extensively with MOTIE on its proposed amendments to the LMO Act, and will continue to work with Korea to develop science-based processes that facilitate access to these technologies and products developed with them.

*Beef and Beef Products*

Prior to 2008, Korea restricted the importation of U.S. beef and beef products, citing concerns related to bovine spongiform encephalopathy (BSE). In 2008, the United States and Korea reached a bilateral agreement to fully reopen Korea's market to U.S. beef and beef products. However, as a transitional measure, U.S. beef and beef products imported into Korea had to be derived from animals less than 30 months of age. This "transitional measure" has remained in place for fifteen years. In addition, imports of processed beef products, including ground beef patties, beef jerky, and sausage are still prohibited. Despite these barriers, the United States exported approximately $2.7 billion in beef to Korea in 2022, making Korea the largest export market for U.S. beef by value and second largest by volume in 2022.

*Market Access for Pet Food Containing Ruminant Ingredients*

In May 2018, the United States sent a formal request to Korea's Ministry of Agriculture, Food, and Rural Affairs (MAFRA) for market access for pet food containing U.S.-origin ruminant ingredients, as well as any ruminant ingredients imported from countries like the United States, that are deemed by the World Organisation for Animal Health as having a negligible risk for BSE. In July 2018, MAFRA indicated that it was drafting import health requirements for pet food. There were no further updates from MAFRA until September 2019, when MAFRA sent a letter to the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) indicating that a risk assessment was required and underway by MAFRA Animal and Plant Quarantine Agency (APQA) and that they were planning to establish pet food import health requirements based on the risk assessment. In 2020 and 2021, APHIS received follow-up questions from APQA and provided responses. While APQA indicated that the COVID-19 pandemic has delayed the process, there had been no further updates or progress on this issue as of December 2022, despite U.S.

engagement with Korea on this issue in the annual meeting of the KORUS Committee on Sanitary and Phytosanitary Measures (SPS Committee) in February 2022.

*Horticultural Products*

Several U.S. market access requests remain pending with the MAFRA APQA. Among these are expanded access for blueberries from U.S. states other than Oregon; improvement in the cherry import program; and, access for apples, pears, Texas grapefruit, and California stone fruits. The United States requested that APQA expedite the approval process for these products. The United States and Korea continued efforts to establish access for U.S. exports and discussed these issues during the annual meeting of the KORUS SPS Committee in February 2022 and at a bilateral plant health technical meeting in October 2022. The United States will continue to press Korea to expedite the various U.S. market access requests.

*Maximum Residue Limits*

Korea's Positive List System (PLS) requires the establishment of new import tolerances for agrochemical residues that were previously permitted but not officially registered for use in Korea, as well as for new substances that do not have any maximum residue limits (MRLs) in Korea. As of January 2022, U.S. agricultural exports are required to comply with Korea's domestic MRLs, import tolerance, or a default of 0.01 parts per million (ppm).

Korea plans to introduce a PLS for meat, poultry, and other animal products. Like the PLS for agrochemical residues, Korea began a phased implementation of the PLS for veterinary drugs. Starting in January 2022, Korea lowered the default limit for antimicrobial residues from 0.03 ppm to 0.01 ppm, in the absence of Korean or Codex Alimentarius Commission MRLs. Under the second phase beginning in January 2024, in the absence of a Korean MRL or import tolerance, Korea will apply a default of 0.01 ppm for veterinary drugs in six major product categories, including beef, pork, chicken, milk, eggs, and fishery products. The United States will work with Korea to ensure a smooth implementation of the PLS for these products.

## GOVERNMENT PROCUREMENT

Korea is Party to the WTO Agreement on Government Procurement (GPA). Korea has made commitments to open its government procurement to U.S. suppliers under the revised GPA and under the KORUS. KORUS provides U.S. suppliers significantly expanded access to central government procurements through a substantially lower threshold for eligible central government procurement contracts of goods and services than exists in the WTO GPA ($100,000 versus the current GPA threshold of $182,000). While KORUS does not cover procurement by Korean sub-central government entities and government enterprises, the GPA provides U.S. businesses with access to procurement conducted by most Korean provinces, cities, and government enterprises.

The Korean Government has instituted a number of policies intended to promote domestic small and medium-sized enterprises (SMEs). Korea does not cover set-asides for SMEs under the WTO GPA or KORUS. The Act on Facilitation of Purchase of Small and Medium Enterprise Manufactured Products and Support for Development of Their Markets categorizes companies by size, with multinationals frequently categorized as "large" (regardless of their actual size) simply because the company is foreign-based or multinational, while local companies are categorized as "small" or "medium." As such, "large" foreign companies are only able to bid on projects valued more than $220,000, while most local companies can bid on the majority of projects. Similarly, the Software Industry Promotion Act restricts bids for certain government contracts for software services to "small and medium-sized" enterprises, again leaving foreign-based and multinational firms out of the government procurement process.

In November 2020, MOTIE announced a "Localized Gas Turbine Competitiveness Plan," which included a proposal to procure locally-developed technology without competitive bidding procedures. The United States has raised concerns with how this proposal would be implemented and will continue to engage with Korea to ensure that implementation is consistent with Korea's international procurement obligations.

**Encryption and Security Requirements for Public Procurement of Information and Communication Technology Equipment**

Korea and the United States are both members of the Common Criteria Recognition Arrangement (CCRA), under which products certified at any CCRA-accredited laboratory in any member country should be accepted as meeting the certification requirements in any other member country. Korea's National Intelligence Service (NIS), however, has imposed additional domestic cybersecurity certification requirements through its Security Evaluation Scheme (SES) since October 2014. Korea has broadly imposed the SES for internationally common criteria (CC)-certified information technology products to be sold to the public sector. In October 2022, NIS introduced a three-tiered scheme dividing all public institutions into three sensitivity tiers. Although NIS now allows institutions in the middle and lower tiers, such as universities and public schools, to use internationally CC-certified information and communication technology products without additional domestic security verification, the SES still applies to most major public institutions, which account for over 90 percent of the public sector market, including all central administrative institutions such as ministries and metropolitan local governments. The United States has urged Korea to abide by its obligations as a CCRA member.

Korea requires network equipment procured by public sector agencies (*i.e.*, government agencies and quasi-government agencies) to incorporate encryption functionality certified by NIS. NIS only certifies encryption modules based on the Korean-developed ARIA and SEED encryption algorithms (which, although recognized as ISO standards, are in practice primarily used in Korea), rather than the internationally standardized Advanced Encryption Standard (AES) algorithm in widespread use worldwide. This restriction has *de facto* significantly limited U.S. suppliers' access to this market as it requires the development of a Korea-specific product line, which may not be commercially viable. The United States has urged Korea to ensure that equipment based on widely used international standards has full access to Korea's public sector market.

**Cloud Security Certification for Public Sector Cloud Service Procurement**

The Cloud Security Assurance Program (CSAP) was created by the Korea Internet and Security Agency in 2016 and elevated from administrative guidance to a legal requirement through a March 2022 revision to the Cloud Computing Promotion Act. The CSAP, which applies to Korea's entire central, provincial, and local public sector with very limited exceptions, creates significant barriers to U.S. cloud service providers (CSPs) seeking to sell to Korea's public sector, as U.S. firms are unable to meet some components of the certification program without creating a separate Korea-unique product, including the need to create physically-segregated facilities for exclusive use for government-owned customers, requirements for data localization of cloud systems, backup systems and data, requirements for operations and management personnel of cloud service providers to be located within the territory of Korea to obtain the low-tier certification, and using only NIS-certified encryption algorithms (ARIA or SEED).

The potential market from which U.S. providers are being excluded is large and growing. In July 2021, the Ministry of the Interior and Safety announced all Korean Government data will be migrated to the cloud by 2025, but only those CSPs that have CSAP certification can participate in the government's digital transformation initiative. In August 2022, Korea began a review of the CSAP with a view to reform it in a way that would open market access possibilities for foreign service providers, indicating it would benchmark the U.S. Federal Risk and Authorization Management Program (FedRAMP). The United States

raised this issue in August and October 2022 and will continue to engage with Korea to align its cloud security certification requirements with other internationally accepted standards.

## INTELLECTUAL PROPERTY PROTECTION

In general, Korea has a strong regime of intellectual property (IP) protection and enforcement. Under KORUS, Korea agreed to strong enforcement provisions for various types of IP rights and agreed to join key multilateral IP agreements. Moreover, the Korean Government prioritizes IP protection, as Korea is a significant creator of IP. Nevertheless, some IP-related concerns remain, including with respect to: the transshipment of counterfeit goods, especially via small express-shipped parcels; geographical indications; and, a lack of civil and criminal penalties sufficient to deter IP violations. The United States continues to work with Korea to improve these areas.

In January 2021, certain Korean National Assembly lawmakers proposed a complete revision to the Copyright Act. Stakeholders have expressed concerns over the proposed revisions, including in the areas of collective licensing; a lack of clarity concerning the scope and application of and possible extensions to the digital audio transmission right; the introduction of portrait rights into the Copyright Act; and, possible restrictions on the freedom to contract. In addition, in the second half of 2022, several lawmakers introduced amendments to the Copyright Act seeking to increase compensation for directors and scriptwriters of successful shows featured in online content platforms through a systematic payment program. Stakeholders have expressed concerns over the amendment's lack of both a detailed payment scheme and an "opt-out" clause for content creators preferring alternative compensation packages. The United States will continue to monitor these amendments.

## SERVICES BARRIERS

### Audiovisual Services

Korea's international success in film, video, and music entertainment has coincided with the significant lowering of domestic content quotas as part of KORUS. Notwithstanding this success and KORUS commitments to not impose new restrictions, multiple Korean Government agencies and the National Assembly have been discussing ways to incorporate online media streaming platforms into the existing restrictive regulatory framework for legacy media, including potential local content requirements for U.S. over-the-top platforms.

### Financial Services and Insurance Services

*Cross-Border Data Transfer by Reinsurance Institutions*

The U.S. Government continues to raise significant concerns that reinsurance firms are not able to transfer information outside Korea as required in their ordinary course of business and as they should be able to do under Korea's KORUS obligations. Korea's Financial Services Commission informed the U.S. Government in 2021 and in 2022 that it changed its interpretation of relevant rules under the User Protection and Credit Information Act such that U.S. reinsurance companies can send personal information of primary insurance policy holders outside Korea for purposes of data processing, risk management, and underwriting. However, U.S. reinsurance companies reported in 2022 that they have not seen such a change in practice, and, absent sufficient legal certainty, they have not been able to send information cross-border. The U.S. Government raised this issue on several occasions in 2022. In October 2022, progress was made in clarifying important outstanding questions, including the allowable purposes for such information transfers, the locations to which information may be sent, and the interaction of the User Protection and Credit Information Act and the Insurance Business Act, both of which regulate the insurance industry. These

clarifications indicated that the transfer of such information by reinsurance companies would be allowed in most cases; however, there is no public written documentation of this upon which industry could rely for legal certainty. The U.S. Government will continue to seek further progress on this issue and will continue to monitor Korea's overall implementation of its KORUS commitments in financial services, including with respect to the transfer of information.

*Facilities Localization*

The FSC Regulation on Supervision of Electronic Finance and Data Protection Standards for Cloud Computing Services regulates usage of cloud services by the financial sector. This measure favors local cloud service providers by requiring cloud service providers to serve financial institutions only using servers located in Korea, preventing U.S. cloud service suppliers and data processing firms from offering such services on a cross-border basis and reducing the flexibility of foreign financial services companies. The United States will continue to engage with Korea on these issues.

**Professional Services**

Since 2013, Korea has taken steps to open its legal services market, as outlined in KORUS. The amended Foreign Legal Consultants Act now allows foreign law firms to open foreign legal consultant offices in Korea and enter into "cooperative agreements" with Korean firms to handle cases jointly where domestic and foreign legal issues are mixed. Foreign licensed lawyers and firms have been able to establish joint ventures and hire Korean-licensed lawyers since 2017, but several requirements that are unique to Korea discourage U.S. companies from doing so. The Act limits a foreign law firm's ownership of the joint venture to 49 percent and requires that the firms composing the joint venture have been in operation for at least three years. The Act also requires foreign and Korean law firms participating in a joint venture to establish a new separate legal entity under Korean law. In addition, the Act limits the scope of practice of joint ventures. These provisions undermine the legislation's purpose of facilitating trade in legal services between the two countries. The United States continues to urge Korea to review its overall approach to opening the legal services market.

## BARRIERS TO DIGITAL TRADE

**Interactive Computer Services**

Several bills introduced in the National Assembly in 2021 and 2022 would mandate that foreign content providers pay network usage fees to Korean Internet service providers (ISPs). Because some Korean ISPs are also themselves content providers, fees paid by U.S. content providers could benefit a Korean competitor. Such a network usage fee requirement could raise concerns under KORUS. Furthermore, such a mandate could be anti-competitive by further strengthening Korea's ISP oligopoly of three major providers to the detriment of the content industry. The United States raised this issue with Korea on several occasions throughout 2022.

**Data Localization Requirements**

Korea's restrictions on the export of location-based data have led to a competitive disadvantage for international suppliers seeking to incorporate such data into services offered from outside Korea. For example, foreign-based suppliers of interactive services incorporating location-based functions, such as traffic updates and navigation directions, cannot fully compete against their Korean rivals because locally-based competitors typically are not dependent on foreign data processing centers and do not need to export location-based data. Korea is the only significant market in the world that maintains such restrictions on the export of location-based data. While there is no general legal prohibition on exporting location-based

data, exporting such data requires a license. As of December 2022, Korea had never approved a license to export cartographic or other location-based data, despite receiving numerous applications from foreign suppliers.

## INVESTMENT BARRIERS

Foreign investment is not permitted in terrestrial broadcast TV operations. For both cable and satellite broadcasting services, foreign participation is limited to 49 percent of a company. Since March 2015, Korea has permitted U.S. investors to hold up to 100 percent of the equity interest in a program provider not engaged in news reporting, multi-genre programming, or home shopping, but foreign cable/satellite retransmission channels are limited to 20 percent of the total number of operating channels.

In addition to the restrictions in telecommunications and key services sectors, Korea maintains other restrictions on foreign investment, including a prohibition on foreign investment in rice and barley farming and a 50 percent foreign equity limitation for enterprises engaged in meat wholesaling. Firms that generate, distribute, and sell electric power, as well as those that publish periodicals other than newspapers, are also restricted. Electric power generation and enterprises publishing daily newspapers are subject to a 30 percent foreign equity limitation. News agencies are subject to a 25 percent foreign equity limitation.

## SUBSIDIES

### Industrial Subsidy Policy

Established under the Korea Development Bank Act of 1953, the Korea Development Bank (KDB) has been one of the government's main sources of policy-directed lending to favored local industries. Although the Government of Korea began privatizing the KDB in 2009 as part of its reform of the financial sector, it subsequently decided that the KDB should be a policy lender to support SMEs and strategic industries. In 2015, the government restored the KDB's role of providing public policy financial support to Korea's industries and companies.

## ANTICOMPETITIVE PRACTICES

The Korea Fair Trade Commission (KFTC) has a broad mandate that includes promoting competition, strengthening consumer rights, creating a competitive environment for SMEs, and restraining the concentration of economic power. In addition to its authority to conduct investigations, including authority over corporate and financial restructuring, the KFTC can levy sizeable administrative fines for legal violations and for failure to cooperate with investigators. Decisions by the KFTC are appealable in the Korean court system. As part of KORUS implementation, the KFTC instituted a consent decree process in 2014, which it continues to refine.

A number of U.S. firms have raised concerns that the KFTC has targeted foreign companies with disproportionate enforcement efforts (*e.g.*, remedies with geographic scope that go beyond the harm to competition in Korea). U.S. firms have also expressed concerns under KORUS about KFTC procedures and practices that inhibit the ability of companies to adequately defend themselves during investigatory proceedings and hearings. The United States has had extensive discussions with the KFTC regarding the right of companies to reasonably access and rebut evidence used to determine if companies have violated Korea's competition laws. In 2019, the United States requested and held formal consultations with Korea under the Competition Chapter of KORUS to discuss these concerns.

Revisions to the Monopoly Regulation and Fair Trade Act (MRFTA) entered into force in December 2021. The revisions (among other changes) expand the rights of affected parties to view or copy data related to

KFTC administrative decisions. The changes also provide a right to view confidential business information by independent legal counsel of the parties involved, with restrictive conditions designed to prevent improper disclosure. The United States will monitor the implementation of the revised MRFTA.

## OTHER BARRIERS

### Motor Vehicles

Increased access to Korea's automotive market for U.S. automakers remains a key priority for the United States.

The U.S. Government has raised concerns about Korea's emission-related components (ERC) regulations under Korea's Clean Air Conservation Act. Vehicle manufacturers and importers are required to obtain either a modification certification (for a substantial modification of ERCs) or prepare modification reports for insignificant changes. However, the automobile industry has expressed concern about lack of clarity over what types of modifications fall under which category. Automakers also have noted that violations with respect to imports could be subject to criminal prosecution by Korea's customs authorities, which lack authority to investigate domestically manufactured vehicles. In the October 2022 meeting of the KORUS Automotive Working Group, Korea indicated that it would pursue a revision of the law in 2023 which would clarify certain aspects and reduce certain penalties for insignificant infractions.

In August 2022, U.S. automotive industry stakeholders raised concerns around the Ministry of Environment's verification test procedure conducted by the National Institute of Environment Research on randomly selected new models imported to Korea. These tests have caused delays in manufacturers' product launches. The U.S. Government raised this issue with Korea in October 2022.

The U.S. Government will follow these and other issues closely to ensure further increased access of U.S. vehicles to Korea's automobile market.

### Pharmaceuticals and Medical Devices

The U.S. pharmaceutical and medical device industries continue to report concerns regarding a lack of transparency in Korea's pricing and reimbursement policies. The United States continues to urge Korea to improve its engagement with this sector in terms of transparency and meaningful opportunities for stakeholder input.

# KUWAIT

## TRADE AGREEMENTS

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

The United States and Kuwait signed a Trade and Investment Framework Agreement (TIFA) in 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Kuwait.

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

As a member of the Gulf Cooperation Council (GCC), Kuwait applies the GCC common external *ad valorem* tariff of five percent on the value of most imported products, with several commodity-specific exceptions. Kuwait's exceptions include 417 basic foodstuffs, agricultural, medical, and pharmaceutical items that are exempt from customs duties.

*Taxes*

In 2016, GCC Member States agreed to introduce common GCC excise taxes on carbonated drinks (50 percent), energy drinks (100 percent), and tobacco and electronic smoking products (100 percent). U.S. beverage producers report that the current excise tax structure for carbonated drinks, which also applies to sugar-free carbonated beverages but exempts sugary juices—many of which are manufactured domestically within GCC countries—disadvantages U.S. products and fails to address public health concerns. Kuwait introduced legislation to implement the excise taxes in the National Assembly in 2018. It remains under debate.

### Non-Tariff Barriers

*Import Bans*

Kuwait prohibits the importation of alcohol; pork products; used medical equipment; automobiles more than five years old; books, periodicals or movies that insult religion or public morals; and, all materials that promote political ideology.

*Import Licensing*

Kuwait maintains an import licensing regime for a wide variety of products, ranging from plant products to products of the chemical and allied industries, in order to ensure that imports are compliant with various laws and regulations. Importers of products subject to import licensing must be citizens of Kuwait or be Kuwaiti-based brokers, and are required to register with the Ministry of Commerce and Industry.

*Import Certificates*

All imported agricultural and food products require a health certificate issued by government authority at the country of export. This includes long-shelf-life products that are certified by the U.S. Department of

Health and Human Services Food and Drug Administration (FDA), the U.S. Department of Agriculture, or by a state agriculture or health department (*e.g.*, Free Sale Certificate or FDA certificate for Food for Human Consumption). For these long-shelf-life products, U.S. suppliers are required to link these certificates to the shipment to avoid rejection by local authorities by including information such as container number, bill of lading number, invoice number, production and expiration dates, lot number, and any other pertinent information.

Any food product that contains meat ingredients requires a halal certificate issued by an approved Islamic center in that country, which must be included in Kuwait's approved list of halal certifiers. Meat products are routinely tested upon importation into Kuwait.

Cosmetics and pharmaceuticals often require a health certificate from the country of origin, which is certified by the Public Authority for Food and Nutrition or Ministry of Health. Some customs officials have refused to accept certificates of free sale from U.S. state governments. This has created an additional cost to U.S. exporters and can increase delays in document approval.

*Customs Barriers and Trade Facilitation*

Kuwait notified its customs valuation legislation to the World Trade Organization (WTO) in December 2017 but has not yet responded to the WTO Checklist of Issues describing how the Customs Valuation Agreement is being implemented.

Kuwait ratified the WTO Trade Facilitation Agreement in April 2018. Kuwait was to self-designate the implementation date of each commitment and any technical assistance required by August 2019, but has not done so.

Kuwait does not use a risk management system for clearing food shipments for import, instead requiring customs to inspect every food shipment into Kuwait before it is cleared for entry. This process can add several days to the delivery time, reduce the longevity of the food, and increase costs.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Automobiles*

U.S. automakers have raised concerns over growing regulatory fragmentation in the GCC. While the Gulf Standardization Organization (GSO) is supposed to set standards for the entire GCC market, individual GCC Member States have instituted unique standards for automobiles that deviate from GCC automobile standards. Though Kuwait has not taken such steps, the United States will be monitoring this issue across GCC Member States going forward.

*Restrictions on Hazardous Substances – Electrical Goods*

In March 2018, GCC Member States notified the WTO of a draft GSO technical regulation that would require pre-market testing by accredited labs for certain hazardous substances in electrical goods. The measure would also require each type of good to be registered annually and require sample products to be submitted prior to receiving approval for use in the GCC. The United States has raised concerns that the proposed regulatory requirements would have a significant negative impact on the imports of U.S. electrical and electronic equipment, especially as the third-party certification requirements differ from international best practices.

*Energy Drinks*

In January 2016, GCC Member States notified to the WTO a draft GSO technical regulation for energy drinks, which was revised in March 2022. The U.S. Government and private sector stakeholders have raised concerns through bilateral and multilateral fora regarding the draft regulation. These concerns include the proposed marketing-based definition for energy drinks and labeling requirements regarding recommended consumption. Industry stakeholders still report that caffeine-content limitations unduly target energy drinks in GCC Member States. In many cases, such limitations do not apply to other drink products that contain similar or even higher levels of caffeine, such as tea, brewed coffee, and other ready-to-drink coffee products.

**Sanitary and Phytosanitary Barriers**

*Food Additives*

U.S. industry stakeholders have noted concerns that the 2021 GCC Technical Regulations applied to Additives Permitted for Use in Foodstuffs are not aligned with relevant standards for food additives from the Codex Alimentarius Commission (Codex), particularly with respect to additives such as curcumins and annatto that are widely used in cheese production, and may potentially disrupt trade in food products.

*Titanium Dioxide*

In September 2020, GCC Member States notified to the WTO a draft GSO technical regulation that would remove titanium dioxide from the list of approved food additives, in line with EU food additive regulations. Titanium dioxide is an adopted food additive that is included in the Codex General Standard for Food Additives (GSFA). As such, it may be used in specified foods under the conditions of good manufacturing practices as outlined in the Codex GSFA. The U.S. Department of Health and Human Services Food and Drug Administration continues to allow for the safe use of titanium dioxide as a color additive in foods, subject to certain restrictions, including that the quantity of titanium dioxide does not exceed one percent in weight of the food. The EU banned the use of titanium dioxide as a food additive on August 7, 2022, based on a risk classification that the European Court of Justice later ruled to be based on faulty scientific analysis. The EU is determining how to respond in light of the court's ruling. Following the EU move to ban the use of titanium dioxide in animal feed, in 2021 the Codex Committee on Food Additives agreed that titanium dioxide should be re-evaluated by the Joint FAO/WHO Expert Committee on Food Additives (JECFA). JECFA is set to meet and provide its findings in June 2023. The United States has requested that GCC Member States wait until this review has been completed before considering changes to their existing regulatory approval, given the lack of data demonstrating negative health effects from allowed uses of this food additive.

## GOVERNMENT PROCUREMENT

Public Tenders Law No. 49 of 2016 regulates government procurement and requires that any procurement with a value greater than KD 75,000 (approximately $250,000) be conducted through the Central Agency for Public Tenders. Certain contracts from Kuwait Petroleum Corporation that exceed KD 5 million (approximately $16.5 million) are exempt. Ministry of Interior, Defense, National Guard, and core (*i.e.*, drilling and extraction) Kuwait Petroleum Corporation contracts are also exempted. Kuwait provides a 15 percent price preference for domestic and GCC goods, and requires foreign contractors to purchase at least 30 percent of their inputs domestically and to subcontract at least 30 percent of the work to domestic contractors where available.

The process that manufacturers must undertake to pre-qualify new technologies by the government is lengthy, burdensome and lacks transparency.

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

## INTELLECTUAL PROPERTY PROTECTION

Kuwait was removed from the Watch List in the 2022 Special 301 Report for making continued and significant progress on concerns that stakeholders identified with intellectual property enforcement and transparency. For example, the Ministry of Commerce and Industry and the Copyright Office created online portals for streamlining the submission of trademark and copyright violation reports, respectively. Kuwait also increased engagement and transparency through meetings of the TIFA Intellectual Property Working Group.

## SERVICES BARRIERS

### Financial Services

Foreign bank members of the Kuwait Banking Association may operate in Kuwait. However, foreign banks are subject to a maximum credit concentration limit equivalent to less than half of the largest local bank. They are prohibited from directing clients to borrow from external branches of their bank. Foreign banks may open representative offices.

### Telecommunications Services

Although Kuwait's telecommunications industry is technically open to private investment, in practice the government maintains extensive ownership in the sector, and controls licensing and infrastructure development. Kuwait's telecommunications law gives authorities sweeping power to revoke licenses and block content with little judicial oversight.

## INVESTMENT BARRIERS

### Limitations on Foreign Equity Participation

Existing law generally mandates that businesses established in Kuwait must be majority owned (at least 51 percent) by Kuwaiti or other GCC nationals. However, the Foreign Direct Investment Law of 2013 permits the Kuwait Direct Investment Promotion Authority (KDIPA) to authorize, on a case-by-case basis, up to 100 percent foreign ownership in the following industries: infrastructure (water, power, wastewater treatment, and communications); insurance; information technology and software development; hospitals and pharmaceuticals; air, land, and sea freight; tourism, hotels, and entertainment; housing projects and urban development; and, investment management. KDIPA approved the first wholly U.S. owned business in 2015, and since then has approved 37 additional U.S. companies for up to 100 percent ownership. Notwithstanding these efforts, major barriers to foreign investment persist, including regulations prohibiting foreigners from investing in real estate, extraction of crude petroleum and natural gas, manufacture of coke oven products and fertilizers, and publishing; long delays associated with starting new enterprises (it can take as long as 12 months to establish a foreign business in Kuwait), and difficulty in identifying a required local sponsor and agent.

# LAOS

## TRADE AGREEMENTS

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

The United States and Laos signed a Trade and Investment Framework Agreement (TIFA) on February 17, 2016. The Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Laos. The United States signed a bilateral trade agreement with Laos on February 4, 2005.

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

Laos' average Most-Favored-Nation (MFN) applied tariff rate was 8.6 percent in 2021 (latest data available). Laos' average MFN applied tariff rate was 11.2 percent for agricultural products and 8.1 percent for non-agricultural products in 2021 (latest data available). Laos has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound MFN tariff rate that will be 19.2 percent when all of its WTO accession commitments come into force in 2023.

*Taxes*

In February 2022, the Ministry of Finance issued its Notification on Taxation of Electronic Commerce and Digital Platforms No. 0541/MOF, which requires foreign electronic commerce and digital service providers to register for Laos' value-added tax (VAT) through an online portal. Any non-resident company that generates more than Lao kip (LAK) 400 million (approximately $34,000) in income per year within Laos will be required to pay such obligation as well as a profit tax.

### Non-Tariff Barriers

*Import Licensing and Restrictions*

Laos has gradually removed license requirements for some imports, although certain products, including motor vehicles, refined petroleum fuels and oil, natural gas, and timber products are still subject to import licensing.

*Customs Barriers and Trade Facilitation*

Laos notified its customs valuation legislation to the WTO in 2013, but has not yet responded to the Checklist of Issues that describes how the Customs Valuation Agreement is being implemented.

In 2019, the Customs Department at the Ministry of Finance introduced the Lao National Single Window to simplify customs processes and connect Laos to the regional ASEAN Single Window. However, the system only processes applications and issues permits for automobile imports at the Friendship Bridge-1 checkpoint at the border between Laos and Thailand. Manual processes are still applied to imports and exports for other commodities, and at other checkpoints.

## TECHNICAL BARRIERS TO TRADE

### Vehicles

Laos' Government Decree No. 470 of 2019 on the management of land vehicles requires that imported vehicles registered and used in Laos meet regional and international standards and are in accordance with the treaties and international agreements to which Laos is a Party. Further regulations are anticipated, and the United States will continue to monitor the development of proposed regulations in 2023.

## INTELLECTUAL PROPERTY PROTECTION

Laos continues to improve its intellectual property (IP) regime, including by issuing regulations to implement its Law on Intellectual Property, and continues to increase public awareness and media coverage of the harm caused by counterfeit goods and the impact of copyright piracy on local content industries. With U.S. Government assistance, Laos also continues to work to establish an effective system for civil and criminal enforcement of IP. However, counterfeit and pirated goods continue to be available in Lao marketplaces.

## SERVICES BARRIERS

### Financial Services

Laos' National Assembly passed the Law on National Payments in 2017. The law establishes a Payment Systems Department in the Bank of the Lao PDR (BoL). The BoL has issued a number of decisions since to regulate the development of electronic payment systems, and has since officially launched the Lao Payment and Settlement System in 2020.

In September 2021, the BoL issued a Notification on Limits for Electronic Financial Services No. 730/PSD, which identified a threshold (per transaction, per day, and per account) for both individuals and enterprises in making electronic payments. These limits might pose a challenge for large international money transfers.

In 2022, the BoL issued Decision No. 449/BoL on the Currency Exchange Service of Commercial Banks and Exchange Bureaus and Decision No. 779/BoL on the Currency Determination to Control Foreign Exchange Markets following the sharp fall of the Lao kip. These measures indicate the Lao Government's effort to give commercial banks a greater role in managing foreign currency flows, while limiting the amount and the role of private money exchange businesses in currency trading. In particular, currency exchange bureaus are not allowed to sell foreign currencies. The authorities have enforced the decisions with more than 300 exchange outlets suspended for rule violations.

The U.S. Government continues to closely monitor Laos' development of regulations in the area of electronic payments, with a view towards ensuring that the measures adopted facilitate competition and a level playing field for U.S. electronic payment service suppliers.

## BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

In April 2021, Laos issued its Decree on Electronic-Commerce No. 296/GOV, which identifies a regulatory framework for the operation, management, and procedures and requirements for electronic commerce. The decree provides a clearer path for investors pursuing an online strategy to grow their businesses. However, foreign equity is limited to a 90-percent share of the business, and a minimum registered capital of LAK 10 billion (approximately $580,000) is required. The U.S. Agency for International Development is providing

technical assistance to the Ministry of Commerce in the implementation of the decree, specifically related to the approval license for businesses operating in electronic commerce.

## OTHER BARRIERS

### Bribery and Corruption

Corruption remains a barrier for U.S. businesses seeking to operate in or trade with Laos. Laos' current government leadership has prioritized anticorruption efforts. Laos has improved transparency in its domestic lawmaking process, including with the opening of the Ministry of Justice Electronic Official Gazette in 2013. In accordance with the 2012 Law on Making Legislation, drafts of all new laws and regulations must be published in the Gazette for at least 60 days. In 2018, with the support of the United States, Laos released a "Lao Law" smart phone application that allows the public to download a free platform to access all the laws and regulations found on the Ministry of Justice's Electronic Official Gazette. This development offers investors, entrepreneurs, and the public a more accessible and user-friendly platform for learning about Laos' laws. However, not all government agencies publish their laws and regulations online, and there remain limited opportunities for shaping draft legislation.

# MALAYSIA

## TRADE AGREEMENTS

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

The United States and Malaysia signed a Trade and Investment Framework Agreement (TIFA) on May 10, 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Malaysia.

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

Malaysia's average Most-Favored-Nation (MFN) applied tariff rate was 5.6 percent in 2021 (latest data available). Malaysia's average MFN applied tariff rate was 7.9 percent for agricultural products and 5.2 percent for non-agricultural products in 2021 (latest data available). Malaysia has bound 84.3 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 21.2 percent. Malaysia's maximum WTO bound tariff rate varies significantly by product group, for example, from 5 percent for petroleum to 268 percent for dairy products.

Almost all of Malaysia's tariffs are imposed on an *ad valorem* basis. Duties for tariff lines where there is significant local production are often higher. In general, tariffs are lower for raw materials than for value-added goods.

*Taxes*

Malaysia continues to assess a higher excise tax on imported distilled spirits than on spirits that are predominantly produced domestically. Malaysia maintains very high excise taxes on motor vehicles, ranging from 60 percent to 105 percent, based on vehicle type and engine size.

### Non-Tariff Barriers

*Customs Barriers and Trade Facilitation*

Malaysia ratified the WTO Trade Facilitation Agreement (TFA) on May 26, 2015, and generally meets its advance ruling obligations under the TFA.

*Import Restrictions on Motor Vehicles*

Malaysia imposes import restrictions on automobiles under the Malaysian National Automotive Policy (NAP), which makes a fundamental distinction between "national" cars (*e.g.*, domestic automakers Proton and Perodua) and "non-national" cars, which include other vehicles produced or assembled in Malaysia, as well as imports. The Malaysian system of "national approved permits" (NAPs) confers on permit holders the right to import and distribute cars and motorcycles. The NAP system is administered in a non-transparent manner and is used to implement a cap on the total number of vehicles that can be imported in a given year, currently set at 10 percent of the domestic market. In addition, Malaysia applies high tariffs

in the automobile sector and has traffic restrictions and noise standards that affect the usage of large motorcycles.

In August 2019, the Malaysian Government announced that a Malaysian engineering company had been selected to design and build the new national car. Additionally, the Malaysian Government announced a new NAP in 2020 that focuses on domestic production of advanced technology vehicles. The 2020 NAP appears to include incentives and subsidies for domestic manufacturers, which could further limit market access for imported automobiles.

The Malaysian Government proposed in its 2023 federal budget import and excise duty exemptions for imported electric vehicles (EVs) through December 31, 2024. Locally assembled EVs can benefit from the exemptions through December 31, 2025.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Halal Regulations for Meat and Poultry Products*

Malaysia's halal requirements are more prescriptive than internationally recognized guidelines on labeling food as halal. Specifically, Malaysia requires slaughter plants to maintain dedicated halal production facilities and to ensure segregated storage and transportation facilities for halal and non-halal products. In contrast, international guidelines allow for halal food to be prepared, processed, transported, or stored using facilities that have been previously used for non-halal foods, provided that Islamic cleaning procedures have been observed. U.S. industry has expressed concerns regarding the costs of creating new, segregated production facilities to access Malaysia's market.

Prior to exporting to Malaysia, the halal practices at each individual U.S. meat and poultry plant must be inspected by Malaysia's Department of Islamic Development (JAKIM) and certified by a JAKIM-accredited Foreign Halal Certification Body (FHCB). Malaysia's Department of Veterinary Services (DVS), in conjunction with JAKIM, has approved only one U.S. beef plant and one U.S. turkey plant to export halal products to Malaysia.

In February 2021, JAKIM released a draft of Malaysia's new Procedure for the Recognition of Foreign Halal Certification Bodies, which sets out the new requirements for recognizing a FHCB and their post-recognition obligations. Malaysia has not notified these requirements to the WTO. The United States continues to engage with Malaysia on the approval of additional U.S. FHCBs and Malaysia's new draft procedures for accrediting FHCBs, and to urge Malaysia to notify its new draft procedures to the WTO.

*Facility Registration Requirements for Exporting Countries*

Malaysia requires that all meat, poultry, and dairy facilities that export to the country be registered by DVS. This process requires submission of an application with supporting documentation for DVS review, which can take several months. Following the application review, meat and poultry products are also subject to on-site inspection by DVS and JAKIM (with the exception of pork products). For all products subject to registration, any adjustment to registration parameters (*e.g.*, introduction of a new product in an approved plant, clerical changes to plant numbers or addresses, etc.) requires a new application and additional delays of weeks to months to update the registration. Minor differences between export certificate details and plant details in the registration system can result in detained shipments that often take several days to clarify. There is no public access to the registration database, so exporters and officials are unable to verify whether a registration is current and accurate to avoid these issues.

*Restrictive Regulations on Alcoholic Beverages*

The definitions for a number of alcoholic beverage products in Malaysia's Food Regulations 1985 are very narrow and do not provide for the sale of new products that do not fit neatly within the product categories. As a result, Malaysia prohibits the importation of products that do not meet a defined category, including some spirits and spirit-based ready-to-drink products. In addition, Malaysia's product definitions, specifically alcohol content requirements, effectively restrict access for certain U.S. distilled spirits. The United States will continue to engage with Malaysia on its regulations for alcoholic beverage products, including potentially trade-restricting definitions for alcoholic beverages.

**Sanitary and Phytosanitary Barriers**

*Agricultural Biotechnology*

Malaysia requires mandatory labeling of food and food ingredients with genetically engineered (GE) content above three percent, although it has not enforced this regulation. As of December 2022, Malaysia had approved 57 GE products for market release for use in food, feed, and processing.

## GOVERNMENT PROCUREMENT

Malaysia has traditionally used government procurement contracts to support national public policy objectives, including: encouraging greater participation of Bumiputera (the majority Malay ethnic group) in the economy; transferring technology to local industries; reducing the outflow of foreign exchange; creating opportunities for local companies in the services sector; and, enhancing Malaysia's export capabilities. As a result, Malaysia has generally invited international tenders only when domestic goods and services are not available, and in those cases, foreign companies often find they need to take on a local, Bumiputera-qualified partner before their tenders will be considered.

Malaysia is not a Party to the WTO Agreement on Government Procurement but has been an observer of the WTO Committee on Government Procurement since July 2012.

## INTELLECTUAL PROPERTY PROTECTION

Malaysia is in the process of reforming its intellectual property (IP) laws, including laws governing copyrights, patents, and trademarks. Malaysia also continues to take steps to enhance its IP enforcement regime. However, concerns remain in a number of areas. Counterfeit goods are available, as highlighted by the continued inclusion of Petaling Street Market in Kuala Lumpur on the 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List). In addition, online piracy, and book and journal piracy, remain a challenge for right holders. The United States urges Malaysia to continue its efforts to improve protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to enhance criminal sanctions for trade secret theft and misappropriation.

## SERVICES BARRIERS

**Financial Services**

*Best Interest Test*

Under the Financial Services Act, Bank Negara Malaysia (Malaysia's central bank) evaluates potential investments in financial institutions based, among other criteria, on whether the investment serves the "best

interests of Malaysia," including its impact on economic productivity and financial stability and the degree to which it strengthens Malaysians' participation in the financial sector. The "best interest" test has required a number of companies to reduce foreign equity ownership to 70 percent in order to remain in the Malaysian market.

As of February 2020, Bank Negara Malaysia limits foreign banks to eight physical branches in Malaysia and imposes certain other restrictions. For example, foreign banks cannot set up new branches within 1.5 kilometers of an existing local bank; Bank Negara Malaysia considers ATMs as equivalent to separate branches. In addition, Bank Negara Malaysia has conditioned foreign banks' ability to offer some services on commitments to undertake certain back-office activities in Malaysia.

In December 2020, Bank Negara Malaysia issued a Policy Document on Licensing Framework for Digital Banks, which references the "best interest of Malaysia" criterion for license applications. As of April 2022, Bank Negara Malaysia has issued digital bank licenses to five consortiums of banks, investment banks, and businesses.

Malaysia maintains some restrictions on the business of reinsurance, requiring that Malaysian insurers first seek reinsurance from local reinsurers, and then from reinsurers based in the Labuan territory before obtaining cross-border reinsurance. Also, primary insurers must offer Malaysian Re, the national reinsurer, up to 15 percent for certain lines of both proportional and non-proportional treaty reinsurance and for facultative and engineering reinsurance up to a certain amount.

*Electronic Payment Requirements*

In 2018, Bank Negara Malaysia issued the Interoperable Credit Transfer Framework (ICTF), which requires that financial institutions process certain types of credit transfers in Malaysia via an approved operator of a shared payment infrastructure. The ICTF, which went into effect on July 1, 2018, requires payment providers to obtain approval from Bank Negara Malaysia, which partially owns one of the operators. These approvals are subject to meeting conditions such as safeguards to protect and access data located offshore, enabling interoperability, reducing fragmentation of multiple providers, and pricing transparency.

## BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

### Data Localization

In October 2021, the Minister of Communications and Multimedia announced that the Malaysian Communications and Multimedia Commission (MCMC) would subject cloud service providers and data centers hosting cloud service applications to licensing obligations under the Communications and Multimedia Act 1998 starting January 2022. MCMC subsequently issued a follow-up frequently asked questions document in December 2021 regarding the licensing requirements for cloud service providers. Cloud service providers with a local presence will be required to apply for an "Application Service Provider's (ASP) license" and can remain 100 percent foreign owned; cross-border suppliers of cloud services without a local presence do not need to register as ASPs.

## INVESTMENT BARRIERS

### Limitations on Foreign Equity Participation

Certain Malaysian businesses, including in the logistics, industrial training, and distributive trade sectors, are required to limit foreign equity participation when applying for certain operating licenses, permits, and approvals, most commonly manifesting as a 70-30 equity split between foreign investors (maximum 70

percent) and Malaysian entities (minimum 30 percent). In the oil and gas industry, non-Malaysian firms are permitted to participate in oil services in partnership with local firms and are restricted to a 49 percent equity stake if the foreign party is the principal shareholder.

## SUBSIDIES

### Export Subsidies

Malaysia maintains several programs relating to exports, distinct from the pioneer status and investment tax allowance programs previously listed in Malaysia's subsidies notifications to the WTO. For example, the normal and enhanced allowance for increased exports programs provide for tax deductions of up to 70 percent of statutory income for increased exports, which Malaysia has not included in its WTO subsidies notifications. The United States continues to raise concerns with Malaysia about these and other policies through the WTO Committee on Subsidies and Countervailing Measures and the WTO Trade Policy Review Body.

# MEXICO

## TRADE AGREEMENTS

### The United States–Mexico–Canada Agreement

The United States–Mexico–Canada Agreement (USMCA) entered into force on July 1, 2020. The USMCA maintains the zero tariffs that were in place among the three countries under the North American Free Trade Agreement (NAFTA), while also modernizing the agreement to include: strong, enforceable labor and environmental obligations, ground-breaking provisions to combat non-market practices, and provisions covering digital trade and small and medium-sized enterprises (SMEs).

## IMPORT POLICIES

### Non-Tariff Barriers

*Import Licensing*

Since December 2013, Mexico has required importers to obtain a license before certain steel products may be shipped to Mexico. Mexico's stated objectives for the licensing system are to combat customs fraud, improve enforcement of trade remedy measures, and improve statistical monitoring of steel imports. The United States continues to closely monitor the administration of the alternative scheme.

Mexico regulates imports of footwear, apparel, and textile goods through the use of reference prices that trigger the need for an import license. The United States continues to monitor this program, including how reference prices are determined and ongoing concerns regarding uneven enforcement by Mexico.

*Customs Barriers and Trade Facilitation*

Mexico continues to provide insufficient prior notification of procedural changes, inconsistent interpretation of regulatory requirements at different border posts, and uneven border enforcement of Mexican standards and labeling rules. Some goods are still not allowed to be imported at all ports of entry. Restricting goods to certain ports has made it difficult for U.S. exporters to arrange for transportation and logistics, especially for electronic commerce purchases from U.S. SME exporters.

The USMCA prohibits arbitrary limits on the number of ports at which a customs broker may operate. Yet, Article 161 of Mexico's Customs law limits a broker to operate at four ports if the broker is not part of a customs agency. The United States continues to urge Mexico to amend the law to allow brokers to operate at any port where the broker is able to perform its duties.

The USMCA also requires that Mexico implement a periodic payment option for express delivery shipments, which is yet to be developed. In addition, for express delivery, Mexico continues to limit the number of shipments that may be delivered to a single recipient per month.

On January 1, 2022, Mexico imposed a new requirement for a "complement" to the existing electronic waybill requirement on transportation services. Any shipment transported within Mexico over federal roads must be accompanied by an electronic waybill "complement" that contains up to 140 data elements about the shipment. The requirement affects most imports from arrival in Mexico until their final destination. Regulations for this new requirement were not issued until December 24, 2021. However, Mexico has

delayed enforcement four times since the requirement was first imposed, most recently until August 1, 2023. The United States continues to monitor Mexico's implementation of this requirement.

*Medical Devices, Supplies, and Pharmaceuticals*

As of the spring of 2021, Mexico's food and health safety regulator, the Federal Commission for Protection Against Sanitary Risks (COFEPRIS), had a backlog of over 60,000 sanitary registrations and import permits. The lack of timely approvals by COFEPRIS denies access to the Mexican market for many U.S. products, principally, but not exclusively, pharmaceuticals. While COFEPRIS continues to work through its backlog, companies that try to register U.S. Health and Human Services Food and Drug Administration (FDA)-approved products in Mexico continue to report delays of up to more than a year. COFEPRIS reportedly continues to be understaffed and not have sufficient capacity to grant sanitary registrations and conduct factory inspections to issue good manufacturing practices certifications within the established timeframes. COFEPRIS is in the process of implementing reliance mechanisms for approvals and inspections and, as part of these efforts, continues to hold technical regulatory discussions with the FDA to identify opportunities to improve its review process.

*Glyphosate*

Mexico's Secretariat of the Environment and Natural Resources (SEMARNAT) has rejected import permits for glyphosate-containing chemical products. Mexico has not provided an opportunity for public comment, submitted notifications to the World Trade Organization (WTO), or provided scientific evidence for the rejections.

Separately, on January 1, 2021, a decree that called for the phase-out of the use of glyphosate and glyphosate-containing products by January 31, 2024, entered into force. A subsequent decree, published on February 13, 2023, extended the phase-out deadline to March 31, 2024. During the phase-out period, Mexico's National Council of Science and Technology (CONACYT) is tasked with studying, developing, and promoting alternatives to glyphosate. Furthermore, the decree prohibits Mexico from using glyphosate in any government-sponsored programs during the phase-out period. Mexico is implementing import quotas for glyphosate and glyphosate-containing products.

The United States continues to press Mexico to grant import permits for glyphosate and glyphosate-containing products, following a science- and risk-based regulatory approach.

*Pesticides and Agricultural Chemicals*

U.S. companies continue to report significant delays in receiving the necessary registration and marketing approvals from COFEPRIS for certain pesticides and agricultural chemicals. These delays appear to impact both applications for registration and applications for re-registration, sometimes involving only administrative updates such as changing the company's address.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Dairy Product Requirements*

Mexico has notified several measures impacting U.S. dairy exports to the WTO Committee on Technical Barriers to Trade (WTO TBT Committee), including Mexican Official Standard NOM-223 on cheese conformity assessment procedures (CAP), modifications to NOM-222 on milk powder, and modifications

to NOM-181 on yogurt. The United States remains concerned by the overly burdensome informational requirements, overly burdensome and duplicative technical requirements, and a lack of use of international standards in these measures. In 2022, the United States raised concerns with all three dairy measures during regular bilateral discussions on issues related to technical barriers to trade and WTO TBT Committee matters. The United States has also raised concerns with the proposed CAP, which include first-of-its-kind certification, inspection, and post-market surveillance requirements for cheese, at all three 2022 meetings of the WTO TBT Committee and the WTO Council for Trade in Goods. On August 26, 2021, Mexico published a final draft measure on CONAMER's website, which would require: (1) third-party certification with an annual production facility inspection, traceability and post-market surveillance performed by a third-party certification body, or (2) batch-by-batch testing, with results verified at points of entry, and (3) a scope of products that includes cheese intended for retail, to be used as an ingredient, or sold in bulk, citing NOM-051. On January 31, 2022, Mexico published a final draft version of the measure in Mexico's Federal Register, with largely insignificant revisions to the version posted to the CONAMER site in August 2021. In 2022, the United States joined a Mexican working group reviewing the standards and conformity assessment procedures for cheese to advocate for the use of relevant international standards and eased conformity assessment procedures.

*Local Specific Absorption Testing Requirements*

In February 2020, Mexico's telecommunications regulator, the Federal Telecommunications Institute (IFT), published new guidelines pursuant to Technical Provision IFT-012-2019 that pose a barrier to trade for mobile telecommunications products by requiring in-country testing for Specific Absorption Rates (SAR). Mexico has a limited number of accredited facilities able to perform the required tests. In addition, the testing requirements refer to out-of-date standards instead of recent guidance from the International Electrochemical Commission/Institute of Electrical and Electronics Engineers (IEC/IEEE) and the International Commission on Non-Ionizing Radiation Protection (ICNIRP). These new requirements were notified to the WTO in February 2021, following U.S. Government engagement with the Government of Mexico. The United States continued to press Mexico, including on the margins of the 2022 WTO TBT Committee meetings, to use the latest testing standards (IEC/IEEE 62209-1528:2020) and the 2020 version of ICNIRP guidelines and to include testing to these standards in the scope of the Mutual Recognition Agreement between the Government of the United States of America and the Government of the United Mexican States for Conformity Assessment of Telecommunications Equipment.

**Sanitary and Phytosanitary Barriers**

*Fresh Potatoes*

Since 2003, the United States has sought access for fresh potatoes to all of Mexico, beyond a 26-kilometer zone along the U.S.–Mexico border outside of which imports were not permitted. In April 2021, the Supreme Court of Mexico affirmed the authority of Mexico's regulatory agency to expand access for U.S. fresh potatoes. Subsequently, in 2021, Mexico completed the regulatory steps necessary for access for U.S. fresh potatoes to cities with populations over 100,000 people. In May 2022, the United States began shipping fresh potatoes to Mexico beyond the 26-kilometer zone. The United States is monitoring the situation to ensure that there is transparent and predictable access for U.S. exporters.

*Biotechnology Products*

Mexico's Biosafety Law requires COFEPRIS to decide on a complete application for authorization covering the import and sale of biotechnology products within six months of receipt. The United States has expressed serious concerns that certain decisions on applications were not based on science and with delays in processing applications.

On January 1, 2021, a decree entered into force under which existing authorizations "for the use of genetically modified corn grain in the diet of Mexican women and men" will be revoked and new authorizations are prohibited until genetically modified corn grain is completely replaced by January 31, 2024. A decree published February 13, 2023 repealed the 2021 decree and contains bans on and phase-outs of biotechnology corn for certain uses.

On March 6, 2023, the United States requested technical consultations under the USMCA Sanitary and Phytosanitary Chapter regarding certain measures set out in Mexico's February 13, 2023 decree and rejections of applications for authorization covering the import and sale of certain biotech products.

*Biotechnology Cotton*

Mexico rejected applications for cultivation of biotechnology cotton in 2019 and 2020. No applications were submitted in 2021 and 2022. Biotechnology cotton has been cultivated in Mexico for 25 years with no evidence of adverse impact on the environment, biodiversity, or animal or plant health. The United States continues to press Mexico to reconsider these applications, complete its approval procedure without undue delay, and use a science and risk-based approval process.

## INTELLECTUAL PROPERTY PROTECTION

Mexico was listed on the Watch List in the 2022 Special 301 Report. Obstacles to U.S. trade in intellectual property (IP) intensive goods and services include the wide availability of pirated and counterfeit goods, via both physical and online markets. As broadband access increases, so has online piracy. Overall criminal enforcement of IP rights, including online, continues to be characterized by weak coordination among federal, state, and municipal officials; limited resources for prosecutions; the lack of sustained investigations targeting suppliers of counterfeit and pirated goods and services; and, the lack of sufficient penalties to deter violations. Brand owners also face bad faith trademark registrations, making it important for companies to register their trademarks early. Moreover, rights holders continue to express concern about the length of administrative and judicial patent and trademark infringement proceedings and the persistence of continuing infringement while cases remain pending. The United States identified the Tepito market in Mexico City, the San Juan de Dios market in Guadalajara, and the La Pulga Rio market in Monterrey in the 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List) for selling pirated and counterfeit goods.

With respect to geographical indications (GIs), in 2020, Mexico and the European Union (EU) concluded negotiations on a free trade agreement in which Mexico agreed to protect 340 names for foodstuffs, wines, and beers. The United States remains concerned about the EU practice of negotiating product-specific IP outcomes as a condition of market access, and reiterates the importance of each individual IP right being evaluated on its individual merit in Mexico. In a USMCA side letter, Mexico confirmed that market access of U.S. products is not restricted in Mexico due to the mere use of certain individual cheese terms. Mexico has a *sui generis* system of protection for GIs that includes certain elements aimed at improving and respecting due process and transparency.

In 2020, Mexico enacted a new Federal Law for the Protection of Industrial Property and amended its Federal Copyright Law and Federal Criminal Code with a view to complying with various provisions of the USMCA and strengthening intellectual property protection. Mexico is still in the process of drafting regulations for both the Federal Law for the Protection of Industrial Property and the Federal Copyright Law amendments.

## SERVICES BARRIERS

### Electronic Payments Services

The United States continues to closely monitor developments with respect to Mexico's evolving policy framework for electronic payment service suppliers. Aspects of the existing policy framework have the effect of limiting the ability of U.S. electronic payment service suppliers to supply their complete suite of value-added services, including fraud protection, and differentiate themselves in the marketplace. As Mexico considers updating its regulations, the United States continues to urge Mexico to facilitate a competitive market and level playing field for U.S. electronic payment service suppliers, aligned with Mexico's USMCA obligations.

Mexico issued regulations in 2021 relating to the use of cloud service suppliers by electronic payment fund institutions. The United States continues to be concerned by the length, complexity, and uncertainty of the approval process for electronic payment fund institutions that seek to use secure, U.S.-based cloud computing services instead of local data centers, raising questions as to the extent to which the approvals are being conditioned on using local computing facilities.

### Telecommunications Services

Notwithstanding the sweeping reforms of the telecommunications sector in 2013 and 2014, new market entrants must still compete with the traditional dominant supplier, which has maintained a market share well above 60 percent and was designated as a "preponderant economic agent" by the Federal Telecommunications Institute (IFT). The entrenched position maintained by this dominant supplier, particularly with regards to the mobile services market, demonstrates the continued need for vigilant enforcement by the IFT of the regulations it adopted to address that supplier's status as a preponderant economic agent. In addition, statements by the Mexican President concerning the intention to eliminate the IFT raise significant concerns regarding Mexico's continued compliance with its USMCA obligations.

## BARRIERS TO DIGITAL TRADE

### Digital Taxation

The Revenue Law for 2023 includes a provision that gives the Mexican Government the authority to order Internet service providers in Mexico to block access in Mexico to electronically delivered services from non-resident service suppliers that are found out of compliance with Mexican VAT registration. Although Mexico has yet to use this "kill switch" provision since it went into effect in 2021, this penalty remains legally available.

## INVESTMENT BARRIERS

### Energy Sector

Since December 2018, Mexico has pursued an energy policy centered on reinstating the primacy of its state-owned electrical utility, the Comisión Federal de Electricidad (CFE), and oil and gas company, Petróleos Mexicanos (PEMEX). Mexico has undertaken various measures to achieve this aim. For example, in March 2021, Mexico amended its Electric Power Industry Law so that its grid operator will prioritize for dispatch to Mexico's grid CFE-generated electricity over electricity generated by all private competitors, irrespective of cost or environmental impact.

Mexico has also taken, or is taking, actions or inactions, which are curtailing the ability of private companies to participate effectively, if at all, in Mexico's energy sector. These actions include, but are not limited to, delaying, denying or failing to act on applications for new permits or permit modifications; suspending or revoking existing permits; and, otherwise blocking private companies' ability to operate renewable energy facilities (such as wind and solar installations), import and export electricity and fuel, store or transload fuel, and build or operate retail fuel stations.

In addition, in December 2019, Mexico's energy regulator granted PEMEX but not other companies, including U.S. companies, a five-year extension to comply with maximum sulfur content requirements under its fuel standard in certain parts of Mexico, which otherwise require the sale of ultra-low sulfur diesel fuel throughout the country. Without the extension, PEMEX would have to purchase ultra-low sulfur diesel imported from the United States or upgrade its facilities to produce ultra-low sulfur diesel in sufficient quantities.

In June 2022, Mexico's Secretary of Energy notified the Energy Regulatory Commission (CRE) and the National Natural Gas System Operator (CENAGAS) of a change in policy that would require, among other things, that users of Mexico's gas transportation network demonstrate that they source natural gas from PEMEX or CFE.

On July 20, 2022, the United States requested consultations with Mexico under USMCA Chapter 31 regarding these measures.

**Mining Sector**

The Mexican Government passed legislation in April 2022 amending the national mining law to establish greater state control over the country's lithium resources. The amendments place responsibility for the exploration, exploitation, and utilization of Mexico's lithium under the exclusive control of a newly created state-owned lithium company, LitioMx, and prohibits concessions, licenses, contracts, permits, and authorizations to non-public entities to undertake those activities. The amendments also open the door to declaring other minerals as "strategic resources" that would require greater state control in the future. The government is still drafting implementing measures for the amendments. The United States continues to monitor Mexico's implementation of these amendments.

**Restricted Sectors**

Mexico restricts foreign investment in certain sectors under the Foreign Investment Law. Foreign ownership is capped at 49 percent for express delivery companies and land for agricultural, livestock, and forestry purposes. Certain other sectors, such as ground transportation services and transportation infrastructure (including airport management), are closed to foreign participation.

# MOROCCO

## TRADE AGREEMENTS

### The United States–Morocco Free Trade Agreement

The United States–Morocco Free Trade Agreement (USMFTA) entered into force on January 1, 2006. Morocco immediately eliminated duties on 95 percent of industrial and consumer goods. Morocco implemented phased tariff reductions culminating in the complete elimination of duties on most other such goods by January 2015. Some sensitive agricultural products have longer periods for duty elimination and may be subject to other provisions, including tariff-rate quotas (TRQs). Goods from key U.S. export sectors, such as information technology, machinery, construction equipment, chemicals, and textiles, receive either duty-free or other preferential duty treatment when entering Morocco. The United States and Morocco consult regularly to review the implementation and functioning of the Agreement and to address outstanding issues. The United States–Morocco Joint Committee is the central oversight body for the USMFTA.

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

On January 5, 2023, as prescribed in the USMFTA, Morocco published Circular 6404/222, announcing tariff changes for calendar year 2023. The circular includes a list of products for which tariffs have been phased out in 2023, products for which tariffs are not yet fully liberalized, and updated agricultural TRQs and agricultural safeguard measures for the period from January 1 through December 31, 2023. Notable changes include the elimination of TRQs for U.S. high-quality beef and the removal of the safeguard mechanism for imported chickpeas and lentils.

*Taxes*

Under its General Code of Taxes, Morocco levies a 20 percent value-added tax (VAT) on imported meat, poultry, seafood, olive oil, and dates. Exceptions exist for specific imported meat, seafood, and poultry patties. In comparison, all domestic meat, poultry, seafood, olive oil, and dates are exempt from VAT payment. Beginning in 2019, prospective importers of U.S. seafood, beef, and poultry complained that the VAT put U.S. exports at a cost disadvantage. The United States continues to closely monitor Morocco's application of VAT to U.S. products and to raise the issue as necessary with Moroccan officials during engagements under the USMFTA.

### Non-Tariff Barriers

#### *Agricultural Subsidies*

Morocco last notified its levels of agricultural domestic support to the World Trade Organization (WTO) for the year 2007, and last notified its agricultural export subsidies for the years 2018 and 2019. Morocco appears to provide high levels of domestic support for its wheat production. Morocco also appears to subsidize agricultural exports to the United States.

## TECHNICAL BARRIERS TO TRADE

### Technical Barriers to Trade

In July 2016, the Moroccan Government issued an implementation decree (Decree No. 2-15-89 of Ramadan 3, 1437) that allows for the importation of automobiles that meet the U.S. Federal Motor Vehicle Safety Standards (FMVSS). Morocco has yet to notify this measure to the WTO. Previously, Morocco only allowed the import of automobiles meeting the United Nations Economic Commission for Europe (UNECE) vehicle standards, effectively barring many automobiles produced in the United States, which met safety standards with the same goals as those of the UNECE from entering the Moroccan market. Although issuance of the implementation decree should have enabled importers to clear customs using self-certification documents to demonstrate compliance with FMVSS, U.S. companies continue to report that Moroccan customs has still not adopted a procedure to regularize this process.

## INTELLECTUAL PROPERTY PROTECTION

Inadequate intellectual property protection and enforcement in Morocco continues to be an area of concern. Although the United States acknowledges the efforts of Morocco to combat piracy and trade in counterfeit goods, Morocco continues to be a thriving market for counterfeit products and faces challenges with digital piracy.

The United States and Morocco continue to engage on matters related to Morocco's policy toward geographical indications (GIs). The United States remains concerned that the European Union (EU) has pursued negotiations with Morocco and other countries that would require partner countries to adopt overly broad protection of EU GIs as a condition of market access into the EU. The EU's approach may likely adversely impact access for U.S. and other producers and likely prevents all producers, other than in certain EU regions, from using certain product names. The United States continues to reiterate to Morocco the importance of each GI being independently evaluated on its individual merits, with adequate due process requirements.

U.S. companies remain concerned about Morocco's lack of protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

## SERVICES BARRIERS

Although Morocco's insurance regulations do not appear to make formal distinctions based on national origin, U.S. insurance suppliers have reported that, in practice, the Moroccan regulatory body (part of the Ministry of Economy and Finance) applies an authorization process that has impeded U.S. insurance companies from introducing products that compete with Moroccan firms.

## OTHER BARRIERS

U.S. firms have cited irregularities with regard to certain government procedures, including a lack of clear and accessible information about new regulations and certifications relating to imports into the country, as among the greatest obstacles to trade and investment with Morocco. In particular, U.S. companies have pointed to difficulties they encounter in processes for obtaining permits, land use approvals, and other government permissions. U.S. companies also have noted the challenges created by rigid protocols and excessive bureaucracy, which can lead to long wait times for decisions and permissions, particularly when dealing with public sector entities. Morocco's employment regimes and property registration procedures also continue to impede business.

In an effort to avoid an excessive drain on foreign exchange, Moroccan authorities allow Moroccan companies to prepay only up to 30 percent of a shipment's total value in advance of importation. These restrictions on purchasers are often problematic for U.S. exporters that require 100 percent advance payment. Some U.S. exporters use letters of credit to mitigate the effect of these limitations, but these are costly and many U.S. exporters report lengthy payment delays. Additionally, some Moroccan banks are only willing to conduct business with certain U.S. banks, regardless of the preferences of U.S. exporters, which causes further transactional delays. While Moroccan officials had indicated in 2019 that the 30 percent limit would be phased out over an indefinite timeline, it remained in effect as of December 31, 2022. The United States will continue to press for removal of the limitation.

# NEW ZEALAND

## TRADE AGREEMENTS

### The United States–New Zealand Trade and Investment Framework Agreement

The United States and New Zealand signed a Trade and Investment Framework Agreement on October 2, 1992. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and New Zealand.

## IMPORT POLICIES

### Tariffs

New Zealand's average Most-Favored-Nation (MFN) applied tariff rate was 1.9 percent in 2021 (latest data available). New Zealand's average MFN applied tariff rate was 1.4 percent for agricultural products and 2.0 percent for non-agricultural products in 2021 (latest data available). New Zealand has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 9.5 percent.

As of 2021, New Zealand applied a zero percent duty on an MFN basis on 72.4 percent of its tariff lines in agricultural goods and on 65.1 percent of its tariff lines in non-agricultural goods.

## SANITARY AND PHYTOSANITARY BARRIERS

### Animal Health

New Zealand maintains restrictions on imports of pork from the United States related to unwarranted concerns that certain pork products may transmit animal diseases. Imports of U.S. frozen or chilled pork products weighing more than three kilograms must be cooked, canned, or undergo further processing within New Zealand.

### Industrial Goods

Since August 2020, New Zealand requires treatment of all imported vehicles, machinery, and parts to prevent entry of the brown marmorated stink bug (BMSB) during the BMSB season, from September 1 to April 30. The Ministry for Primary Industries considers the United States one of 37 "risk countries" requiring off-shore treatment of imported vehicles, machinery, and parts, whether containerized or not. Prior to August 2020, only uncontainerized vehicle cargo from risk countries required treatment before arriving in New Zealand.

## INTELLECTUAL PROPERTY PROTECTION

New Zealand generally provides strong intellectual property (IP) protection and enforcement. Since 2018, New Zealand has been considering changes to its copyright regime (the Copyright Act of 1994), including through a public consultation process. The next steps and timing for further consultation are unclear. The United States continues to monitor the outcome of this review, including with respect to technological protection measures and copyright term.

The United States continues to monitor developments to amend the Medicines Act 1981 through the Therapeutic Products Bill, the review of the Geographical Indications (Wine and Spirits) Registration Act 2006, and proposed amendments to the Patent Acts 2013, the Trade Marks Act 2002, and the Designs Act 1953. The United States will continue to work with New Zealand to address any IP issues.

## OTHER BARRIERS

The Pharmaceutical Management Agency (PHARMAC) determines which medicines to fund for use in community and public hospitals; negotiates prices with pharmaceutical companies; manages the national contracting of hospital medical devices; and, sets subsidy levels and reimbursement criteria. Some U.S. stakeholders have expressed concern about aspects of PHARMAC's regulatory process, including lack of transparency, timeliness, and predictability in the funding process and lengthy delays in reimbursing new products.

# NICARAGUA

## TRADE AGREEMENTS

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

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

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

As a member of the Central American Common Market, Nicaragua applies a harmonized external tariff on most items (approximately 95 percent of Nicaragua's tariff lines) at a maximum of 15 percent, with some exceptions. However, under the CAFTA–DR, as of January 1, 2015, U.S. originating consumer and industrial goods enter Nicaragua duty free.

In addition, nearly all U.S. agricultural exports enter Nicaragua duty free under the CAFTA–DR. Nicaragua eliminated its remaining tariffs on rice and chicken leg quarters on January 1, 2023, and is scheduled to eliminate tariffs on dairy products by 2025. For certain agricultural products, tariff-rate quotas (TRQs) permit duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Nicaragua will liberalize trade in white corn through continual expansion of a TRQ rather than the reduction of the out-of-quota tariff. Nicaragua is required under the CAFTA–DR to make TRQs available on January 1 of each year. Nicaragua monitors its TRQs through an import licensing system, which the United States carefully tracks to ensure the timely issuance of these permits.

*Taxes*

The Nicaraguan Government levies a consumption tax of 15 percent to 42 percent on certain luxury items. Since 2019, Nicaraguan customs officials have calculated this tax based on a unilaterally devised purchase price that often seems to be inflated. Alcoholic beverages and tobacco products are also taxed on the basis of a presumed purchase price. The selective consumption tax may disadvantage foreign suppliers because domestic products pay the tax only on the actual purchase price. In addition, businesses report being unable to secure tax refunds, with some stating that filing for a refund has resulted in audits, additional taxes, and penalties. The National Institute of Information and Development (INIDE) has provided a schedule of retail prices that is supposed to serve as a baseline for this tax, but businesses report that customs authorities often do not use the schedule.

### Non-Tariff Barriers

*Customs Barriers and Trade Facilitation*

Businesses report that Nicaraguan customs officials routinely delay customs inspections and levy arbitrary fines for minor paperwork problems such as typographical errors. These fines reportedly often represent

up to three times the value of the shipment. Businesses also continue to report that a majority of shipments are subject to physical inspection. Some businesses express concern that customs officials might target shipments for further scrutiny for political reasons.

In addition, six government institutions are involved in processing import paperwork. Many services, such as lab testing for food safety, are available only in the capital city of Managua, creating delays and additional costs if goods must be stored in Managua while testing is completed. Some businesses report that customs officials arbitrarily hold or open containers that contain perishable items, such as refrigerated or frozen goods.

Starting in 2019, Nicaragua's Customs Authority (DGA) began systematically seeking proof of country of origin of products that had previously been established as originating in the United States, including through a comprehensive questionnaire to importers seeking detailed information about the products. Multiple businesses have reported that the requested information includes proprietary business data or trade secrets. Businesses have sought to make arrangements with DGA to provide proof of origin without publishing trade secrets in questionnaires, such as through site visits to production plants and staff interviews. However, DGA has rejected those proposals and in multiple cases has initiated administrative processes to remove preferential treatment under the CAFTA–DR and also seek retroactive tariffs for the time that the product was imported with preferential treatment. DGA's increased scrutiny of the proof of origin of imports has led to delays at customs and arbitrary fines for businesses. In multiple cases, DGA has also levied a separate fine that doubles the amount owed.

U.S. exporters report that DGA has ignored certifications provided by U.S. or local Government agencies as proof of origin for agricultural commodities and that submission of additional documents requested by customs, such as questionnaires, has not resulted in approval of a claim for preferential treatment and does not appear to be part of a good-faith process.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

U.S. industry has raised concerns that food product registration in Nicaragua can be complicated and arbitrary. The Ministry of Health requires a Certificate of Free Sale for product registration. In some cases, U.S. companies have satisfied the requirement by submitting documents from state or local government authorities or trade organizations. However, U.S. manufacturers cannot gain approval to sell into the Nicaraguan market if they are unable to obtain such documents.

U.S. food companies have expressed concern regarding Law 842 (2013), that requires that all processed food products be marked with an expiration date. Nicaraguan officials have at times interpreted "Best By" dates, which indicate food quality or freshness rather than food safety, as expiration dates, and have destroyed products exceeding those dates. Nicaraguan importers of U.S. products have complained that the law imposes costs on food importers, especially for products that do not typically have expiration dates. Nicaraguan importers continue to work with suppliers to include expiration dates in the translated Spanish label as required by Central American Technical Regulation on General Labeling of Prepackaged Food Products (RTCA 67.01.07.10).

### Sanitary and Phytosanitary Barriers

U.S. exporters have faced multiple container rejections since 2021 due to Nicaragua's interpretation of a Central American Technical Regulation for fresh/chilled/frozen meat (RTCA 67.04.50:17). Among the Central American countries applying the regulation, only Nicaragua applies a 'zero-tolerance' requirement

for the presence of salmonella. Shipments rejected by Nicaragua have been successfully re-exported to the United States, passed subsequent food safety inspections by U.S. regulators, and re-exported to other Central American countries that operate under the same regional regulation.

U.S. poultry meat and genetics exporters have expressed concerns that Nicaragua has denied import permits for and rejected shipments of U.S. poultry products, citing the presence of high pathogenicity avian influenza (HPAI) in the U.S. state where the product was produced. Under guidance from the World Organisation for Animal Health, the United States successfully exports U.S. poultry products to other countries using a U.S. county-level standard, exporting products produced in U.S. counties free from HPAI despite infections in other counties in the same U.S. state.

## GOVERNMENT PROCUREMENT

Significant hurdles inhibit the ability of U.S. suppliers to compete for sales to Nicaraguan Government entities. Existing law provides that all government purchases must be planned and approved by procurement committees within each public entity and published in Annual Procurement Plans. The law also requires a minimum of 30 days from publication of a bid to the due date for submissions. However, these requirements are not always followed. Industry reports that the Nicaraguan Government limits transparency on public procurement, publishes public procurements too late to ensure fair competition, creates terms of reference and technical specifications that are frequently unclear, and includes requirements for financial guarantees and local legal representation that create significant challenges for U.S. firms without a local presence or partner. Moreover, U.S. businesses report that the rule of law is weak and that outside actors can influence the judicial process and hamper due process.

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

## INTELLECTUAL PROPERTY PROTECTION

Despite a strong legal framework to implement CAFTA–DR commitments on intellectual property (IP) protection and enforcement, concerns remain including optical disc and broadcast media piracy and the use of unlicensed software in Nicaragua. Further, the sale of counterfeit and pirated goods is reportedly on the rise throughout Nicaragua. The United States has expressed concern to the Nicaraguan Government about inadequate IP enforcement, as well as the need to ensure transparency in procedures relating to the protections for geographical indications. The United States will continue to monitor Nicaragua's implementation of its IP obligations under the CAFTA–DR.

# NIGERIA

## IMPORT POLICIES

### Tariffs

Nigeria's average Most-Favored-Nation (MFN) applied tariff rate was 12.1 percent in 2020 (latest data available). Nigeria's average MFN applied tariff rate was 15.8 percent for agricultural products and 11.5 percent for non-agricultural products in 2020 (latest data available). Nigeria has bound 19.7 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 120.5 percent.

Consistent with the Economic Community of West African States (ECOWAS) common external tariff (CET), Nigeria applies five tariff bands: (1) zero percent duty on essential social goods (*e.g.*, medicine); (2) 5 percent duty on essential commodities, raw materials, and capital goods; (3) 10 percent duty on intermediate goods; (4) 20 percent duty on consumer goods; and, (5) 35 percent duty on certain goods that the Nigerian Government elected to afford greater protection. The CET was slated to be fully harmonized by 2020, but, in practice, some ECOWAS Member States have maintained deviations from the CET beyond the January 1, 2020 deadline.

Nigeria maintains a number of supplemental levies and duties on imports of certain goods, which significantly raises the effective tariff rate paid by importers. For example, Nigeria maintains a combined effective duty (tariff plus levy) of 50 percent or more on 156 tariff lines. These include 15 tariff lines on which the combined effective duty exceeds the 70 percent limit set by ECOWAS, covering tobacco (135 percent for cigars and cigarettes and 85 percent for tobacco and other tobacco products), rice (120 percent), wheat flour (100 percent), and sugar (80 percent).

### Non-Tariff Barriers

*Import Bans*

The Nigeria Customs Service continues to ban the import of 45 different product categories, citing the need to protect local industries or promote health and safety. The list of prohibited imports currently includes: bird eggs; cocoa butter, powder, and cakes; pork; beef; frozen poultry; refined vegetable oil and fats; bottled water; spaghetti and other noodles; fruit juice in retail packs; tomatoes, tomato ketchup, and tomato sauces; nonalcoholic beverages (excluding energy drinks); bagged cement; beer and stout; all medicaments falling under Harmonized System headings 3003 and 3004; soaps and detergents; mosquito repellant coils; paper board; telephone recharge cards and vouchers; used motor vehicles more than 12 years old; ball point pens; pistols and air pistols; cartridge reloading implements; used clothing; and, certain spirits and alcohols. The import ban lists can be found at the Nigeria Customs Service website: Import Prohibition List (25 categories) and Goods: The Importation of Which is Absolutely Prohibited (20 categories).

*Customs Barriers and Trade Facilitation*

The Nigeria Customs Service's practices continue to present major obstacles to trade. Importers report inconsistent application of customs regulations; lengthy clearance procedures, often due to outdated manual processing systems; and, corruption. These factors sometimes contribute to product deterioration and result in significant losses for importers of perishable goods. Disputes among Nigerian Government agencies over the interpretation of regulations often cause delays, and frequent changes in customs guidelines slow the movement of goods through Nigerian ports. The customs authority has attempted to automate its

processes, but many basic customs procedures are still paper-based and require an unreasonably long time to complete. In September 2020, the Nigerian Government approved a $3.1 billion customs modernization project that would include the automation of paper-based customs processes. The project was to be completed in 36 months and executed via a public-private partnership through a 20-year concession. This project has experienced implementation delays.

While the Nigerian Government has undertaken efforts to implement access road improvement projects, traders continue to report that infrastructural limitations in and around Nigeria's ports contribute to long queues of both trucks and ships, resulting in delays and increased costs.

Nigeria ratified the WTO Trade Facilitation Agreement (TFA) in January 2017. Nigeria's notification on the use of customs brokers was due to the WTO in December 2020, according to Nigeria's self-designated TFA implementation schedule. Nigeria submitted an incomplete notification with respect to the use of customs brokers on November 25, 2022, and the United States will seek further information and encourage Nigeria to submit a revised notification with complete information.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Labeling*

In 2020, Nigeria held a domestic consultation regarding its proposed measure on "Formulated Caffeinated Beverage (Labelling) Regulations." This measure would establish caffeine levels and warning statements for caffeinated beverages. In October 2020, the United States submitted comments and requested Nigeria to notify this measure to the WTO Committee on Technical Barriers to Trade (TBT). As of December 31, 2022, Nigeria had not notified this measure to the WTO. The WTO TBT notification process is designed to provide stakeholders ample time to understand, comment on, and then comply with new regulations. Without this information, U.S. exporters may have difficulty meeting Nigerian market requirements. The United States will continue to urge Nigeria to notify this and any future measures that may have a significant effect on trade to the WTO.

*Transparency*

Transparency of the regulatory system in Nigeria is a concern, as U.S. companies complain that some regulations are issued only as final measures without a clear process or period for public comment on draft regulations. Nigeria has not consistently notified draft technical regulations to the WTO Committee on Technical Barriers to Trade. Implementation of such measures also raises concerns as Nigeria can implement measures inconsistently or opaquely.

### Sanitary and Phytosanitary Barriers

*Import bans*

Nigeria continues to ban imports of beef, pork, sheep, goat meat, and edible offal. Nigeria has indicated that the reason for the ban is the prevention of bovine spongiform encephalopathy (BSE), but the bans apply to meats from all countries, even those without reported BSE cases. Nigeria also bans the import of live and processed poultry (with the exception of day-old chicks) and poultry meat, including fresh, frozen, and cooked poultry meat, due to alleged concerns about avian influenza.

*Import Certificates*

Nigeria requires that all food, drug, cosmetic, and pesticide imports be accompanied by certificates from manufacturers, third party certifiers, and/or exporters' national authorities, depending on the product. These certificates must attest that the product is safe for human consumption even though certificate-issuing authorities do not inspect every shipment of exported food product. However, Nigeria's limited capacity to review certificates, carry out inspections, and conduct testing has resulted in delays in the clearance of food imports in particular, and has contributed to the diversion of imports into informal channels.

## GOVERNMENT PROCUREMENT

U.S. companies have expressed concerns about corruption and a lack of transparency in procurement processes in Nigeria.

The Public Procurement Act of 2007 established the Bureau of Public Procurement (BPP) as the regulatory authority responsible for the monitoring and oversight of public procurement in Nigeria. Nigeria only requires government entities to engage in competitive bidding for any procurement worth more than ₦2.5 million (approximately $5,747). Only majority Nigerian-owned companies may bid on procurements above ₦2.5 million, and up to ₦100 million (approximately $229,885) for goods and up to ₦1 billion (approximately $2.3 million) for services and works. Above those thresholds, both majority foreign-owned and majority Nigerian-owned companies may engage in competitive bidding. Nigerian Government agencies do not always follow procurement guidelines, despite the requirement that no procurement proceedings are to be formalized until the procuring entity has ensured that funds are available to meet the obligations and has obtained a "Certificate of 'No Objection' to Contract Award" from the BPP.

Executive Order 5 of 2018 added restrictions and obligations for public procurement related to science, engineering, and technology. The order is designed to bolster the Public Procurement Act of 2007 and directs government offices to grant preference to Nigerian professionals.

There is a local content margin of preference, which varies from project to project, but does not exceed 15 percent. In addition, Nigeria offers a preference to majority Nigerian-owned companies as long as their price is within 15 percent of a majority foreign-owned company. Foreign companies may also be subject to a local content or other localization requirement (*e.g.*, partnership with a local partner firm or joining a consortium). In 2013, the National Information Technology Development Agency (NITDA), an agency of the Federal Ministry of Communication Technology, issued the "Guidelines for Nigerian Content Development in Information and Communications Technology" (NITDA Guidelines). The NITDA Guidelines require ministries and development agencies to source and procure all computer hardware only from NITDA-approved original equipment manufacturers (OEMs). The Nigerian Oil and Gas Industry Content Development Act also mandates a maximum quota of five percent of all positions that can be allotted to foreign nationals and specifies minimum requirements intended to benefit host communities (*i.e.*, communities where oil and gas operations are located) among other local content stipulations.

Nigeria has made modest progress on its pledge to conduct open and competitive bidding processes for government procurement. The BPP has made a variety of procurement procedures and bidding information publicly available on its website. However, Nigeria's National Assembly operates its own procurement process that is not subject to BPP oversight and lacks transparency. Moreover, although U.S. companies have won contracts in a number of sectors, difficulties in receiving payments are common and can discourage firms from bidding. Supplier or foreign government subsidized financing arrangements appear in some cases to be a crucial factor in the award of government procurements.

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

## INTELLECTUAL PROPERTY PROTECTION

Nigeria has taken steps to improve its legal framework for intellectual property (IP) protection. In 2021, the National Assembly enacted the Plant Variety Protection Act, which creates a legal framework and administrative structure for the protection of plant varieties in Nigeria. In 2017, Nigeria submitted its instruments of accession and ratification in connection with four World Intellectual Property Organization (WIPO) treaties: the WIPO Copyright Treaty; the WIPO Performances and Phonograms Treaty; the Beijing Treaty on Audiovisual Performances; and, the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. Nigeria's pending Copyright Bill seeks to implement those treaties. On July 27, 2022, the National Assembly passed the bill and it awaits the President's signature. In 2019, the President signed into law the Federal Competition and Consumer Protection Act which, among other things, contains provisions designed to combat trademark counterfeiting. However, pirated and counterfeit goods remain widely available in Nigeria and often threaten the health and safety of consumers. Counterfeit pharmaceuticals, automotive parts, and other consumer goods are prevalent, as well as widespread online infringements and pirated software, music, and video recordings. IP enforcement remains inadequate due to chronically insufficient resources for enforcement agencies, porous borders, entrenched trafficking systems that make enforcement difficult, and corruption. Public awareness is low regarding the role of IP in Nigeria's economy despite the benefits Nigeria is seeing with its growth as a regional hub for the African film industry and the harm to consumers from counterfeit products. However, the Nigerian Government recently released National IP Policy and Strategy seeks to identify the comparative advantages IP industries could give Nigeria. The Nigerian Copyright Commission and the Federal Competition and Consumer Protection Commission, often in partnership with the U.S. Embassy, have taken steps to raise awareness about IP.

## SERVICES BARRIERS

Nigeria prohibits foreign firms from participating in reinsurance of risks in the oil and gas sector. Although the regulator may waive this prohibition, all local reinsurance capacity must be fully exhausted. Nigeria also imposes five percent mandatory reinsurance cession requirements in favor of the Africa Reinsurance Corporation and the WAICA Reinsurance Corporation.

In June 2022, the National Assembly passed the Advertising Regulatory Council of Nigeria Act, which came into force on July 25, 2022. The Act replaced the Advertising Practitioners Council of Nigeria, which functioned like a trade association, with the Regulatory Council, which has sweeping regulatory and enforcement powers. The Act prescribes mandatory registration for any person or company engaging in any form of advertising in Nigeria and requires all advertisements to be pre-approved before publication.

## BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

The NITDA Guidelines require all foreign and domestic businesses to store all data concerning Nigerian citizens within Nigeria. The NITDA Guidelines further require that businesses host all government data locally unless officially exempted. These requirements create a significant barrier to market entry for firms that distribute their data storage and processing globally. Further, such data localization requirements prevent Nigerian businesses from taking advantage of cloud computing services supplied on a cross-border basis.

The NITDA Guidelines also require information and communication technology (ICT) companies to use Nigerian businesses for the provision of at least 80 percent of all value-added services on their network.

The NITDA Guidelines define "value-added service" vaguely, creating uncertainty for businesses seeking to comply with the measure. Though Nigeria has largely declined to enforce the NITDA Guidelines, periodic threats of repercussions for non-compliance remain a concern.

In October 2022, the NITDA issued a "Code of Practice for Interactive Computer Service Platforms/Internet Intermediaries," which came into force on December 26, 2022. The Code of Practice requires online platforms to remove content upon notice from any government agency or Internet user that the content is unlawful. It also requires digital service platforms with more than one million users in Nigeria to incorporate in and have a physical contact address in Nigeria.

*Digital Services Taxation*

The 2020 Finance Act subjects non-resident companies (NRCs) with significant economic presence in Nigeria to consumption and corporate taxes. An Executive Order accompanying the Act defined NRCs as companies that are not registered in Nigeria and do not have a physical presence in Nigeria but that derive revenue or income from Nigeria. NRCs are divided into two categories. The first group consists of digital firms: companies offering streaming, downloading, or data transmission services; electronic commerce platforms; websites with a Nigerian domain name; and, digital platforms with prices and/or payment options in naira, the Nigerian currency. These firms are subject to the Nigerian Companies Income Tax (CIT) of 30 percent (or 6 percent of revenue where assessable profits cannot be determined) and a value-added tax (VAT) of 7.5 percent if they generate revenues exceeding ₦25 million (approximately $57,077) from their Nigerian operations in a given fiscal year. The second group consists of technical or professional services firms that will be deemed to have significant economic presence if the firms generate any income or receive payment from Nigeria in a given year. There is no sales threshold. Such firms are subject to the 7.5 percent VAT and a 10 percent withholding rate for the CIT.

## OTHER BARRIERS

### Bribery and Corruption

Corruption remains a substantial barrier to trade and investment in Nigeria. Corruption and lack of transparency in tender processes have been great concerns to U.S. companies. U.S. firms experience difficulties in day-to-day operations due to inappropriate demands from officials for "facilitative" payments. Efforts to strengthen anticorruption measures have been hampered by inter-ministry infighting and partisan politics. Questions also remain regarding the Nigerian justice system's capacity to achieve convictions and appropriate sentencing for corruption-related crimes.

### Foreign Exchange Controls

Foreign exchange limitations have negatively impacted investment as well as trade. Restrictive measures have hampered some U.S. companies' abilities to import finished or semi-finished goods for use in their Nigerian operations. Moreover, Nigeria's policies have increased challenges for projects developed with international financing that include U.S. dollar denominated debt obligations, as borrowers have struggled to secure the necessary foreign exchange to meet those obligations.

In 2015, the CBN imposed a series of restrictions that prohibited the use of official foreign exchange to import 41 product categories, including rice, meat, poultry, vegetable oil, and a number of steel products. Since 2018, the CBN has added fertilizer, milk and dairy products, maize, and sugar to the list of restricted products. The CBN indicated that these actions were intended to protect and support domestic production, and not solely to maintain the value of its currency or preserve foreign exchange reserves. However, these measures may exacerbate the compounding impacts of the global pandemic, climate crisis, and protracted

conflicts by decreasing the availability and affordability of food and fertilizer in Nigeria. For example, these measures have made it difficult for U.S. businesses to export the covered items to Nigeria and for Nigerian companies to source inputs needed for production. The CBN issued waivers for milk/dairy, maize, and sugar to a limited number of importers who, according to the CBN, had made reasonable progress in improving domestic production. In April 2021, the CBN announced plans to add wheat to the foreign exchange restriction list with the overall goal of ending wheat imports by 2023. As of December 31, 2022, the CBN had not yet added wheat to the list. The United States has repeatedly raised concerns regarding the foreign exchange restrictions in both bilateral and multilateral engagements.

The CBN heavily restricts access to U.S. dollars needed to import necessary inputs outside of those on the banned list, or to repatriate profits or make U.S. dollar-denominated loan payments. The impact is especially felt by foreign airlines. The International Air Transport Association announced on August 28, 2022 that Nigeria held $464 million in trapped funds for foreign airlines that they were not able to repatriate. Lack of dollars sometimes forces businesses to source foreign currency from the parallel market. Policy uncertainty, a decline in oil production, which results in fewer dollars in the market (the oil sector provides approximately 90 percent of Nigeria's foreign currency reserves), and declining foreign direct investment have compounded the impetus to source dollars from the parallel market. Meanwhile the spread between the official and parallel rates continues to widen, having reached 100 percent in certain markets within Nigeria in November 2022.

**Local Content Requirements**

The NITDA Guidelines require OEMs operating in Nigeria to assemble all hardware products locally and multinational companies operating in Nigeria to source all ICT hardware locally. In addition, the NITDA Guidelines require companies to use only locally manufactured subscriber identification module (SIM) cards and to use indigenous companies to build cell towers and base stations. It is frequently not feasible for companies to comply with the Guidelines, and the Nigerian Government appears to not be enforcing them as it lacks the capacity and resources to monitor hiring practices, technological compliance, and data flows. The United States has encouraged Nigeria to review the Guidelines.

The Nigerian Government periodically broadcasts these localization requirements and presses ICT companies to establish local capacity-building programs. These companies have explained to the Nigerian Government why it is not feasible to meet some of the Guidelines. In 2017, the Office of Nigerian Content Development in Information and Communications Technology distributed a letter threatening OEMs with "criminal offense" if they did not demonstrate compliance with local content guidelines on after-sales support and warranty support. There are no known criminal charges filed against a firm for non-compliance.

**Port Congestion, Inefficiency, and Maritime Crime**

Delays caused by congestion and the poor condition of access roads, combined with corruption issues and an insufficient number of digital cargo scanners, make operations at Nigerian ports among the most expensive in the world. According to shipping industry reports, Apapa in Lagos is among the most expensive ports in the world for shipments from the United States, due to an average delay of 30 days to clear a container ship. Lagos ports also lack adequate space, and ships often wait for days, and in some cases weeks and months, before being able to berth and discharge their contents. Nigeria continues to lose tens of millions of dollars daily because of traffic gridlock at the main port in Lagos. Maritime crime in the Gulf of Guinea emanating from Nigeria diminished in 2022, but still has a deleterious effect on maritime trade.

## Oil and Gas Sector

The Oil and Gas Content Development Act (the Act) of 2010 has imposed broad-ranging local content requirements on projects in Nigeria's oil and gas sector. Under the Act, all companies operating in this sector must give preferential treatment to Nigerian goods and services and prioritize Nigerian nationals when hiring. The Act's scope is broad, covering any activity or transaction carried out in, or connected with, the oil and gas industry. The Act's local sourcing mandate, which applies to an extensive list of goods and services supplied to the oil and gas industry, has been a particular concern of U.S. oil and gas service suppliers. Companies must also create and seek approval for a "Nigerian Content Plan" to demonstrate how they will increase local content in their oil and gas operations. Companies that do not follow a Nigerian Content Plan face large fines or cancellation of contracts. Majority foreign-owned companies operating in the sector must also deposit 10 percent of their annual profit in a Nigerian bank.

According to stakeholders, the Act continues to adversely affect a diverse range of companies, including operators, contractors, subcontractors, and service suppliers. Majority foreign-owned companies continue to observe that the Act significantly adds to the cost of doing business in Nigeria.

In August 2021, Nigeria enacted the Petroleum Industry Act (PIA). The PIA represents the culmination of nearly two decades of attempts to overhaul the regulation and governance of Nigeria's energy sector. While the law provides a new fiscal framework that is generally assessed to be more investor-friendly than the previous framework, it also contains a number of provisions that are expected to create additional hardships for operators in the oil and gas sector. One of the most contentious provisions regards the Host Community Development Trust Fund, which requires all oil producers to allocate three percent of the preceding year's operating expenditures into the fund for the benefit of host communities. However, the PIA places the onus entirely on oil producers to determine which communities qualify as host communities and to set up and designate a board to oversee the fund. Additionally, both international and domestic oil producers have complained about other ambiguous language in the PIA, subject to the interpretation of Nigerian authorities. With respect to local content, the PIA explicitly affirms the primacy of the Oil and Gas Content Development Act of 2010.

## Export Ban

The Nigeria Customs Service prohibits exports of maize, timber, raw hides and skin, scrap metals, and unprocessed rubber latex. The export ban list can be found on the Nigerian Customs Authority's Export Prohibition List.

# NORWAY

## TRADE AGREEMENTS

Norway participates in the European Union (EU) single market through the European Economic Area (EEA) Accord. As an EEA Accord signatory, Norway assumes most of the rights and obligations of EU Member States, except in the agricultural and fishery sectors. Norway has implemented or is in the process of implementing most EU trade policies and regulations. Norway grants preferential tariff rates to EEA Members.

## IMPORT POLICIES

### Tariffs

Norway's average Most-Favored-Nation (MFN) applied tariff rate was 5.9 percent in 2021 (latest data available). Norway's average MFN applied tariff rate was 39.9 percent for agricultural products and 0.4 percent for non-agricultural products in 2021 (latest data available). Norway has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 22.2 percent. Norway continues to reduce tariffs on industrial products on a unilateral basis.

Although the EEA Accord does not generally apply to agricultural products, it includes provisions on raw material price compensation that are meant to increase trade in processed food. Norway has a special agreement within the EEA Accord that results in Norway applying a preferential duty on EU processed food products. The special agreement provides preferential access for EU suppliers for a wide range of products, including bread and baked goods, breakfast cereals, chocolate and other candies, ice cream, pasta, pizza, soups, and sauces. This preferential access for EU suppliers disadvantages U.S. exporters of these processed foods.

Although Norway is less than 50 percent self-sufficient in agricultural production, it maintains tariff rates on agricultural products as high as several hundred percent to protect domestic agricultural interests. Domestic agricultural shortages and price surges are offset by temporary tariff reductions. However, a lack of predictability in tariff adjustments and insufficient advance notification of these adjustments, generally only two days to five days before implementation, favor nearby European suppliers and make the export of products from the United States, especially fruits, vegetables, and other perishable horticultural products, very difficult. For some processed food products, tariffs are applied based on a product's ingredients, requiring the Norwegian importer to provide a detailed disclosure of product contents. Many exporters to the Norwegian market refuse to provide all requested details and, as a result, their products are subject to maximum tariffs.

### Non-Tariff Barriers

*Agricultural Support*

Although agriculture accounts for only 0.5 percent of Norway's gross domestic product, support provided by Norway to its agricultural producers was 52.0 percent of total farm receipts between 2019 and 2021 (latest data available), the second highest among Organization for Economic Cooperation and Development (OECD) Member States, and more than three times the OECD average. Norway justifies this high level of domestic support based on "non-trade concerns," including food security, environmental protection, rural employment, and the maintenance of human settlement in sparsely populated areas.

In 2020, Norway established a crop failure compensation subsidy that provided farmers of fruits, berries, vegetables, or potatoes, who were unable to harvest due to lack of seasonal workers, a payment of up to NOK 2 million (approximately $200,000) for crop failures of more than 30 percent of the average production over a 5-year reference period. The scheme was temporarily expanded so that farmers experiencing harvest failures in both 2020 and 2021 could apply for compensation. 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, ice cream (for milk and glucose), pizza (for cheese and meat), and sweets. The purpose of the system is to help compensate the domestic food processing industry for the high costs of domestically-produced raw materials. In light of its commitments from the 2015 Nairobi WTO Ministerial Conference, Norway eliminated its last export subsidies on cheese and processed agricultural products at the end of 2020.

## SANITARY AND PHYTOSANITARY BARRIERS

### Transparency

Under the EEA Agreement, Norway applies certain EU sanitary and phytosanitary (SPS) regulations that are maintained without sufficient scientific evidence, are applied beyond the extent necessary – with the exception of regulations relating to plant health – or, unnecessarily restrict trade without furthering safety objectives. On plant health, the Norwegian Food Safety Authority provides measures to eradicate, prevent, or limit the spread of regulated pests independent of the EU. However, Norway's maximum residue limits for pesticides were adopted under the EEA Agreement and are updated when new EU regulations are adopted.

### Agricultural Biotechnology

Norway has implemented extremely restrictive policies for crops derived from agricultural biotechnology, with limited exceptions. The restrictions include prohibiting farmers from cultivating biotechnology crops and using biotechnology feed for farm animals. The United States continues to press Norway to recognize the applicable science on the safety of such products, and accordingly to open its market to U.S. exports of such products. The advent of innovative biotechnology research approaches, such as genome editing, has led Norway to reconsider its stance on agricultural biotechnology.

In December 2018, the Norwegian Biotechnology Advisory Board published a proposal on a forward-looking regulatory framework for genetically modified organisms that was developed in close dialogue with the public. The proposal recommends basing risk assessment and approval for new breeding techniques on a tiered system related to the genetic change(s) that have been made, from level 1 to level 3 based on contribution to societal benefit, sustainability and ethics. An expert committee on biotechnology was appointed by the Norwegian Government in 2020 to gather updated scientific information on new biotechnologies for use in formulating new policies and to assess whether to adjust the existing legal framework to ensure that technological advancements benefit society without harming health or the environment. The committee's findings are expected to be published by June 2023.

### Beef and Beef Products

Norway applies regulations developed by the EU that ban imports of beef from animals treated with hormones, despite the absence of scientific evidence demonstrating that this practice poses any risk to human health.

## GOVERNMENT PROCUREMENT

U.S. pharmaceutical companies active in Norway have raised concerns regarding government procurement procedures for pharmaceuticals, including a lack of detailed information on the selection process for winning bidders. Tenders in Norway can be unpredictable and non-transparent, and companies have sought more direct communication with the body responsible for final procurement decisions on behalf of regional health authorities (the Norwegian Decision Forum).

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

## BARRIERS TO DIGITAL TRADE

### Data Localization Requirements

Data protection in Norway is governed by the Norwegian Personal Data Act, which implements the European Union General Data Protection Regulation (GDPR) and became effective on July 10, 2018. The GDPR was incorporated into the EEA Agreement on July 6, 2018. The Norwegian Personal Data Act restricts the transfer of the personal data outside of the EEA, except to specific countries determined to provide adequate data protection by the European Commission (the Commission) or when other specific requirements are met, such as the use of standard contract clauses or binding corporate rules. Restrictions on the flow of data have a significant effect on the conditions for enabling the functionality embedded in intelligent goods (*i.e.*, smart devices).

On October 7, 2022, the U.S. President signed the Executive Order on Enhancing Safeguards for United States Signals Intelligence Activities to implement the U.S. commitments announced with the European Commission President in March 2022. The steps taken by U.S. Government agencies pursuant to the Executive Order provide the Commission with a basis to adopt a new adequacy determination, which would also apply to transfers of personal data from Norway to the United States.

## INVESTMENT BARRIERS

Direct foreign ownership of hydropower resources is prohibited in Norway, except in rare instances in which the government allows foreign investors up to 20 percent equity ownership.

# OMAN

## TRADE AGREEMENTS

### The United States–Oman Free Trade Agreement

The United States–Oman Free Trade Agreement (FTA) entered into force on January 1, 2009. Under this Agreement, as of January 1, 2019, Oman provides duty-free access to all U.S. exports. Officials from the United States and Oman meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

## IMPORT POLICIES

### Taxes

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

### Non-Tariff Barriers

*Customs Barriers and Trade Facilitation*

Companies importing U.S. goods occasionally report difficulties in demonstrating eligibility for preferential tariff treatment under the FTA for goods that enter Oman over land via the United Arab Emirates. The Royal Oman Police Customs Directorate sometimes applies requirements for origin-marking, segregation of FTA cargo, and other documentation inconsistently.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Automobiles*

U.S. automakers have raised concerns over growing regulatory fragmentation in the GCC. While the Gulf Standardization Organization (GSO) is supposed to set standards for the entire GCC market, individual GCC Member States have instituted unique standards for automobiles that deviate from GCC automobile standards. Though Oman has not taken such steps, the United States will be monitoring this issue across GCC Member States going forward.

*Restrictions on Hazardous Substances–Electrical Goods*

In March 2018, GCC Member States notified the World Trade Organization (WTO) of a draft GSO technical regulation that would require pre-market testing by accredited labs for certain hazardous substances in electrical goods. The measure would also require each type of good to be registered annually and require sample products to be submitted prior to receiving approval for use in the GCC. The United States has raised concerns that the proposed regulatory requirements would have a significant negative

impact on the imports of U.S. electrical and electronic equipment, especially as the third-party certification requirements differ from international best practices.

*Energy Drinks*

In January 2016, GCC Member States notified to the WTO a draft GSO technical regulation for energy drinks, which was revised in March 2022. The U.S. Government and private sector stakeholders have raised concerns through bilateral and multilateral fora regarding the draft regulation. These concerns include the proposed marketing-based definition for energy drinks and labeling requirements regarding recommended consumption. Industry stakeholders still report that caffeine-content limitations unduly target energy drinks in GCC Member States. In many cases, such limitations do not apply to other drink products that contain similar or even higher levels of caffeine, such as tea, brewed coffee, and other ready-to-drink coffee products.

**Sanitary and Phytosanitary Barriers**

Agricultural stakeholders have raised concerns regarding Oman's import requirements involving certification for pesticide residues as well as radiation attestations for agricultural products. The companies assert that these regulations provide restrictive controls that do not necessarily further the goal of protecting human and animal health. The United States is continuing to work with Oman to resolve these concerns.

*Food Additives*

U.S. industry stakeholders have noted concerns that the 2021 GCC Technical Regulations applied to Additives Permitted for Use in Foodstuffs are not aligned with relevant standards for food additives from the Codex Alimentarius Commission (Codex), particularly with respect to additives such as curcumins and annatto that are widely used in cheese production and may potentially disrupt trade in food products.

*Titanium Dioxide*

In September 2020, GCC Member States notified to the WTO a draft GSO technical regulation that would remove titanium dioxide from the list of approved food additives, in line with EU food additive regulations. Titanium dioxide is an adopted food additive that is included in the Codex General Standard for Food Additives (GSFA). As such, it may be used in specified foods under the conditions of good manufacturing practices as outlined in the Codex GSFA. The U.S. Department of Health and Human Services Food and Drug Administration continues to allow for the safe use of titanium dioxide as a color additive in foods, subject to certain restrictions, including that the quantity of titanium dioxide does not exceed one percent in weight of the food. The EU banned the use of titanium dioxide as a food additive on August 7, 2022, based on a risk classification that the European Court of Justice later ruled to be based on faulty scientific analysis. The EU is determining how to respond in light of the court's ruling. Following the EU move to ban the use of titanium dioxide in animal feed, in 2021 the Codex Committee on Food Additives agreed that titanium dioxide should be re-evaluated by the Joint FAO/WHO Expert Committee on Food Additives (JECFA). JECFA is set to meet and provide its findings in June 2023. The United States has requested that GCC Member States wait until this review has been completed before considering changes to their existing regulatory approval, given the lack of data demonstrating negative health effects from allowed uses of this food additive.

**GOVERNMENT PROCUREMENT**

The FTA requires covered government entities in Oman to conduct procurements covered by the Agreement in a fair, transparent, and nondiscriminatory manner. Oman provides a 10 percent price

preference to tenders that contain a high content of local goods or services, including direct employment of Omani nationals, as per its in-country value requirements. However, Oman may not apply such price preferences to bids offering goods and services from the United States in procurement covered by the FTA.

For most major tenders, Oman invites bids from international firms or firms pre-selected by project consultants, but stakeholders report that in recent years Oman has favored local community contractors and Omani small and medium-sized enterprises. Suppliers are requested to be present at the opening of tenders and interested persons may view the process on Oman's Tender Board website. Some U.S. companies report that award decisions are delayed, sometimes for years, or that the tendering is reopened with modified specifications and short deadlines.

Oman is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since May 2001.

## INTELLECTUAL PROPERTY PROTECTION

Oman committed in the FTA to provide strong intellectual property (IP) protection and enforcement. Oman revised its IP laws and regulations to implement its FTA commitments and acceded to several international IP treaties. While IP laws in Oman are strong, the lack of IP enforcement capacity effectively places an additional burden on right holders to perform their own monitoring and enforcement through legal actions in the courts.

## SERVICES BARRIERS

In August 2021, Oman banned network marketing, direct selling, and multi-level marketing.

### Financial Services

Oman limits customs brokerage activities to Omani nationals. The United States has raised concerns about the consistency of this limitation with provisions of the FTA.

Oman does not permit representative banking offices or offshore banking.

### Professional Services

Non-Omani attorneys, including U.S. attorneys practicing in Oman, are prohibited from appearing in courts of first instance. The United States has raised concerns about the consistency of this limitation with provisions of the FTA. U.S. ownership in a legal services firm is limited to no more than 70 percent. In January 2021, Oman barred non-Omani attorneys from appearing or pleading in higher courts in Oman.

## BARRIERS TO DIGITAL TRADE

Oman, operating through its government majority-owned telecommunications service providers and through its telecommunications regulator, periodically slows or blocks access to certain over-the-top services such as Voice over Internet Protocol (VoIP) services. Oman has temporarily lifted a ban on most VoIP services since the start of the COVID-19 pandemic.

The Telecommunications Regulatory Authority (TRA) in September 2022 announced a new regulation that limits the provision of internet voice and video IP services only to companies in the educational, commercial, or medical sectors. The regulation requires service providers to obtain TRA permits and house

data servers and equipment in Oman and it limits services to corporate customers only (not individuals). The government has yet to issue clarifying details on the regulation or its implementation.

U.S. technology companies report that Oman's data localization policy of requiring companies to host government data within its borders presents a restrictive environment for their businesses. Oman enacted a new personal data protection law in February 2022 to regulate the processing of personal data in the country, which took effect on February 13, 2023. The government has yet to release executive regulations implementing the law.

## INVESTMENT BARRIERS

### Limitations on Foreign Equity Participation

In 2019, Oman banned foreign ownership of real estate and land in certain governorates and areas that the government deems necessary to restrict under Royal Decree 29/2018; however, non-Omanis may purchase residential units in multi-storied commercial and residential buildings in certain areas of the Muscat Governorate under usufruct rights (*i.e.*, the right to lease one's property to another person), with certain restrictions, and Oman has allowed the establishment of real estate investment funds (REIF) to encourage new inflows of capital into Oman's property sector. The regulations permit foreign investors, as well as expatriates in Oman, to own shares in REIFs.

# PAKISTAN

## TRADE AGREEMENTS

### United States–Pakistan Trade and Investment Framework Agreement

The United States and Pakistan signed a Trade and Investment Framework Agreement (TIFA) in June 2003. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Pakistan.

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

Pakistan's average applied Most-Favored-Nation (MFN) tariff rate was 11.2 percent in 2021 (latest data available). Pakistan's average MFN applied tariff rate was 13.4 percent for agricultural products and 10.9 percent for non-agricultural products in 2021 (latest data available). Pakistan has bound 98.6 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 60.8 percent. For agricultural products, the average WTO bound rate is 96.2 percent. Tariffs are lower for non-agricultural products, with an average WTO bound rate of 55.2 percent.

Despite the reduction of tariff rates since 2013, U.S. and global companies have cited concerns that Pakistan is protecting several local industries, including automobiles and finished goods, by imposing high tariff rates and, in some cases, additional customs and regulatory duties. In addition, Pakistan grants sector and product-specific import duty exemptions, concessions, and protections through the promulgation of statutory regulatory orders (SROs). SROs may be issued without providing for stakeholder consultations or allowing importers time for implementation and compliance. Under the current International Monetary Fund (IMF) program initiated in July 2019, Pakistan has pledged to limit the use of SROs to genuine emergencies. However, SROs continue to be issued, and Pakistan has not provided a timeline for their removal.

On August 22, 2022, Pakistan's Federal Board of Revenue (FBR), on the recommendation of the National Tariff Commission and after cabinet approval, imposed "regulatory duties" and "additional customs duties" of up to 100 percent on more than 800 "luxury and non-essential" goods through SROs 1571 and 1572, citing the need to conserve foreign exchange reserves and resolve the balance of payments crisis. These goods had previously been subject to an import ban from May 19 to August 19, 2022 through SRO 598, including on finished automobiles, food items, home appliances, and mobile phones. A number of U.S. companies have raised concerns about duty increases on imported inputs that would raise production costs and the price of finished goods manufactured in Pakistan. On September 30, 2021, Pakistan imposed a 100 percent cash margin requirement on the import of 114 items, although in August 2022 this was subsequently relaxed to 25 percent or zero percent depending on the payment tenor (cash margins are the amount of money an importer must deposit with its bank for initiating an import transaction).

## Non-Tariff Barriers

*Import Restrictions*

Pakistan permits the importation of certain goods only by the public sector or industrial consumers (*e.g.*, active ingredients for the formulation or manufacturing of pesticides). Some imports require approvals from Federal Ministries such as the Ministry of Climate Change (MOCC) and the Ministry of National Health Services, Regulations and Coordination. Imports of food colors, waste, parings, and scrap plastics must receive official certification by the exporting country or by a specialized pre-shipment inspection company.

Pakistan restricts imports of second-hand vehicles, automobile parts, boilers, compressors, air conditioners, watercraft, trawlers, aircraft, and related parts and equipment unless they meet specified conditions, such as prior approval or clearance, certain testing arrangements, or other procedural requirements.

*Customs Barriers and Trade Facilitation*

U.S. food and consumer product exporters have expressed concerns regarding a lack of uniformity in customs valuation in Pakistan that negatively affects both U.S. and other foreign companies. Similarly, in the machinery and materials sectors, there are reports that customs officials have erroneously assessed goods based on a set of minimum values rather than the declared transaction value.

Some U.S. companies have reported being adversely affected by Customs Rules 389 and 391. Rule 389 requires the placement of a physical invoice and packing list in the shipping container, while Rule 391 places the responsibility of including such documents, and liability for failure to comply, on the owner of the goods and the carrier. Such rules can pose compliance challenges for companies whose global supply chains require the use of intermediaries, re-invoicing, or the storage of goods at various points during transit in order to insert paper documents into the shipping container. They also create additional burdens for shippers who are required by other countries' customs requirements to provide this information only through electronic filings. Many companies' invoicing, accounting, and shipping systems do not permit the generation of invoices and packing lists prior to the departure of the goods from the company's production or storage facilities. FBR officials have said customs officials have the discretion to impose penalties, while recognizing the variety in invoicing systems from different companies. While Pakistan has shown openness to addressing the issue and U.S. authorities have worked with the FBR to that end, the rules remain formally in place and customs officials can implement them at any time.

Pakistan notified its customs valuation legislation to the WTO in May 2001, but has not yet responded to the WTO Checklist of Issues that describes how the Customs Valuation Agreement is being implemented.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

Pakistan generally accepts imported food as packaged in the exporting country. A notable exception, however, is food packaging for vegetable oil. Pakistan requires refined vegetable oil to be imported in bulk for re-packaging, a requirement aimed at encouraging local packaging and saving foreign exchange.

In July 2019, Pakistan imposed additional requirements for food product labels, requiring information on ingredients as well as usage and expiration dates in Urdu and English in accordance with SRO 237 and subsequent amendments. The new requirements in SRO 237 also mandated that each food and beverage related shipment include a halal certificate and prohibited the use of stickering, overprinting, or stamping

to meet the new requirements, even on an interim basis. Although Pakistan resolved the issue for bulk food items by permitting the use of stickers, the issue remains for retail sales. SRO 237 also requires all products to have 50 percent shelf-life remaining from the date of filing of the Import General Manifest, and 66 percent shelf-life remaining from the date of manufacture. After notification requests from the United States, Pakistan eventually notified SRO 237 to the WTO TBT Committee in May 2020. The United States raised concerns with Pakistan's requirements at TBT Committee meetings from November 2019 to May 2020. The United States continues to monitor updates to SRO 237. During the February 2023 TIFA meeting, the Ministry of Commerce and the Ministry of National Food Security and Research (MNFSR) indicated a willingness to amend SRO 237 to allow for stickering. The United States continues to engage on this issue.

**Sanitary and Phytosanitary Barriers**

Pakistan has not fully recognized the United States' negligible risk status for bovine spongiform encephalopathy (BSE). In 2013, the United States received a negligible risk status for BSE in accordance with World Organisation for Animal Health (WOAH) guidelines. In February 2015, Pakistan established requirements for the importation of live cattle from the United States. In March 2016, more than 300 Holstein heifers arrived in Punjab Province from the United States, the first such shipment since 1999. Since March 2016, U.S. live cattle exports to Pakistan have totaled 14,144 head. Demand for U.S. live dairy cattle has grown since the 2016 shipment. However, Pakistan continues to ban imports of all beef and beef products from cattle 30 months of age and older, in spite of WOAH guidelines and the negligible BSE risk status of the United States. During the February 2023 TIFA Council meeting, Pakistan and the United States reached an agreement in principle on an export certificate that would re-open the market for U.S. beef.

The government of Punjab has established trait-based semen import requirements that would limit market access to imported semen for dairy and beef producers. The federal and provincial governments are reviewing the matter, but no timeframe has been set for its resolution.

In 2005, Pakistan enacted a biosafety law establishing biosafety committees that govern the manufacture, research, import, export, and sales of genetically modified plants, animals, microorganisms, and cells. As of December 31, 2022, Pakistan had yet to establish rules and administrative protocols to implement the 2005 rules and, as a result, the requirements for certification and importation of genetically engineered (GE) food and agricultural products remain unclear. National regulatory bodies are in different stages of promulgating rules and administrative procedures governing agricultural biotechnology. Once complete, the updated rules and administrative procedures will need to be harmonized to operate effectively and enable companies to register genetically engineered products for food, feed, and processing (FFP) purposes. In October 2020, the MOCC established a sub-committee to formulate policy and procedure to regulate or ban the import of GE grains for FFP purposes. On February 2, 2022, the technical sub-committee completed a draft policy on imports of GE commodities for FFP and submitted it to the National Biosafety Committee (NBC) for approval. The NBC completed its review of the policy in June 2022. As of December 31, 2022, the MOCC and the MNFSR were still reviewing the draft. The MOCC is leading a process to amend the 2005 Biosafety Rules to facilitate imports of GE products for FFP purposes.

In October 2022, Pakistani customs detained two shipments of U.S. GE soybeans. The MNFSR reiterated the requirement to apply for an import license for GE products, a process currently stymied by a lack of implementing regulations for GE soybean approvals in the FFP category. In December 2022, the Prime Minister formed a committee to evaluate the issue.

## GOVERNMENT PROCUREMENT

Since 2014, Pakistan has relied more on technical qualifications in its procurements, though U.S. suppliers continue to struggle with pricing issues. Some U.S. companies report instances in which the procuring agency used a U.S. bid as a basis for, and to incentivize, further negotiations with other competitors, rather than accepting the lowest-priced and technically superior bid as outlined and required by applicable bidding guidelines. Most notably, this has occurred with competing firms based in the People's Republic of China. Other companies believe Pakistan uses lower bids in an effort to negotiate lower prices from U.S. and European Union companies, thereby procuring higher quality goods at lower, and in some cases, below-market pricing.

Pakistani authorities have worked with international financial institutions on improving the transparency of their procurement regime, including a structural benchmark in Pakistan's current IMF program requiring publication of beneficial ownership information for companies awarded contracts above $175,000, and World Bank support for development of an electronic procurement system that will publish information on procurement contracts and bid winners across federal and provincial authorities.

Pakistan is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since February 2015.

## INTELLECTUAL PROPERTY PROTECTION

Pakistan remained on the Watch List in the 2022 Special 301 Report. Intellectual property (IP) concerns in Pakistan were raised during the March 2022 TIFA Intersessional meeting. However, serious concerns remain, particularly in the area of IP enforcement.

Although Pakistan has maintained a positive dialogue with the United States on IP matters and has continued to engage in meaningful IP capacity-building and training programs, as noted in the 2022 Special 301 Report, Pakistan must do significantly more to overcome challenges with respect to adequate and effective IP protection and enforcement. In addition, a lack of public awareness as well as budgetary and human resource constraints are also challenges for IP enforcement. For example, while Pakistan's establishment of IP Tribunals in three cities in 2016 was a welcome development, litigants with experience in these courts have raised concerns over lack of capacity, inconsistency of rulings, nominal fines, a general lack of expertise among tribunal judges, confusion over standards by which courts review tribunal decisions, and large case backlogs. Pakistan's ongoing but unfinished efforts to align its patent, trademark, and copyright laws, and IP regulations and enforcement regimes, with international standards continues to be an area for further progress. Moreover, counterfeiting and piracy in Pakistan remain high, particularly in the areas of pharmaceuticals; consumer goods such as food and beauty products; printed works; digital content; and, software.

## SERVICES BARRIERS

### Financial Services

Foreign banks that do not have global Tier-1 paid-up capital (*i.e.*, equity and retained earnings of $5 billion or more), or are not from countries that are part of regional groups and associations of which Pakistan is a member (*e.g.*, the Economic Cooperation Organization and the South Asian Association for Regional Cooperation), must incorporate as a local company to conduct banking business in Pakistan. Foreign direct investment is limited to 49 percent in each bank. Foreign and local banks must submit an annual branch expansion plan to the State Bank of Pakistan (SBP) for approval based on financial factors and the needs of the local population.

### Insurance Services

The National Insurance Company, a majority state-owned enterprise, has the exclusive authority to underwrite and insure public sector firms, assets, and properties. Pakistan has discretion to grant exemptions to this requirement. Private sector firms may use foreign reinsurance companies to meet only up to 65 percent of their treaty re-insurance needs, but the remainder of reinsurance must be ceded locally. In the case of facultative reinsurance, there is a system of mandatory cession: business must be offered to the state-owned Pakistan Reinsurance Company, which may choose to accept the business or not.

## BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

### Data Localization

As of December 31, 2022, Pakistan was finalizing the Personal Data Protection Bill. The draft bill would require platforms to store all personal data on servers within the territory of Pakistan and prohibit the cross-border transfer of "critical" personal data. The scope of "critical" personal data is not clearly defined. Such measures may restrict trusted cross-border data flows and burden U.S. and Pakistani businesses, particularly small businesses, by creating an uncertain business climate. U.S. industry has indicated additional concerns with the draft bill's scope, potential extraterritoriality, and onerous requirements for the processing of personal data. Although there was an initial stakeholder consultation on an early draft of the bill, the Pakistani Government has not offered formal comment periods on subsequent drafts.

### Internet Services

In October 2021, Pakistan adopted the Removal and Blocking of Unlawful Online Content (Procedure, Oversight, and Safeguards) Rules, 2021. The Rules apply to the removal and blocking of online content that is deemed unlawful on a "social media or social network service." Several provisions would pose significant barriers to foreign and domestic firms operating in Pakistan, including burdensome registration and licensing requirements; content restrictions; requirements that companies maintain a physical presence in Pakistan and appoint local "grievance" and compliance officers; and, requirements for removal of objectionable content within a 48-hour timeframe. The Ministry of Information Technology and Telecommunication (MOITT) and the Pakistan Telecommunications Authority (PTA) consulted with foreign and domestic firms and other stakeholders, but did not circulate a revised version of the rules for further public consultation before sending it to the Pakistani cabinet for final approval. In April 2022, the Prime Minister instructed the MOITT to review the Prevention of Electronic Crimes Act 2016 and the Removal and Blocking of Unlawful Online Content Rules, soliciting feedback from all stakeholders to identify and address issues. The MOITT is currently completing its deliberations.

Pakistan periodically blocks access to Internet services for hosting content deemed to be blasphemous or immoral, or on grounds that such services can be used to "undermine national security." In September 2020, the PTA blocked five "dating" websites, including a U.S. company website, citing alleged circulation of immoral content. The PTA has also sent notices to U.S. based social media platforms, threatening adverse action if those platforms did not remove objectionable content. Pakistan has repeatedly suspended access to mobile data and certain online services in major cities in response to perceived unrest, but has recently refrained from the frequent blocking of online services for the entire country. In September 2022, the PTA inhibited the live streaming of the former Prime Minister's rally speeches, and the Pakistan Electronic Media Regulatory Authority (PEMRA) suspended transmission of multiple television broadcasters in response to their airing of the speeches. In November 2022, PEMRA briefly blocked all broadcasting of the former Prime Minister's speeches across all channels.

Pakistan drafted an Electronic Commerce Policy Framework in August 2018, with the aim of increasing exports and strengthening the digital economy. After the government made a draft available for public comment in January 2020, U.S. industry expressed concerns regarding some aspects of the Framework, such as customs duties on digital goods imported into Pakistan, the requirement to disclose the facility where data is stored, the obligation for businesses to maintain a physical address in Pakistan, and the restriction on payments to unauthorized or unregistered sites and apps. The framework, adopted on January 12, 2022, retained some of the most concerning obligations and restrictions. For example, the policy contains licensing, registration, and local presence requirements, as well as broad restrictions on cross-border data flows.

## INVESTMENT BARRIERS

Pakistan generally permits foreign investment, subject to equity caps in key sectors including agriculture, aviation, banking, defense, media, insurance, securities, and railways. Ostensibly to combat tax evasion, in which companies report operating losses but remit royalties, Pakistan has limited foreign investors' remittance of royalty payments to a maximum of $100,000 for the first payment, with subsequent payments capped at 5 percent of net sales for the following 5 years.

Although Pakistani law allows 100 percent repatriation of profits, subject to restrictions listed in Chapter 14, section 15 of the SBP Foreign Exchange Manual, U.S. and other companies continue to face bureaucratic hurdles repatriating profits and assets from Pakistan, generally coinciding with the government's focus on maintaining foreign currency reserves. Local franchises of U.S. brands report limitations and extended delays in remitting funds to the United States as a result of SBP policies. For example, a U.S. financial services provider had attempted to repatriate assets from the sale of a local subsidiary for more than five years, and finally received the funds in early February 2022, following years of U.S. Government advocacy.

U.S., global, and domestic firms also continue to face restrictions on letters of credit due to the current balance of payments situation. Analysts and industry state that the restrictions are often arbitrary, with a lack of clarity from SBP on which items may qualify for exemption. Pakistan's Finance Minister announced on November 1, 2022, that pending letters of credit of up to $100,000 would be cleared, but restrictions on larger amounts remain in place.

Reports indicate that contract enforcement can be difficult for U.S. and other foreign investors in Pakistan due to significant delays and lack of enforcement of court rulings.

*Taxes*

Pakistan has one of the lowest tax compliance and tax-to-Gross Domestic Product ratios in the world, approximately 9 percent in FY2022. Pakistan relies heavily on multinational corporations for the revenue generated by tax collection. Foreign investors in Pakistan regularly report that both federal and provincial tax regulations are difficult to navigate, frequently citing the lack of transparency in the assessment of taxes.

Improving and broadening tax collection is a key focus of the IMF's Extended Fund Facility (EFF) program for Pakistan, agreed to in July 2019. Under the program, the target is for Pakistan to increase its tax revenues to PKRs 7.5 trillion (approximately $34.1 billion) in FY 2023, up by PKR 1.5 trillion (approximately $6.8 billion) from the collections made during FY 2022. However, Pakistani authorities have long delayed key politically sensitive tax reforms under the program, and throughout the EFF there have been multiple policy reversals concerning tax reforms. U.S. companies have experienced increased pressure from the FBR to prepay anticipated tax liabilities and have expressed concern that many of their local competitors still do not pay taxes at all or engage in tax evasion. The U.S. Government has repeatedly engaged Pakistani

officials on issues involving unfair and disproportionate taxation and continues to reinforce the importance of Pakistan broadening its tax base.

## OTHER BARRIERS

### Corruption

U.S. companies cite corruption and a weak judicial system as substantial disincentives to foreign investment in Pakistan. The country's federal anticorruption agency, the National Accountability Bureau (NAB), was established in 1999, but subsequently the 18th Amendment to Pakistan's Constitution declared all acts and laws made by the President, implicitly including creation of the NAB, to be without lawful authority. While the NAB continues to function, there is still a legislative gap in its authority. In 2009, Pakistan's Supreme Court directed the National Assembly to pass new legislation to establish it formally, but, as of December 31, 2022, the National Assembly had yet to do so. In addition, the NAB's broad exercise of its remit to investigate government operations and business dealings have led to a number of cases where it reopened established policies and targeted reputable businesses, potentially dissuading foreign investors and making officials reticent to exercise authority.

# PANAMA

## TRADE AGREEMENTS

### The United States–Panama Trade Promotion Agreement

The United States–Panama Trade Promotion Agreement (the Agreement) entered into force on October 31, 2012. The United States and Panama continue to work closely together to review the implementation and functioning of the Agreement and to address outstanding issues.

## IMPORT POLICIES

### Tariffs

Tariff reduction under the Agreement began on October 31, 2012, and all U.S. consumer and industrial products have been duty free since January 1, 2021. Remaining duties on some U.S. agricultural goods will be phased out November 1, 2023, as called for within 12 years following the entry into force of the Agreement, with duties on the most sensitive products phased out between 2026 and 2031, 15 years to 20 years after entry into force of the Agreement.

Since August 2020, Panama has imposed volume restrictions on U.S. onion imports outside of the Agreement tariff-rate quota (TRQ) quantities. Panamanian authorities have also designated approved importers and specified volumes per importer. The United States has raised concerns regarding these issues at the World Trade Organization (WTO) Import Licensing Committee and is discussing them with Panamanian authorities in light of the Agreement commitments.

Following a similar action in 2021, on November 30, 2022, Panama held its auction for rough rice TRQ volumes for 2023 after notifying the United States that the volume of the 2023 milled rice quota allocation would be converted to rough rice and added to the rough rice quota allocation. The United States is discussing this issue with Panamanian authorities in light of the Agreement commitments.

### Non-Tariff Barriers

*Customs Barriers and Trade Facilitation*

Panama has not yet submitted transparency notifications related to the operation of its single window, as required by the WTO Trade Facilitation Agreement (TFA). This notification was due on January 1, 2022, according to Panama's self-designated implementation schedule.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

Since February 2017, the United States has raised concerns with Panama's quality requirements for fresh onions, and since March 2019, its quality requirements for fresh potatoes. Both measures establish mandatory harvest date requirements, sprouting limits, and temperature and storage criteria, raising concerns regarding their scientific basis and consistency with international standards. Since October 2020, the United States has raised these issues at the WTO Committee on Technical Barriers to Trade (TBT Committee), and elevated the concerns to the WTO Council for Trade in Goods throughout 2022. U.S. concerns regarding the measures continue to go unaddressed and U.S. onion producers continue to be

negatively affected. Since January 2020, U.S. onion exports to Panama decreased by 67 percent, from approximately $7.7 million in exports during 2019 to approximately $2.5 million in exports during 2022, due in part to Panama's measure. After a number of delays, in December 2021 Panama issued Resolution 235, which finalized quality requirements on fresh potatoes, and began implementing the measure on February 19, 2022. The United States has raised this issue with Panama, and will continue to raise concerns regarding these regulations.

In August 2022, the United States submitted comments on Panama's draft technical regulations on grains and cereals, including requirements for paddy rice, and milled and white rice. The United States raised concerns regarding Panama's lack of acceptance of the U.S. Department of Agriculture grading standards, creation of a unique grading system for rice, bagging requirements for paddy rice that needs further processing, and unrealistic requirements for fortification prior to import, among other import barriers. As of December 2022, Panama was still reviewing these comments.

On January 22, 2020, Draft Bill 265 was presented in Panama's National Assembly. If passed, the bill would establish a front-of-package nutritional warning labeling scheme modeled after other examples in the region, which includes octagonal stop sign-shaped labels for foods and beverages that contain non-caloric sweeteners, caffeine, sodium, fats, and sugars. The United States provided its formal comments to Panama in October 2021 and requested that it notify the proposed implementing measure to the WTO TBT Committee. A National Assembly commission has been created to address the labeling program, but, as of December 31, 2022, the bill has not been approved. The United States will continue to monitor the draft bill and engage with the Panamanian Government.

**Sanitary and Phytosanitary Barriers**

In March 2021, Panama passed a law to eliminate the Panamanian Food Safety Authority, replacing it with the Panamanian Food Agency (APA), which began operations on October 1, 2021, and has regulatory responsibility for both imports and exports. This transition continues to be a work in progress, as staff turnover, computer system interoperability, and inspection infrastructure pose ongoing challenges.

In August 2020, the Panamanian Food Safety Authority began implementing Ministry of Health (MINSA) Decree 255, which requires registration of establishments involved in the storage, display, distribution, and sale of raw meat and raw meat products. These products were previously only subject to routine APA registration, a process that could be completed in 24 hours. The process under the new decree takes 180 days, resulting in delays of U.S. exports, including U.S. beef, pork, and poultry that supply the hotel, restaurant, and institutional market, as well as products destined for supermarkets. The United States is monitoring the new decree to ensure that the registration requirements for raw meat are consistent with the basic product information requirements in the 2006 United States–Panama Agreement Regarding Certain Sanitary and Phytosanitary Measures and Technical Standards Affecting Trade in Agricultural Products.

On August 25, 2022, MINSA shared draft revisions of Decree 255, and in October 2022 the United States shared comments on the proposed draft. The August 2022 revision separated out regulations for poultry products and proposed a draft regulation (Decree 368). The United States is developing comments on this proposal. The United States will continue to monitor developments and will await the revised version of these decrees prior to final publication.

In October 2022, the Animal Health Directorate of Panama's Ministry of Agriculture issued two decrees that clarified import procedures for U.S.-origin petfood and poultry products from U.S. counties in which Highly Pathogenic Avian Influenza (HPAI) has been detected in commercial flocks. These decrees clarified trade issues related to these products and are in line with World Organisation of Animal Health guidance, as well as regulations under the Agreement.

## DIGITAL TRADE AND ELECTRONIC COMMERCE BARRIERS

The Government Innovation Authority of Panama published (09/10) Resolution No. 52, which ordered that all cloud services, mission-critical or state-security databases, and sensitive institutional data of all governmental entities must be held in Panamanian territory by December 31, 2022. The United States continues to engage with Panamanian authorities as they prepare to implement this resolution.

## INTELLECTUAL PROPERTY PROTECTION

Panama still must develop a system for Internet service provider notice-and-takedown procedures and pre-established damages for copyright infringement and trademark counterfeiting. An interagency committee, led by the Panama Customs Authority and includes the Ministry of Commerce and Industry, the Ministry of Economy and Finance, the District Attorney for Intellectual Property Rights (IPR), and the Ministry of Health, has held discussions on modifying the current decree for IPR enforcement in customs and providing for pre-established damages. The committee last met in April 2020 to discuss customs-related fines, but the initiative has not advanced since then. Challenges also remain in the areas of trademarks as well as pirated and counterfeit goods. The United States continues to engage closely with Panama to ensure its effective implementation of all obligations under the Agreement.

# PARAGUAY

## TRADE AGREEMENTS

The United States and Paraguay signed a Trade and Investment Framework Agreement on January 13, 2017. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Paraguay.

## IMPORT POLICIES

### Tariffs

Paraguay's average Most-Favored-Nation (MFN) applied tariff rate was 9.6 percent in 2021 (latest data available). Paraguay's average MFN applied tariff rate was 10.0 percent for agricultural products and 9.5 percent for non-agricultural products in 2021 (latest data available). Paraguay has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 33.4 percent.

Paraguay is a founding member of the Southern Common Market (MERCOSUR), formed in 1991, which also comprises Argentina, Brazil, and Uruguay. MERCOSUR's Common External Tariff (CET) ranges from zero percent to 35.0 percent *ad valorem* and averages 12.5 percent. In July 2022, MERCOSUR countries agreed to a 10 percent reduction of the CET for over 80 percent of product lines. Any good imported into Paraguay (not including free trade zones) is subject to the payment of the CET to Paraguay's customs authority. If the product is then re-exported to another MERCOSUR country, the CET must be paid again to the second country. MERCOSUR approved a Common Customs Code (CCC) in 2010 and launched a plan to eliminate the double application of the CET within MERCOSUR in 2021. However, only Argentina has ratified the CCC, and it has not yet taken effect.

### Non-Tariff Barriers

*Import Licensing*

Paraguay requires import licenses on a variety of products. Import licenses, once issued, are only valid for 30 days. Importing goods within this 30-day window can be difficult if there are shipment delays, which are fairly common in Paraguay, a landlocked country largely dependent on riverine shipment that can slow during dry seasons. Due to those delays, importers may need to reapply for an import license. 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.

*Customs Barriers and Trade Facilitation*

Paraguay ratified the WTO Trade Facilitation Agreement (TFA) in March 2016. Paraguay has not yet submitted its transparency notification related to import, export, and transit regulations. This notification was due to the WTO in September 2021, according to Paraguay's self-designated TFA implementation schedule.

Paraguay requires that specific documentation for each import shipment (*e.g.*, commercial invoice, certificate of origin, and cargo manifest) be certified either through Paraguay's single window system or at a Paraguayan consulate in the country of origin. Those consularization requirements are burdensome for U.S. exporters and impose an additional cost for each set of commercial documents.

## INTELLECTUAL PROPERTY PROTECTION

Paraguay remained on the Watch List in the 2022 Special 301 Report. The United States also remains concerned with the lack of enforcement action in Ciudad del Este, one of the main destinations for illicit goods in the region, which continues to be named in the 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List). In addition, there remains a lack of deterrent-level penalties for intellectual property crimes and government use of unlicensed software. The United States urges Paraguay to ensure transparency and procedural fairness in the protection of geographical indications (GIs) and to ensure that the grant of GI protection does not deprive interested parties of the ability to use common names, particularly as Paraguay proceeds with the European Union (EU)–Mercosur Trade Agreement. The United States and Paraguay agreed on an Intellectual Property Work Plan in September 2022 that will serve as a roadmap for Paraguay to address a number of these outstanding issues.

# PERU

## TRADE AGREEMENTS

### The United States–Peru Trade Promotion Agreement

The United States–Peru Trade Promotion Agreement (the Agreement) entered into force on February 1, 2009. Under the Agreement, Peru currently provides duty-free access to nearly all U.S. exports. The United States and Peru meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

## IMPORT POLICIES

### Tariffs

All duties for U.S. consumer and industrial goods exported to Peru have been eliminated, while a small number of Peruvian tariffs apply to select U.S. agricultural products. These are scheduled to be phased out by 2026. In accordance with the Agreement commitments, Peru has ceased applying its price band system to U.S. agricultural products.

### Non-Tariff Barriers

Peru's registration and marketing approval processes for pharmaceuticals and medical devices remain slow, hampering market access.

Under Peru's Customs Crime Law No. 28008 of 2003, express delivery managers and legal representatives are subject to criminal investigations and penalties for minor discrepancies in the value of invoices of low value shipments. Furthermore, the same law also allows for concurrent administrative sanctions against the express courier companies for the same violations. Express delivery carriers are subject to the same fixed monetary penalty as containerized cargo, regardless of the differences in shipment size or value.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

The 2017 Manual on Health Warnings, which implemented the "Healthy Food Promotion Act for Children and Adolescents" (Law No. 30021), contains technical specifications and guidelines for the inclusion of health-related warnings on processed food labels and in media advertisements. In order to address concerns about adequate time for producers to comply with the new requirements, the Manual has been amended several times since 2019. As of December 31, 2022, Peru requires the use of a printed, non-sticker label on domestic and imported products in order to comply with warning label requirements.

The United States supported concerns related to the Manual and Law 30021 raised by Costa Rica and Ecuador at the WTO Committee on Technical Barriers to Trade (TBT Committee) in May 2020 and June 2020. In July 2022, the United States asked Peru to notify proposed changes to the nutrient thresholds for mandatory front-of-pack labeling, which Peru did on September 1, 2022, and the United States followed up with a request for a bilateral meeting to discuss the changes in November 2022. On October 28, 2022, the United States submitted comments on the proposed amendment via Peru's WTO TBT Enquiry Point. The United States will continue to monitor ongoing developments related to these issues.

A variety of stakeholders have continued to note regulatory processes in Peru as inconsistent in their application and enforcement. Peru's Congress approved Decree No. 063-2021 on regulatory quality improvement and the application of regulatory impact analysis (RIA) in 2021. The United States is working with Peru on its whole-of-government initiative to integrate RIA with public consultation for future regulatory actions.

**Sanitary and Phytosanitary Barriers**

*Biotechnology*

On January 6, 2021, the Peruvian congress passed Law No. 31111, which extended Peru's moratorium on the cultivation and import for cultivation of genetically engineered organisms, such as seeds, for fifteen years. Peru has not supported its biotechnology moratorium with a risk assessment or otherwise put forward a scientific justification for it, as called for in the measure's implementing regulations. The United States has raised its concerns regarding the moratorium with government officials from Peru at each annual meeting of the Agreement Standing Committee on Sanitary and Phytosanitary Measures from 2012 through 2022. The United States will continue urging Peru in this forum and at other opportunities to address the United States' concerns and to notify its moratorium and its implementing regulations to the WTO Committee on Sanitary and Phytosanitary Measures.

*Agricultural Product Certification*

In January 2018, Peru's Ministry of Foreign Trade and Tourism (MINCETUR) created new sanitary import requirements for U.S.-processed meat and egg products. As of 2018, a Single Export Sanitary Certificate (SESC) containing both human and animal sanitary requirements from Peru's National Sanitary Authority (DIGESA) and the National Agrarian Health Service (SENASA) must accompany shipments of processed products of animal origin, including processed meat and egg products. In October 2022, Peru clarified some requirements and added a few additional requirements to the certificate. As of December 31, 2022, Peru had not notified the certificate requirement to the WTO Committee on Sanitary and Phytosanitary Measures. The United States continues to engage with Peru to finalize a certificate that includes Peru's SESC attestations.

In November 2022, SENASA published a resolution requiring additional food safety requirements for corn, beef, pork, and poultry. This resolution requires that each shipment of these products be accompanied by a health certificate or undergo testing in a local laboratory. Following U.S. Government engagement, SENASA agreed to delay implementation of the resolution until after it is notified to the WTO.

## GOVERNMENT PROCUREMENT

Legislative Decree 1444 issued in September 2018 modified the public procurement law to allow government agencies to use government-to-government (G2G) agreements in procurement processes. Following the execution of recent infrastructure tenders using the G2G model in 2019, an increasing number of ministries and government entities require foreign companies, including U.S. firms, to obtain sponsorship by their respective governments in order to compete for major procurements. The U.S. Government is not permitted to sign such contracts, making Peru's use of G2G procurements a barrier for U.S. domiciled companies to compete in some relevant government tenders.

## INTELLECTUAL PROPERTY PROTECTION

Peru remained on the Watch List in the 2022 Special 301 Report.

Pirated and counterfeit goods continue to remain widely available in Peru and right holders cite particular concerns with respect to counterfeit medicines, internet piracy, and illicit recordings in cinemas. For example, the Gamarra market, a popular shopping center in Lima, Peru, is listed in the 2022 Notorious Markets for Counterfeiting and Piracy (Notorious Markets List).

The United States continues to call for Peru to fully implement the Agreement's intellectual property (IP) obligations, including enacting statutory damages for copyright and trademark infringement. The United States also calls on Peru to undertake IP reforms that include increasing and enhancing enforcement efforts such as expanding the imposition of deterrent-level fines and penalties for counterfeiting and piracy, border measures, and building the technical IP-related capacities among enforcement agencies.

**LABOR**

A review of Peru's progress on implementing specific recommendations to improve worker rights practices in Peru's non-traditional export sectors has been ongoing since the issuance of a U.S. Department of Labor (DOL) report in 2016. The DOL report, published in response to a submission from the public under the Agreement, raised significant concerns regarding the right to freedom of association in certain sectors, including textiles, apparel, and certain agricultural sectors. The DOL report also noted concerns regarding labor law enforcement in Peru.

# THE PHILIPPINES

## TRADE AGREEMENTS

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

The United States and the Philippines signed a Trade and Investment Framework Agreement (TIFA) on November 9, 1989. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and the Philippines.

## IMPORT POLICIES

### Tariffs

The Philippines' average Most-Favored-Nation (MFN) applied tariff rate was 6.1 percent in 2021 (latest data available). The Philippines' average MFN applied tariff rate was 9.9 percent for agricultural products and 5.5 percent for non-agricultural products in 2021 (latest data available). The Philippines has bound 66.8 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 25.9 percent.

Products with unbound tariffs include certain automobiles, chemicals, plastics, vegetable textile fiber, footwear, headgear, fish, and paper products. MFN applied tariffs on fresh fruit, including grapes, apples, oranges, lemons, grapefruits, and strawberries, as well as on processed potato products (including frozen fries), are between 7 percent and 15 percent (except dates and figs, which have a 3 percent MFN applied tariff). WTO bound rates are much higher at 35 percent and 50 percent, including for fresh potatoes at 40 percent.

U.S. agricultural exports are significantly inhibited by the high in-quota tariffs for agricultural products under the Philippines' tariff-rate quota (TRQ) program, known as the Minimum Access Volume (MAV) system. Under the MAV system, the Philippines has scheduled TRQs on select agricultural products, including sugar, corn, coffee and coffee extracts, potatoes, pork, and poultry products, with in-quota tariffs ranging from 30 percent to 50 percent.

In 2021 and 2022, the Philippines adjusted its tariffs on pork, rice, corn, and mechanically deboned meat (MDM) of chicken and turkey to curb inflationary pressures. Following a petition from meat processors to the Philippine Tariff Commission, on January 15, 2021 the Philippine President signed Executive Order (EO) 123 to reestablish through December 31, 2022 the 5 percent concessionary rate for MDM of chicken and turkey that originated as part of the June 2014 bilateral agreement reached between the United States and the Philippines on agricultural concessions in connection with the WTO extension of rice special treatment. The Philippine President then signed three additional EOs in May 2021: EO 133 raised the MAV on pork imports from 54,210 MT to 254,210 MT through January 31, 2022; EO 134 lowered pork tariffs below the original 30 percent in-quota and 40 percent out-of-quota rates for 12 months; and, EO 135 re-established a flat MFN rice tariff at 35 percent, in parity with rice tariffs applied by the Association of Southeast Asian Nations (ASEAN), for 12 months in place of the 40 percent in-quota and 50 percent out-of-quota tariffs. The Philippine President signed EO 171 on May 17, 2022, re-establishing the uniform tariff on rice at 35 percent, re-lowering tariffs on pork to 15 percent in-quota and 25 percent out-of-quota, and lowering tariffs on corn to five percent in-quota and 15 percent out-of-quota until December 31, 2022. To temper continuing inflation, the Philippine President signed EO 10 on December 29, 2022, extending the validity of temporary duty reductions on rice, corn, and pork through the end of 2023. On January 13,

2023, the Philippine President signed EO 13 extending the tariff reduction on MDM until the end of the year.

The Philippines continues to apply high tariffs on finished automobiles and motorcycles. A 30 percent tariff is imposed on completely built passenger vehicles with capacity of less than 10 persons (*i.e.*, cars) as well as motorcycles; a 20 percent tariff is imposed on passenger vehicles with capacity of 10 or more (*i.e.*, buses); and, a 20 percent tariff is imposed on commercial vehicles (*i.e.*, trucks). New vehicle imports from ASEAN countries, such as Korea, and Japan, benefit from preferential tariffs under the Philippines' free trade agreements. The Philippines continues to extend duty-free treatment to imports of capital equipment, spare parts, and accessories by motor vehicle manufacturers and other enterprises registered with the Board of Investments (BOI) under EO 226.

**Non-Tariff Barriers**

*Quantitative Restrictions*

The Philippines prohibits the importation of used motor vehicles, except in certain cases which require prior authority to import from the Department of Trade and Industry. Importation of used motor vehicle parts is also regulated.

The Philippine Department of Agriculture (DA) regularly uses the Certificate of Necessity to Import (CNI) and/or the Sanitary-Phytosanitary Import Clearance (SPSIC) system to enact unscheduled quantitative restrictions to increase prices of sensitive agricultural and fishery products, especially during and near harvest periods.

The Philippine Secretary of Agriculture, in coordination with the Philippine Fisheries Development Authority and Bureau of Fisheries and Aquatic Resources, and in consultation with the National Fisheries and Aquatic Resources Management Council, determines a maximum importable volume of fish products during closed and off-fishing seasons or during occurrences of calamities. The Secretary may prescribe the species type of fish to be imported and the volume to be imported. Importers must obtain a CNI to import these products. Issuance of SPSICs is based on these determinations, and appears to be aimed at restricting fish imports during Philippine closed fishing seasons.

The DA has a similar mechanism in place for importation of onions. Department Circular 8 issued on December 14, 2021, states that the issuance of SPSICs for fresh onion will be based on the importation period specified in the CNI, which includes the volume to be imported and the specific period for import arrival.

The DA-Sugar Regulatory Administration (SRA) sets the allowable import quota of sugar typically at the beginning of each marketing year. For marketing year 2022 to 2023, SRA issued Sugar Order 2 on September 13, 2022, setting the allowable import volume at 150,000 MT for refined sugar and zero MT for raw sugar, all of which was required to be delivered by November 15, 2022. The allowable volume applies to all sources, whether it comes from an ASEAN or an MFN trading partner.

*Customs Barriers and Trade Facilitation*

Reports of corruption and irregularities in customs processing persist, including incidents of undue and costly delays, irregularities in the valuation process, 100 percent inspection and testing of some products, and inconsistent assessment of fees.

In August 2018, the Philippine Customs Commissioner issued an internal memorandum to customs collectors reminding them of their general legal obligation to assess duties on the basis of transaction value. As part of an October 2018 Joint Statement concluded under the TIFA, the United States welcomed the Philippines' efforts to ensure the WTO-consistent valuation of agricultural imports for duty collection purposes, including the enforcement of laws, regulations, and policies prohibiting the use of reference pricing. In 2020, the Philippine Bureau of Customs implemented the Enhanced Value Reference Information System (e-VRIS), which is a database of information on the value and classification of imports for reference purposes in support of the implementation of the WTO Customs Valuation Agreement (CVA). Despite the submission of documentary evidence of payments (*e.g.*, contracts, purchase orders, telegraphic transfers and letters of credits), some importers still report that the Philippine Bureau of Customs continues to use reference prices for the valuation of meat and poultry products in a manner that appears inconsistent with the CVA. Members of the Philippine House of Representatives continue to raise concerns about the practice of using reference prices to assess duties and flag corruption risks in the new valuation system.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Vehicle Standards*

In conjunction with ASEAN harmonization efforts, the Philippines is working to align domestic motor vehicle standards and regulations with those promulgated by the United Nations Economic Commission for Europe (UNECE). Under the October 2018 United States–Philippines Joint Statement, both governments pledged to cooperate to implement a U.S. work program on automotive standards issues in the context of the TIFA. The United States also recognized the Philippines' commitment to the continued acceptance of vehicles that meet multiple high-standard automotive standards, including U.S. Federal Motor Vehicle Safety Standards (FMVSS). However, as of December 31, 2022, the Philippines had not yet issued regulations to implement that commitment.

*Meat Labeling*

Following a surge in imports, in July 2021 the Philippines abruptly began enforcing burdensome meat and poultry labeling requirements that, while in place for several years, had previously not been applied. This change resulted in many detained containers of U.S. products and delays of other container shipments en route. The Philippine Government subsequently issued policy clarifications in November 2021 granting labeling flexibilities indefinitely until the policies can be reviewed and revised, thereby allowing continued exports of U.S. meat and poultry. On November 25, 2022, the Philippines established the Philippine National Standard for Labeling of Prepackaged Fresh Chilled and Fresh Frozen Meat. In 2023, the Philippines will draft revised labeling requirements based on this standard and make them available for public comment.

*Utilization Report*

On June 25, 2022, the Philippine DA Bureau of Animal Industry (BAI) informed domestic stakeholders at a consultative meeting that it will be enforcing BAI Memorandum Circular No. 26 (MC 26), dated August 11, 2021. MC 26 requires importers submit a utilization report concerning their importation of ingredients used in the manufacture of animal feed in order to ensure ingredients imported for animal feed are not diverted for human consumption or for other purposes. Multiple contacts have expressed concern to Post regarding the burdensome nature of this new requirement. The measure is not available on BAI's website and has not been notified to the WTO.

The DA extended similar requirements to fishery products in December 2022, through the issuance of DA Administrative Circular 11, Suspension of Issuance of SPS Import Clearance for Importation of Certain Fish Species under FAO 195.

**Sanitary and Phytosanitary Barriers**

*Import Permits*

The DA requires that importers obtain an import permit, known as a SPSIC, and transmit the permit to the exporter prior to shipment of any agricultural product. Each import permit is valid for only one shipment and has limited validity periods of 15 to 90 days, depending on the commodity. Requiring one SPSIC per shipment with limited validity periods adds costs, complicates the timing of exports, and prevents the rerouting to the Philippines of products intended for other markets but not sold there for commercial reasons. It also prevents an exporter from reselling an imported product if the importer refuses to accept delivery or abandons the shipment. The length of validity and issuance appear to be based on the political sensitivity of the products rather than on sanitary and phytosanitary risk. In 2019 and 2020, the Philippines stopped issuing SPSICs for certain imported agricultural products, including U.S. table grapes, chipping potatoes, and whole birds along with products not currently supplied by the U.S., such as feed wheat, rice, and corn.

On August 10, 2021, DA issued Administrative Order (AO) 21 temporarily extending the validity of SPSICs for imported meat and poultry from 60 to 90 days as a trade-facilitative measure in response to COVID-19 related supply chain and shipping disruptions.

Following both later extensions and terminations of the policy, DA Administrative Circular 6, issued on June 23, 2022, permanently implemented the 90-day validity of SPSICs for meat and poultry. Meanwhile, must-ship-out requirements for garlic, onions, rice, wheat, corn, and fresh/chilled fruits and vegetables remain limited to 20 days. SPSICs expire for frozen fish within 30 days of issuance to institutional buyers and 45 days to retail buyers. Other plant, animal, and aquatic products are also still generally subject to 60 days' validity.

*Local Government Regulations*

Since the arrival of African Swine Fever (ASF) in the Philippines in 2019 and the return of avian influenza in 2022, a number of local government units (LGUs) have maintained restrictions on the entry and exit of live pigs and birds as well as products thereof that exceed both international and national recommendations. LGU measures are not notified to the WTO.

*Product Registration*

The Philippine Food and Drug Administration (PFDA) requires all processed and prepackaged foods and beverages to have a Certificate of Product Registration (CPR) prior to commercialization. While an unclear stickering policy and slow processing times continue to concern importers, PFDA confirmed to the United States in December 2022 that stickering would continue to be permissible in order to accommodate simple changes to labels in order to bring them into conformance, *e.g.*, date formats, adding importer/exporter information, and presentation of nutrition facts.

*Agricultural Biotechnology*

In February 2022, the Philippines approved updates to its agricultural biotechnology regulations that streamlined the review process for new regulations in compliance with the Ease of Doing Business Act.

The DA-Bureau of Plant Industry issues biosafety permits for the use of genetically engineered plant and plant products for field trials, commercial propagation, and direct use as food, feed, or processing. Pursuant to the revised regulations, in March 2022, the DA issued an updated policy for importation, handling and use, transboundary movement, release into the environment, and management of genetically engineered plants and plant products derived from the use of modern biotechnology. On August 13, 2021, the Philippines notified to the WTO its updated list of imported commodities (*e.g.*, pineapples, safflower, and spores) requiring a genetically modified declaration to be issued by the accredited laboratory, shipper, importer, or responsible officer from the country of origin. The Philippines confirmed that importers continue to be acceptable signatories to the declaration upon the products' arrival at Philippine ports. The Philippines will issue an updated list to cover more commodities by April 2023.

*Cold Chain Regulations*

The Philippines has long maintained a two-tiered system for regulating the handling of frozen and freshly slaughtered meat for sale in local wet markets, which imposes more burdensome requirements on the sale of frozen meat, including imported meat, than it does on the sale of freshly slaughtered meat (which is sourced primarily from domestically raised animals). Seeking to address this issue and given the importance of the cold chain in the Philippines, the United States and the Philippines announced, as part of the October 2018 Joint Statement, their intent to collaborate to develop cold chain requirements and best practices in the Philippines, taking into account international guidelines and codes of practice regarding food hygiene adopted by the Codex Alimentarius Commission. This work builds on private sector and local efforts already underway in the Philippines to improve the existing cold chain. Since the issuance of the October 2018 Joint Statement, the U.S. Agency for International Development started to fund a cold chain project in four Philippine localities in conjunction with the Cold Chain Association of the Philippines. A U.S. Department of Agriculture Food for Progress project includes a cold chain component in its overall mission to improve Philippine sanitary and phytosanitary (SPS) measures and facilitate agricultural trade.

On June 2, 2020, DA issued AO 24 to add conditions to approve SPSIC permits by requiring importers to obtain certificates of availability of space of accredited cold storage warehouses, and usage reports for imported meat and poultry. While the DA subsequently suspended implementation of AO 24, it has not been repealed. On September 16, 2020, the Philippines reinterpreted its existing regulations to expand its longstanding ban on the sale of imported frozen fishery products in traditional, so-called "wet" markets to include modern supermarkets and electronic commerce. As a result, the sale of frozen fish products is limited to institutional buyers, such as food processors, and hotel and restaurant chains.

## GOVERNMENT PROCUREMENT

The government procurement system in the Philippines generally favors Philippine nationals or Filipino-controlled enterprises for procurement contracts. Republic Act (RA) No. 9184 or the Government Procurement Reform Act specifies a minimum Filipino ownership requirement of at least 60 percent in the procurement of goods, consulting services and infrastructure projects. Domestic goods are also given preferential treatment over imported products in the bid evaluation process. Additionally, EO 120, issued in 1993, directs government departments and agencies, including government-owned and controlled corporations, to exert best efforts to negotiate countertrade equivalent to at least 50 percent of the value of contracts on foreign capital equipment, machinery, products, goods, and services worth at least $1 million. Government Procurement Policy Board Resolution 14-2005 states that a government agency must comply with the provisions of RA 9184 if it decides to adopt countertrade as an internal procurement policy.

The Philippines is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since June 2019.

## INTELLECTUAL PROPERTY PROTECTION

While the Philippines has made progress in intellectual property (IP) protection and enforcement since its removal from the Watch List in the 2014 Special 301 Report, the United States continues to have concerns. U.S. right holders report issues with online piracy, counterfeit drugs, and counterfeit apparel. Such counterfeiting and piracy concerns led to the continued inclusion of Manila's Greenhills Shopping Center on the 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List). Stakeholders also criticize provisions in the patent law that may preclude the issuance of patents on certain chemical forms unless the applicant demonstrates increased efficacy. Other stakeholder concerns include ineffective IP enforcement, including a lack of capacity and expertise, and slow prosecution and conviction of cases. The United States will monitor the implementation of new regulations related to geographical indications (GIs) that entered into force in November 2022, including their potential impact on market access for U.S. products. As part of the October 2018 Joint Statement, the United States recognized that the Philippines committed "to protect GIs in a manner mutually beneficial to both countries by ensuring transparency, due process, and fairness in the laws, regulations, and practices that provide for the protection of GIs, including by respecting prior trademarks and no restriction of the use of common names." In addition, the statement includes confirmation by the Philippines that it will not provide automatic GI protection, including to terms exchanged as part of a trade agreement. The United States will continue to monitor the implementation of this and other commitments related to GIs, including through engagement under the TIFA.

## SERVICES BARRIERS

### Audiovisual Services

The Philippine Constitution prohibits foreign ownership in mass media, including cable television and broadcasting, as well as film distribution and pay-television. Additionally, foreign equity in private radio communications networks is limited to 40 percent under 2018 changes to the Foreign Investment Negative List (FINL).

### Financial Services

Qualified foreign banks may own up to 100 percent of domestically incorporated banks or enter the market as foreign branches, but ownership restrictions apply to non-bank investors, regardless of their nationality. Non-bank foreign individuals and entreprises, as with non-bank Filipino investors, may not own more than 40 percent of the total voting stock in a domestic commercial bank, nor own more than 60 percent of the voting stock in a thrift or rural bank.

Banks that seek entry as foreign branches cannot open more than five sub-branch offices. The Philippine Central Bank ensures that majority Filipino-owned banks control at least 60 percent of the total banking system assets.

Foreign financial technology companies and banks have been using the Philippines' digital banking licenses to access the underserved financial services market. However, on August 31, 2021, the Central Bank imposed a three-year moratorium on new applications for these licenses. Six applications were approved prior to this moratorium.

On September 1, 2022, the Central Bank closed the regular application window for new virtual asset service provider (VASP) licenses for a period of three years and stated that it would only consider granting licenses to existing central bank-supervised financial institutions.

**Insurance Services**

The Insurance Code provides that all insurance companies operating in the Philippines must seek to cede risks to reinsurance companies admitted to conduct business in the country before entering outward foreign reinsurance arrangements. Moreover, insurance companies operating in the country must cede 10 percent of outward reinsurance placements to the state-controlled National Reinsurance Corporation of the Philippines.

Generally, only the state-owned Government Service Insurance System may provide insurance for government-funded projects and coverage for all government properties, assets, contracts, rights of action, and other insurable risks to the extent of government's interest.

**Professional Services**

The Philippine Constitution limits the practices of certain professions to Philippine citizens. However, various laws and regulations provide for exceptions on a reciprocal basis, such as medicine, pharmacy, nursing, and engineering. The practice of law, radiology and x-ray technology, criminology, and marine deck and engine officers are still reserved to Philippine citizens.

**Advertising Services**

The Philippine Constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers must be Philippine citizens.

**Retail Services**

Philippine law restricts foreign investment in small retail ventures to Philippine nationals, however amendments to its Retail Trade Liberalization Act, enacted in December 2021, open the sector to greater foreign participation. These amendments lower the minimum investment required for foreign retailers from $2.5 million to $500,000 and lower the per-store investment requirement from $830,000 to $200,000. Foreign retailers remain prohibited from engaging in trade outside their accredited stores, such as through the use of carts, sales representatives, or door-to-door selling.

The March 2, 2022 amendments to the Foreign Investment Act reduced capitalization requirements for foreign-owned micro and small domestic enterprises from $200,000 to $100,000, if the business involves advanced technology, is endorsed as startup or startup enablers, or the majority of its direct employees are Filipino (assuming the firm has at least 15 Filipino employees).

**Other Services Sectors**

*Public Utilities*

On February 2, 2022, the Philippine Congress passed amendments to the Public Service Act (PSA) of 1936, lifting longstanding restrictions that had limited foreign ownership to 40 percent in several sectors previously deemed to be "public utilities." With the reform, the logistics, railways, shipping, tollways, and telecommunications sectors are now open to 100 percent ownership by foreign investors. U.S. and foreign trade associations widely hailed the amended PSA as a significant reform that improves the Philippines' investment environment.

*Telecommunications Services*

The Philippines allocates and manages spectrum through the Radio Control Law of 1931 (RA 3846 and its amendment, RA 584), EO 546 s. 1979, and the Public Telecommunications Policy Act of 1995 (RA 7925). These laws and directives provide the country's legal framework for spectrum enfranchisement, operation, and permitting in line with International Telecommunication Union requirements, and general provisions on the allocation and assignment of radio spectrum. While RA 7925 requires the conduct of open tenders in allocating spectrum, no bidding has ever been carried out to allocate spectrum (*e.g.*, "spectrum auctions"). Unlike in most other countries, where public consultation documents, market reviews, and spectrum management plans are issued by the regulator before spectrum is assigned or awarded to an entity, evaluation of applications for spectrum use in the Philippines is not conducted through a public process. Evaluation of applications typically involves the submission by an applicant of a letter of request to the National Telecommunications Commission for its spectrum needs. This model is inherently non-transparent, constituting an "administrative" approach by which applicants are chosen based on the government's prioritization of certain criteria (like financial or technical capacity). This lack of transparency is reflected in the National Radio Frequency Allocation Table, which does not specify which bands are assigned to which entities.

The anticipated Open Access and Data Transmission bill, pending full congressional approval in the Philippines as of December 2022, seeks to lower barriers to market entry, lower the cost of deploying broadband facilities, and make more spectrum available for Internet service.

## BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

### Internet Services

While U.S. cloud service providers are active in the Philippine market, they continue to face constraints that limit their participation, particularly in competing for government projects. The Philippines requires government agencies to procure cloud computing services from the Government Cloud (also known as GovCloud), a cloud infrastructure set up by the Department of Information and Communications Technology. U.S. cloud-based services providers support the Philippines' plans to digitize public service functions, but remain concerned about the potential for government-mandated data localization requirements, ostensibly to address cybersecurity or address latency concerns.

The Philippine President issued EO 127 in March 2021, known as the National Policy for Inclusive Access to Satellite Services, which allows telecommunication entities, value-added service providers, and internet service providers to have direct access to foreign and domestic satellites, repealing the previous policy that required telecommunication companies to first apply for a congressional franchise prior to using satellite facilities. The Department of Information and Communications Technology subsequently issued EO 127's Implementing Rules and Regulations in September 2021.

### Electronic Commerce

Some U.S. stakeholders have raised concerns about the proposed Internet Transaction Act (ITA), introduced in June 2020 and pending full congressional approval as of December 2022. These firms note that the bill contains clauses that may impose undue burdens on platforms and online sellers related to compliance, which ultimately may discourage participation in electronic commerce, especially from small and medium-sized enterprises. U.S. companies seek greater consultation to help the Philippines achieve its goals on consumer protection while continuing to encourage electronic commerce activity.

## INVESTMENT BARRIERS

### Limitations on Foreign Equity Participation

The Philippines has significant restrictions on foreign investment. The Foreign Investment Negative List (FINL), last updated in June 2022, enumerates foreign investment restrictions in two parts: List A details restrictions mandated by the Constitution or specific laws, and List B sets out restrictions mandated by the government for reasons of national security, defense, public health and morals, and the protection of small and medium-sized enterprises. Foreign investment in sectors from the FINL may be prohibited outright (*e.g.*, mass media; practice of professions such as radiology, law, and technology; and, small-scale mining cooperatives) or subject to limitation (*e.g.*, natural resource extraction). The updated FINL reflects amendments to the Retail Trade Liberalization Act, the Public Service Act, and the Foreign Investment Act and retains foreign ownership limits for contracts involving construction and repair of locally funded public works at 40 percent, and private radio communication networks at 40 percent. The FINL continues to allow 100 percent foreign equity participation in sectors such as internet access providers, wellness centers, and higher education institutions and organizations (except those for professional subjects included in government board or bar examinations and entities outside the formal education system providing "short-term high-level skills" training).

## SUBSIDIES

### Export Subsidies

The Philippines offers a wide array of fiscal incentives for export-oriented investments, particularly investments related to manufacturing. These incentives, subject to review based on several performance indicators, are available to qualified firms located in designated export processing zones, free port zones, and other special industrial estates registered with the Philippine Economic Zone Authority (PEZA). The available incentives include: income tax holidays or exemptions from corporate income tax for up to seven years; an option for either special corporate income tax or enhanced deductions for up to 10 years after the income-tax-holiday period; payment of a five-percent special tax on gross income less allowable deductions in lieu of all national and local taxes; exemption from duties and taxes on imported capital equipment, machinery, spare parts, and raw materials; exemption from wharfage dues, imposts, and fees; and, a zero percent value-added tax rate on local purchases (including telecommunications, electricity, water, and building lease) directly and exclusively used in the registered project or activity. The PEZA approves incentives for projects with investment capital of $20 million and below, and the Fiscal Incentives Review Board (FIRB) approves incentives for projects beyond the $20 million investment capital threshold. Additionally, under the Export Development Act, exporters are entitled to tax credits, starting at 2.5 percent for the first five-percent increase in annual export revenue, and an additional five percent and 7.5 percent for the next two incremental five-percent increases in annual export revenues, respectively.

The CREATE Act introduced a sunset provision on the aforementioned preferential tax rates and benefits provided to activities currently registered with Philippine investment promotion agencies, including PEZA. The law grants a 10-year transition period to export enterprises registered prior to the passage of CREATE, with the option to reapply for special corporate income tax treatment subject to the conditions set in the proposed Strategic Investment Priority Plan and a performance review by the FIRB.

## OTHER BARRIERS

### Bribery and Corruption

Corruption is a pervasive and longstanding problem in the Philippines. National and local government agencies, particularly the Bureau of Customs, are beset with various corruption issues. Both foreign and domestic investors have expressed concern about the propensity of Philippine courts and regulators to stray beyond matters of legal interpretation into policymaking, as well as the lack of transparency in judicial and regulatory processes. Investors have also raised concerns about courts being influenced by bribery and improperly issuing temporary restraining orders to impede legitimate commerce.

# QATAR

## TRADE AGREEMENTS

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

The United States and Qatar signed a Trade and Investment Framework Agreement (TIFA) in March 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Qatar.

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

As a member of the Gulf Cooperation Council (GCC), Qatar applies the GCC common external *ad valorem* tariff of five percent on the value of most imported products, with several commodity-specific exceptions. Qatar's exceptions include alcohol (100 percent), tobacco (100 percent), urea and ammonia (30 percent), and steel (20 percent). Wheat, flour, rice, feed grains, and powdered milk are exempt from customs duties, in addition to more than 600 other goods.

*Taxes*

In 2016, GCC Member States agreed to introduce common GCC excise taxes on carbonated drinks (50 percent), energy drinks (100 percent), and tobacco and electronic smoking products (100 percent). U.S. beverage producers report that the current excise tax structure for carbonated drinks, which also applies to sugar-free carbonated beverages but exempts sugary juices—many of which are manufactured domestically within GCC countries—disadvantages U.S. products and fails to address public health concerns. Qatar implemented the common GCC excise taxes in January 2019, as well as an excise tax for "special purpose goods," which includes alcohol and pork (100 percent).

### Non-Tariff Barriers

*Import Licensing*

An import license is required for the importation of most products. The Qatari Government issues import licenses to Qatari citizens, Qatari partners in limited liability companies and to foreign-owned entities operating in Qatar that are registered with the Ministry of Commerce and Industry. On occasion, Qatar has established special import procedures through government-owned companies to address increases in demand. Only authorized local agents of foreign firms are allowed to import goods produced by the firms they represent. In the telecommunications sector, commercially registered companies in Qatar can import telecommunication equipment by obtaining an Import Authorization License from the Communications Regulatory Authority. The Qatar Distribution Company, a subsidiary of the national air carrier Qatar Airways, has sole authority to import pork and alcohol.

*Import Documentation Requirements*

In order to clear goods from customs zones at air and sea ports in Qatar, importers must submit a number of authenticated forms, including a detailed customs declaration, a bill of lading, a certificate of origin and

*pro forma* invoice, as well as an import license. The Qatari Embassy, a Qatari consulate or the Qatari Chamber of Commerce in the United States must authenticate import documentation for U.S.-originated imports. This "consularization" process, or authentication requirement, is burdensome and costly to U.S. exporters. Qatar's customs authority charges a fine of one percent on the shipment value if the invoice is not legalized by the Chamber of Commerce in the country of origin of the exported products.

Imported agricultural products require different certificates depending on the category of the product. Meat, fish, eggs, livestock, live poultry, grains, animal feed, and planting seeds require an original health certificate. All processed or shelf-stable foods exported from the United States to Qatar require a U.S. Department of Health and Human Services Food and Drug Administration Certificate to a Foreign Government: Food for Human Consumption. Imported meat and meat products require an original halal slaughter certificate issued by an approved Islamic authority.

*Customs Barriers and Trade Facilitation*

Qatar ratified the WTO Trade Facilitation Agreement (TFA) in June 2017. Qatar has not yet submitted four transparency notifications required by the TFA related to: (1) import, export, and transit regulations; (2) details of operation of the single window; (3) the use of customs brokers; and, (4) customs contact points for the exchange of information. These notifications were due to the World Trade Organization (WTO) in February 2017, according to Qatar's self-designated TFA implementation schedule. U.S. industry has criticized the limited transparency of changes to Qatar's customs procedures.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Automobiles*

U.S. automakers have raised concerns over growing regulatory fragmentation in the GCC. While the Gulf Standardization Organization (GSO) is supposed to set standards for the entire GCC market, individual GCC Member States have instituted unique standards for automobiles that deviate from GCC automobile standards. Though Qatar has not taken such steps, the United States will be monitoring this issue across GCC Member States going forward.

*Restrictions on Hazardous Substances – Electrical Goods*

In March 2018, GCC Member States notified the WTO of a draft GSO technical regulation that would require pre-market testing by accredited labs for certain hazardous substances in electrical goods. The measure would also require each type of good to be registered annually and require sample products to be submitted prior to receiving approval for use in the GCC. The United States has raised concerns that the proposed regulatory requirements would have a significant negative impact on the imports of U.S. electrical and electronic equipment, especially as the third-party certification requirements differ from international best practices.

*Dairy Regulations*

In June 2019, Qatar's Ministry of Public Health released a Council of Minister's circular on both imported and domestically produced dairy products that implemented limited shelf-life requirements on long life milk and white cheeses. Qatar did not notify the WTO of this regulation prior to implementation. The U.S. Government pressed Qatar on concerning aspects of its regulation in bilateral discussions and at the WTO Committee on Technical Barriers to Trade meetings. On August 22, 2021, the Ministry issued an update

to the June 2019 regulation that expanded its scope, increasing the concerns of the U.S. dairy industry. Qatar again failed to notify the WTO of the new regulation prior to its implementation. The U.S. Government and private sector stakeholders continue to raise concerns with Qatar on this regulation, including the transparency of its implementation and the food safety and food quality rationale of the measure.

*Halal Regulations*

Qatar has expanded application of its halal certification requirement to animal feed, slaughterhouses, handling, packaging, storing and food additives.

*Energy Drinks*

In January 2016, GCC Member States notified to the WTO a draft GSO technical regulation for energy drinks, which was revised in March 2022. The U.S. Government and private sector stakeholders have raised concerns through bilateral and multilateral fora regarding the draft regulation. These concerns include the proposed marketing-based definition for energy drinks and labeling requirements regarding recommended consumption. Industry stakeholders still report that caffeine-content limitations unduly target energy drinks in GCC Member States. In many cases, such limitations do not apply to other drink products that contain similar or even higher levels of caffeine, such as tea, brewed coffee and other ready-to-drink coffee products.

**Sanitary and Phytosanitary Barriers**

*Food Additives*

U.S. industry stakeholders have noted concerns that the 2021 GCC Technical Regulations applied to Additives Permitted for Use in Foodstuffs are not aligned with relevant standards for food additives from the Codex Alimentarius Commission (Codex), particularly with respect to additives such as curcumins and annatto that are widely used in cheese production, and may potentially disrupt trade in food products.

*Titanium Dioxide*

In September 2020, GCC Member States notified to the WTO a draft GSO technical regulation that would remove titanium dioxide from the list of approved food additives, in line with EU food additive regulations. Titanium dioxide is an adopted food additive that is included in the Codex General Standard for Food Additives (GSFA). As such, it may be used in specified foods under the conditions of good manufacturing practices as outlined in the Codex GSFA. The U.S. Department of Health and Human Services Food and Drug Administration continues to allow for the safe use of titanium dioxide as a color additive in foods, subject to certain restrictions, including that the quantity of titanium dioxide does not exceed one percent in weight of the food. The EU banned the use of titanium dioxide as a food additive on August 7, 2022, based on a risk classification that the European Court of Justice later ruled to be based on faulty scientific analysis. The EU is determining how to respond in light of the court's ruling. Following the EU move to ban the use of titanium dioxide in animal feed, in 2021 the Codex Committee on Food Additives agreed that titanium dioxide should be re-evaluated by the Joint FAO/WHO Expert Committee on Food Additives (JECFA). JECFA is set to meet and provide its findings in June 2023. The United States has requested that GCC Member States wait until this review has been completed before considering changes to their existing regulatory approval, given the lack of data demonstrating negative health effects from allowed uses of this food additive. Although Qatar has adopted the GSO regulation, it has extended the implementation period in order for exporters to adjust.

## GOVERNMENT PROCUREMENT

Cabinet Decision 16/2019 stipulates that non-Qatari companies participating in tenders must utilize local goods and services for at least 30 percent of a tender's value, including local raw materials, locally manufactured goods, transportation services, security, guarding and catering services, or any other local services provided. Cabinet Decision 11/2022 additionally favors local small and medium-sized enterprises (SMEs), by exempting them from providing bonds when bidding for government tenders, and incentivizing greater support for the local economy, by encouraging government clients to consider bidders' In-Country Value ratios when evaluating bid prices. Participation in government tenders with a value of QAR 5,000,000 or less (equivalent to approximately $1.37 million) is limited to local SME contractors, suppliers, and merchants registered with the Qatar Chamber of Commerce.

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

## SERVICES BARRIERS

### Financial Services

Foreign Banks established in Qatar are licensed by Qatar Central Bank (QCB) or the Qatar Financial Centre Regulatory Authority (QFCRA). The Qatari Government permits foreign banks licensed by QFCRA to establish a physical presence and conduct most types of banking business, including provision of shariah-compliant banking services, in the Qatar Financial Centre (QFC). These foreign banks are not allowed to offer stand-alone retail banking services outside the QFC. Laws and regulations that govern banking practices in the QFC's Regulatory Authority differ from regulations by the QCB for local and foreign banks in that the former more closely resemble international banking laws and regulations.

### Virtual Assets

Since 2018, QCB and QFC have banned all virtual assets due to the risks associated with money laundering, terrorist financing, and harming customers' rights and interests. The QCB issued three circulars, the latest of which was in March 2022, banning the trading of and dealing in virtual assets and currencies or tools that control them.

### Distribution Services

Only Qatari individuals and domestically licensed entities are allowed to serve as local commercial agents for foreign firms to distribute products or services, except in certain sectors. The Minister of Commerce and Industry can waive the nationality requirement for commercial agents of foreign companies that have direct contracts with the Qatari government.

## BARRIERS TO DIGITAL TRADE

The Qatari Government requires a license for telecommunications providers and companies that plan to provide Voice over Internet Protocol (VoIP) services, granting such licenses only to companies intending to charter in Qatar. This requirement serves as a barrier for foreign or Internet-based communications service providers. Ooredoo and Vodafone Qatar are Qatar's only VoIP and telecommunications service providers, and both are majority owned by state-controlled entities.

## INVESTMENT BARRIERS

Law 1/2019 on "Regulating the Investment of Non-Qatari Capital in Economic Activity" generally allows foreign ownership, either by partnering with a Qatari investor owning 51 percent or more of the enterprise or by applying to the Ministry of Commerce and Industry for up to 100 percent ownership. Foreign ownership in the banking and insurance sectors and commercial agencies is capped at 49 percent, unless granted special approval for greater foreign ownership by the Qatari Cabinet.

# RUSSIA

## SANCTIONS AND COUNTERSANCTIONS

In response to Russia's March 2014 invasion of Ukraine and self-proclaimed annexation of Crimea, the United States imposed sanctions on Russian Government officials, individuals who supported the annexation policy, and critical sectors of the Russian economy. In response, Russia enacted a variety of measures in retaliation. The initial measures banned the importation of a variety of agricultural and seafood products from the United States and other countries.

As a result of Russia's full-scale invasion of Ukraine beginning in February 2022, the United States imposed unprecedented further sanctions on Russia, ceased nearly all bilateral engagement on trade and investment issues with Russia, and continues to take steps to isolate Russia from the global economy and hold President Putin accountable for his war against Ukraine. Those measures include, *inter alia*, withdrawal of Most-Favored-Nation status for Russian goods, increased tariffs on certain imports from Russia, import and export bans and restrictions, financial and investment restrictions in certain industries, and blocking measures against certain entities and individuals. In response, Russia has expanded its retaliation, imposing or proposing measures to impact, *inter alia*, financial transactions, protection and enforcement of intellectual property, exports and re-exports of certain goods, and foreign direct investment, which may extend to nationalization of foreign-owned assets. Russia has also accelerated and expanded its efforts to replace imports with domestic goods and services. As a result of the increased geo-political tensions and the reputational risks of doing business in Russia, hundreds of U.S. companies have withdrawn from or significantly reduced their presence in Russia. Reflecting that tension, in addition to the specific trade barriers discussed below, bilateral trade between Russia and the United States has fallen from $36.0 billion in 2021 to $16.2 billion in 2022, a decline of 55 percent.

This chapter of the National Trade Estimate reports primarily on the significant trade and investment barriers in Russia before the further invasion of Ukraine that began in February 2022. The United States continues to engage with industry to analyze and assess the impact of the sanctions and counter sanctions on trade in the broader context of U.S. national interests. However, due to the near total cessation of engagement with Russia, the ability of the Office of the U.S. Trade Representative (USTR) to raise and resolve market access barriers in Russia is severely limited.

## TRADE AGREEMENTS

### Membership in the World Trade Organization

On August 22, 2012, Russia became the 156th Member of the World Trade Organization (WTO), and on December 14, 2012, following the termination of the application of the Jackson-Vanik Amendment to Russia, the United States and Russia consented to the application of the WTO Agreement between the two countries. Russia's accession to the WTO signaled Russia's movement to adopt key WTO principles, including transparency. Despite its WTO commitments, as noted in the 2022 Report on the Implementation and Enforcement of Russia's WTO Commitments, the Russian Government has maintained restrictive at-the-border measures, instituted behind-the-border measures to inhibit trade, and pursued principles of import substitution and forced localization, taking it on a comprehensive trajectory away from the guiding principles of the WTO.

## Eurasian Economic Union

Russia is a member of the Eurasian Economic Union (EAEU), a limited customs union that also includes Armenia, Belarus, Kazakhstan, and Kyrgyzstan. Moldova, Uzbekistan, and Cuba have observer status at the EAEU. The Eurasian Economic Commission (EEC) is the supranational body charged with implementing external trade policy for member states and coordinating economic integration among them. While tariff harmonization and standardized regulatory approvals across member states have eased the process of doing business within the customs union for some U.S. companies, some regulatory regimes—such as those applying to medical devices and to pharmaceuticals—have not been standardized and still require approvals by the individual member states. As a consequence of its membership in the EAEU, Russia's import tariff levels, trade-in-transit rules, non-tariff import measures (*e.g.*, tariff-rate quotas, import licensing, and trade remedy procedures), and customs policies (*e.g.*, customs valuation, customs fees, and country of origin determinations) are based on EAEU legal instruments. As of March 2022, the EAEU member states are estimated to have harmonized approximately 90 percent of their tariffs governing trade with third countries.

# IMPORT POLICIES

## Tariffs and Taxes

### *Tariffs*

Russia's average MFN applied tariff rate for all goods was 6.6 percent in 2021 (latest data available). Russia's average MFN applied tariff rate was 9.7 percent for agricultural products and 6.1 percent for non-agricultural products in 2021 (latest data available).

Russia has bound 100 percent of its tariff lines in the WTO, with an average WTO bound tariff rate of 7.6 percent. Russia's average WTO bound tariff rate for agricultural goods (10.8 percent) was slightly higher than its average applied rate of 9.7 percent in 2021 (latest data available). Russia's average WTO bound rate for non-agricultural products was 7.1 percent—also slightly higher than its average applied rate of 6.1 percent. Russia's maximum WTO bound tariff rate was 121 percent in 2021 (latest data available). Although Russia has implemented all the tariff reductions required by its WTO commitments, some concerns remain.

In 2018, the Government of Russia adopted Decree No. 788 "On approval of rates of import customs duties in respect of certain goods whose country of origin is the United States of America (amended April 26, 2022) imposing tariffs ranging from 25 percent to 40 percent on various industrial products (mainly certain types of construction machinery) imported from the United States. Russia took this action in retaliation against the President's decision to adjust U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. § 1862). These retaliatory duties are being applied by Russia only, not by other EAEU member states. The United States had been urging Russia to work with the United States to address excess capacity in the global steel and aluminum sectors, rather than engage in unjustified retaliation designed to punish U.S. workers and companies. On August 27, 2018, the United States launched dispute settlement proceedings against Russia at the WTO and requested consultations with Russia. Following unsuccessful consultations in November 2018, the United States requested the establishment of a panel. A panel was composed in January 2019, but the COVID-19 pandemic has resulted in delays in the proceedings.

*Taxes*

Russia applies a value-added tax (VAT) of 20 percent on goods, works, and services (with some limited exceptions). According to Article 149.2 (paragraph 21) of the Russian Tax Code, the 20 percent VAT payments on royalties paid for screening Russian movies (as defined in the Russian tax code) can be rebated, but not VAT payments on royalties for screening U.S. (or other non-Russian) films. However, following Russia's further invasion of Ukraine in 2022, most major Hollywood studios withdrew from Russia and ceased screening movies in Russia. Similarly, Article 149 exempts from the 20 percent VAT the royalties paid on software included in the Unified Register of Russian Software (Federal Law No. 188-FZ, June 29, 2015, and Resolution 1236, November 16, 2015.) Because only Russian software is included in the Register, the cost of using non-Russian software can be automatically 20 percent higher than using Russian software. The United States has raised these discriminatory tax practices with the Government of Russia, but Russia has not changed its practices.

Russia's Federal Law No. 89-FZ (as amended), imposes a recycling fee on automobiles and certain other wheeled vehicles that requires importers (since 2012) and manufacturers (since 2016) of automobiles and certain other wheeled vehicles (including self-moving agriculture and industrial vehicles) to pay a fee, determined by the age, total mass, and engine size of the vehicle. These fees were imposed purportedly to offset the reduction in tariffs. The recycling fee has increased from RUB 3,000 - RUB 110,000 (approximately $41 - $1,494) in 2012, depending on total mass and engine size of the vehicle, to RUB 3,400 - RUB 445,000 (approximately $46 - $6,042) in 2022 for new passenger cars with no more than eight seats and from RUB 5,000 - RUB 700,200 (approximately $68 - $9,507) in 2012 to RUB 5,200 - RUB 700,200 (approximately $71 - $9,507) in 2022 for used passenger cars.

Although the fee applies to both domestic producers and importers, concerns remain regarding the overall level and calculation of the fee for heavy-duty commercial vehicles. Moreover, industry stakeholders assert that the Russian Government offers a variety of subsidies to offset the recycling fee based on criteria that ensure only domestic producers, including domestic manufacturers of foreign-branded cars, receive the offset subsidies.

Russia appears also to protect its domestic automotive industry through the application of a variable excise tax on automobiles based on their engine size. For example, in 2021, cars with engine power below 150 horsepower (hp) (*e.g.*, a Lada, as well as some models of Fiats, Mini Coopers and older Fords) paid an excise tax of RUB 51 (approximately $0.70) per hp. For cars with engine power above 150 hp, the excise tax rate jumped to between RUB 491 per hp to RUB 1,464 per hp (approximately $7 to $20). Those rates translate to a maximum tax of approximately RUB 7,500 (approximately $101) for a car with less than 150 hp, and between RUB 53,000 (approximately $720) for a car with 151 hp to RUB 733,000 (approximately $9,952) for a car with over 500 hp (*e.g.*, certain models of Cadillacs, Ford Mustangs, Jaguars, Alfa Romeos or Mercedes Benz). Although the tax applies to both domestically produced and imported vehicles, in its 2022 WTO Trade Policy Review, Russia acknowledged that it does not produce passenger cars with engine power over 300 hp.

**Non-Tariff Barriers**

*Import Bans*

Russia has maintained a ban on imports of certain food and agricultural imports from Australia, Canada, the member states of the European Union, Norway, and the United States since 2014. The list of banned food included certain beef, pork, poultry, fish and seafood products, fruits and nuts, vegetables, some sausages, and most prepared foods. Russia has since amended the list of products covered by the ban and expanded the list of countries covered by the ban, adding Albania, Iceland, Liechtenstein, Montenegro,

Ukraine, and the United Kingdom. In October 2022, Russia extended the ban until December 31, 2023 through Presidential Decree of October 11, 2022 No. 725 On the Extension of Certain Special Economic Measures to Ensure the Russian Federation's Security.

*Import Licensing*

Even before Russia's further invasion of Ukraine in February 2022, the Russian Government erected barriers to the importation of products with cryptographic functionalities (encryption products). In particular, despite WTO commitments to allow the importation of "mass market" consumer electronics without an import license or other customs formalities (aside from import duties), Russia continues to require at a minimum a one-time notification or, for products with strong encryption, permission from the security services in addition to an import license, significantly increasing import costs and often precluding imports altogether. In addition, pursuant to Government Resolution No. 313 (April 16, 2013), as amended, Russia requires an activity license to distribute encryption products, including many common consumer electronics, further restricting U.S. exporters access to the Russian market. Prior to Russia's 2022 invasion of Ukraine, the U.S. Government raised concerns with the Russian Government about the import licensing regime for encryption products but made no progress.

*Customs Barriers and Trade Facilitation*

In 2019, Russia began to implement a mandatory labeling regime (track and trace regime) in selected industry sectors that requires the application of an encrypted label to products, both imported and domestically produced, in an ever-widening list of industry sectors. The mandatory labeling regime applied initially to only certain industry sectors (*e.g.*, footwear, apparel, pharmaceuticals, and perfumery products) but is expected to apply to most products sold in Russia by 2024. Various affected industry stakeholders have raised significant concerns about the regime, including: short implementation timelines; the risk of disclosure and misuse of sensitive commercial data collected under the regime; the lack of operational details from the Russian Government; the quantity of detailed data required for the labels; the possibility of national treatment and trading rights issues stemming from different procedures for importers to obtain these labels compared to domestic manufacturers; the requirement that the labels must be purchased from a single Russian company; the duplication with existing tracking regimes (*e.g.*, the system for tracking alcohol products); and, arbitrary misuse of the system to halt imports. Although Russia has shown some flexibility in response to stakeholder concerns and in 2022 suspended some of the labeling requirements, the United States will work with stakeholders and, where possible, the Russian Government to ensure that the system does not create new trade barriers to U.S. exports or undermine the benefits of the WTO Trade Facilitation Agreement.

U.S. stakeholders have raised concerns that Russia's practice of assessing tariffs on the royalty amounts for the domestic use of imported audiovisual materials (*e.g.*, television master tapes, DVDs, and digital cinema packs) represents a form of double taxation because royalties are already subject to withholding, income, VAT, and remittance taxes. U.S. consumer goods companies have also reported that Russia's customs authorities calculate customs duties not just on the value of the physical carrier medium, but also on royalty value of the copyright- or patent-protected content contained on the medium (*i.e.*, on the value of the proceeds of the authorized licensed use of a copyright- or patent-protected work). U.S. companies contend that this methodology leads to inflated valuations for tariff purposes.

U.S. stakeholders report that the Russian Government does not publish all regulations, judicial decisions, and administrative rulings of general application on customs matters. In addition, U.S. exporters report that customs enforcement varies by region and port of entry and that changes in regulations can be frequent and unpredictable, adding to costs and delays at the border. U.S. officials have pressed Russian officials to improve transparency in this area and ensure compliance with WTO commitments.

*Import Substitution Policies*

Russia's import substitution policies posed a significant barrier to a wide variety of U.S. exports, even before the invasion of Ukraine caused a precipitous drop in trade. These policies have a long history in Russia, but have increased in prominence in the past few years. Sectors in which these policies have been developed and implemented over the last several years include agriculture, transport vehicles, telecommunications, consumer goods, textiles, optical fiber, defense, banking, oil and gas, solar and wind energy, software, and medical devices. (*For further information, see the sections on Investment Barriers, State-Owned Enterprises, and Government Procurement*.)

Initially, the Russian Government implemented these preferences primarily through government procurement, but since 2015 has increasingly extended the mandated preferences to purchases by state-owned enterprises (SOEs). For example, Russia's law governing SOE purchases expressly favors Russian-produced products; grants the Russian Government the authority to establish plans and tender rules for the purchase of specific Russian goods, works, and services; establishes a Government Import Substitution Commission with responsibility for determining which types of machinery and equipment must be sourced locally for large investment projects by SOEs, state corporations, or certain private businesses; requires the coordination of SOEs' purchases of pharmaceutical, high technology, and innovative products with the government; and, recommends that SOEs follow the more restrictive procurement rules that govern federal and municipal procurement. (*For further information, see the Government Procurement section*.)

Russia's import substitution requirements have not been limited to SOEs, however. Since December 2019, Russia has required the pre-installation of Russian software (*e.g.*, search engines, Yandex browser, mapping and navigation software, anti-virus software, software that provides access to electronic government infrastructure, instant messaging and social network software, and national payment software) on certain consumer electronic products (*e.g.*, smartphones, computers, tablets, and smart TVs) sold in Russia. (Law No. 425 On Amending Article 4 of Russian Federation Law 'On Protecting Consumer Rights' December 2, 2019.) Stakeholders contend that the law appears to be another effort by the Russian Government to disadvantage imports and increase control over technology. In addition, technology companies are concerned that the law would expose devices and services to potentially unsafe, insecure, or unreliable technology. The United States raised concerns directly with the Russian Government prior to the invasion of Ukraine in 2022 and will monitor closely the implementation of this policy, which has the potential to seriously disrupt U.S. and other foreign suppliers of devices, software, and services.

In the telecommunications sector, the Ministry of Economic Development and the Ministry of Industry and Trade have established local content requirements for specified applications or projects. The localization level depends on, among other things, the ownership structure of the company, ownership of the legal rights to the technologies and software, scope of production in Russia, and the scope of the research activities and technological operations carried out in Russia.

Russia has expanded its localization policies beyond Russian-made goods to Russian-origin services. (*For further information, see the Services Barriers section.*)

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

U.S. companies cite technical regulations and related product-testing and certification requirements as major obstacles to U.S. exports of industrial and agricultural goods to Russia. Russia does not accept internationally recognized certificates, such as those issued by the U.S. Department of Health and Human

Services Food and Drug Administration. Russia recognizes only those certificates issued by authorized agencies from one of the EAEU member countries with a representative office in Russia. Russian authorities require product testing and certification as a key element of the approval process for a variety of products, and, in many cases, only an entity registered and residing in Russia can apply for the necessary documentation for those product approvals. Consequently, opportunities for testing and certification performed by competent bodies outside Russia are limited, increasing the burden for companies exporting to Russia. Manufacturers of telecommunications equipment, oil and gas equipment, construction materials and equipment, and veterinary biologics, such as vaccines, have reported serious difficulties in obtaining product approvals within Russia. Other EAEU member states are in the process of adopting similar requirements.

*Alcohol*

Stakeholders have raised concerns about legislative amendments that affect Russia's regulation of the wine market, particularly Federal Law No. 345-FZ of July 2, 2021. Stakeholders were concerned by Russia's failure to provide implementing regulations or a transition period. Moreover, stakeholders were concerned that certain definitions and provisions could create barriers to U.S. wine exports, such as limitations placed on wine exported in bulk and restrictions on the use of certain ingredients. Stakeholders also raised concerns related to limitations on the right to use certain geographical indications (GIs) or appellations of origin and the rules governing labeling (with follow-on implications for labeling approvals). In December 2022, the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications came into force in Russia, allowing Russian companies to register exclusive rights to appellations of origin and GIs abroad and protect them with Russian registration.

In addition, stakeholders noted that Russia requires one or multiple certificates for imported wine from the United States even when those wines conform to both U.S. and Russian standards. Often these certificates must be an original document issued by the U.S. Government or an officially accredited organization located in Russia. When appropriate, the United States will work to ensure that Russia's and the EAEU's alcoholic beverages control regime is consistent with Russia's WTO commitments and urge Russia and the EEC to adopt international standards or guidelines for such products.

*Pharmaceuticals*

U.S. stakeholders continue to raise concerns about the implementation of Russia's Good Manufacturing Practices (GMP) regime for pharmaceutical products. U.S. stakeholders have raised concerns that Russia treats domestic and foreign manufacturers differently in the implementation of its GMP regime for medicines. For example, stakeholders have highlighted the higher rate of unwarranted denials of foreign GMP certificates, the lack of a process for paper review of corrective actions for minor deficiencies, and the disparate legislatively mandated treatment of GMP procedures for local and foreign sites. Moreover, industry stakeholders report that the GMP certificates for veterinary drugs that will be required beginning in September 2023 will present a significant barrier to imports and could potentially close the Russian market to exports of U.S. veterinary drugs.

*Toys*

In January 2021 Russia's Ministry of Health issued proposed draft legislation that would establish a psychological assessment of toys, games, and play structures. U.S. industry is concerned that the draft measure would lead to the arbitrary exclusion of certain toys from the Russian market. U.S. toy industry stakeholders have also raised a concern about the EAEU's ban on recycled content in toys, which they claim contradicts global toy safety standards and undermines the growing focus of the U.S. toy industry on sustainability.

**Sanitary and Phytosanitary Barriers**

Russia has banned imports of most agricultural products since August 2014. Notwithstanding the resulting virtual cessation of agricultural trade, the issues discussed below remain market access barriers.

*Stringent and Unscientific Sanitary and Phytosanitary Standards*

Russia maintains standards on a wide array of animal products that are more stringent than international standards set by the World Organisation for Animal Health (WOAH, previously OIE), the International Plant Protection Convention (IPPC), or Codex Alimentarius Commission (Codex). Findings of veterinary drug residues during Russian border inspection of U.S. meat and poultry products have resulted in trade disruptions, including the suspension of previously approved U.S. beef, pork, and poultry facilities. For example, in October 2013, the EEC adopted a zero-tolerance policy for beta agonists, including ractopamine, and trenbolone acetate for beef and pork products. These standards are more stringent than the Codex's maximum residue limits for these substances in both beef and pork. Russia notified this measure to the WTO in November 2017, and to date the United States is not aware of any complete risk assessment. Although the United States has established a Never Fed Beta Agonists Program, Russia's prohibition of these hormones, including for products that are not affected by Russia's import bans, prevents U.S. exporters of beef and pork products from accessing the Russian market. Russia also maintains a zero-tolerance policy for residues of veterinary drugs that it has not approved domestically, many of which are commonly used in U.S. animal production.

In addition to the product-specific issues discussed above and the 2014 import ban, U.S. exporters of agricultural products continue to face systemic issues in Russia. For example, since August 2008, Russian and EAEU veterinary certificates require U.S. regulatory officials to certify that exported products satisfy EAEU sanitary and veterinary requirements and meet certain chemical, microbiological, and radiological standards. These requirements are problematic because many EAEU sanitary and veterinary requirements appear to be excessively restrictive and lacking in scientific justification. Similarly, Russia requests U.S. exporters to submit certifications stating that the United States is free from various livestock diseases, even where the product in question could pose no risk of transmission. In other cases, Russia requires sanitary or phytosanitary attestations on export certificates for low-risk food or agricultural products without providing scientific evidence of the risk justifying such measures. For example, Russia requires phytosanitary attestations for shipments of certain plant-origin products destined for further processing, such as corn for popcorn, even though such processing removes any potential risk. The United States is also concerned with Russia's failure to remove certain veterinary control measures for lower risk products. Russia maintains a ban on cultivation of genetically engineered (GE) crops and the import of GE planting seeds, as well as stringent import restrictions on animal feed and burdensome methodological guidelines for the registration of GE products. The United States has pressed and will, as appropriate, continue to press for the removal of these types of barriers to exports of U.S. plant and animal products.

*Approved Exporter and Facility Listing Requirements*

Pursuant to a June 2010 EEC regulation, Russia only allows imports of most products under veterinary control (*e.g.*, meat, poultry, dairy, and seafood) from facilities on a list approved by all EAEU member states. Pursuant to a bilateral agreement signed in November 2006, Russia agreed to grant U.S. regulatory officials the authority to certify new U.S. facilities and recertify U.S. facilities that have remedied any previously reported import noncompliance. In practice, however, Russia has not consistently recognized the authority of U.S. regulatory officials to certify additional U.S. facilities, and there have been delays in responding to U.S. requests to update the list of approved U.S. facilities. Russia justifies its approach based on a decision by the Customs Union Commission, Decision No. 834 dated October 18, 2011, On the

Regulation on the Harmonized Procedure of Joint On-Site Inspections and of Taking Samples of Goods (Products) Subject to Veterinary Control (Supervision) and the subsequent EEC Decision No. 94 dated October 9, 2014, On the Regulation on the Harmonized Procedure of Joint On-Site Inspections and of Taking Samples of Goods (Products) Subject to Veterinary Control (Supervision). The EAEU has competence for facility inspections and approvals. The United States worked with Russian and EAEU authorities to negotiate an EAEU inspection regulation that allows the EAEU to accept the certification of additional facilities provided by sanitary and phytosanitary authorities in third countries that certify new facilities. However, implementation of this regulation has lacked predictability and transparency because EAEU member states often continue to insist on conducting their own inspections prior to approving a facility, without providing any rationale.

Similarly, Russia maintains exporter approved lists. Russia has effectively banned the importation of U.S. dairy products since September 2010, when Russia's Federal Service for Veterinary and Phytosanitary Surveillance (VPSS) instructed customs officials to allow shipments only from exporters on VPSS-approved lists. The EEC has now extended this listing requirement to most agricultural products. This directive appears to be inconsistent with EAEU legislation eliminating the requirement that a foreign producer be included on an approved list in order to be eligible to export dairy products to the EAEU. The listing requirement continues to prevent U.S. exports of heat-treated dairy products despite the fact that in March 2014, the United States and the Russia–Kazakhstan–Belarus Customs Union (CU) concluded negotiations on a U.S.–CU veterinary certificate. Despite its WTO accession commitment to eliminate listing requirements for pet food and animal feed products, Russia also continues to require approved lists of exporting establishments for pet food of animal origin. The United States has worked, where possible, with Russia and the other EAEU member states to eliminate the listing requirement for exporters of low-risk products, including heat-treated dairy products.

## GOVERNMENT PROCUREMENT

Russia is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since May 2013. In 2013, Russia adopted Law No. 44-FZ On the Contract System for the Procurement of Goods, Works and Services for State and Municipal Needs establishing the basis for a broad range of requirements relating to federal or municipal government procurement that it argues are not subject to the national treatment obligations of the General Agreement on Tariffs and Trade and the General Agreement on Trade in Services. Given the breadth of the Russian Government's role in the economy and the scope of the numerous import substitution policies and local content requirements applicable across a broad swath of the Russian economy, such measures impede trade because U.S. exports are excluded from a broad section of the Russian economy. Notwithstanding recent legislation simplifying the public procurement process, Russia's restrictions on its government procurement opportunities have accelerated since 2014 when Russia established a 15 percent preference for a variety of goods (including certain food products, pharmaceuticals, steel, machinery, and medical products) produced in the EAEU in purchases for government use and up to 30 percent for certain other products.

In addition, Russia has banned states and municipalities from purchasing foreign-made automobiles, other vehicles, and machinery, and banned procurement of a broad array of consumer goods produced outside the EAEU, unless there are no domestic or EAEU alternatives. The Industrial Policy Law, dated December 31, 2014, specifically promotes import substitution, restricting government procurement (and SOE purchases) of foreign-made products. It provides a framework for the support of certain product manufacturing, research and development subsidies, and infrastructure projects as well as implementation of the Buy Russia law. The law also includes provisions for financial and material support to Russian companies to boost their export potential. Since 2015, Russia has adopted increasingly autarkic measures reaffirming and expanding the ban on government procurement of a wide range of foreign-made products,

including, but not limited to, furniture, vehicles, machinery and equipment, tools, appliances, paper and cardboard, and shoes and clothing.

In addition, measures aimed at the health care industry, such as Russia extending its "three's-a-crowd" localization policy (banning government procurement of certain imported goods if more than two companies from EAEU member states submitted a bid) to government tenders for many drugs, medical devices and health-related disposable goods, have been challenging for U.S. stakeholders. If the "three's-a-crowd" rule is not applicable, a 15 percent price preference is applied. Russia has also adopted additional restrictions on government procurement of imported medicines and medical devices. An additional challenge to U.S. pharmaceutical producers is a reimbursement system that allows only domestic companies to request annual adjustment of prices registered by the Ministry of Health (MoH).

In August 2021, the MoH issued a resolution that significantly strengthens restrictions on public procurements for a range of over 170 groups of electronic equipment, including more than 30 groups of medical devices manufactured by foreign companies. The resolution introduced the so-called "two's-a-crowd" rule, which requires public customers procuring products listed in the resolution to reject bids from foreign manufacturers if there is already one (or more) bids for the supply of the same product manufactured in the EAEU. For the medical devices listed in this measure, this requirement will replace the similar "three's-a-crowd" rule, described above. These measures follow restrictions imposed by Russia that ban government procurement of over 100 imported radio electronic products and components and a 30 percent price preference in purchases by state-owned enterprises. In June 2022, the Ministry of Industry and Trade announced it had prepared a draft government decree on the introduction of the "second one out" rule in public procurement of essential drugs. If adopted, the decree would apply to the entire list of strategically important medicines from September 2024.

In 2016, the Russian Government issued Decree No. 823, amended by Decree No. 832 (last amended in May 2022) banning certain food and dairy products from non-EAEU member states for government and municipal procurement, including fresh and frozen fish, fish products, canned fish, salt, beef, pork, veal, poultry, cheese, cottage cheese, rice, butter, and sugar, and established minimum purchasing requirements of domestic goods. In April 2020, with the adoption of Resolution No. 616, the Russian Government introduced yet another series of bans and restrictions on the admission of foreign industrial goods for the purpose of public procurement and procurement for the needs of national defense and state security. Resolution No. 616 was last amended on October 3, 2022, expanding the list of banned foreign industrial goods in public procurement to meet the needs of national defense and state security during "special military operations" and mobilization in Ukraine.

Russia has expanded the reach of its import substitution policies into the technology sector. Pursuant to amendments to Russia's national procurement law (Law No. 44-FZ), Russia has created a registry of Russian software. Foreign-made software not on the list will no longer routinely qualify for government and municipal procurement unless no similar domestically produced software is available. In July 2016, the Russian Government went a step further and issued an order that approved a three-year plan to switch government agencies to Russian office software. According to U.S. stakeholders, because the move to domestic software was not moving fast enough, the Russian Government in 2020 proposed measures that would expand the list of companies considered Critical Information Infrastructure (CII), and thus extend to many private companies the import substitution requirements and local content requirements applied to government entities. In March 2022, the Russian President signed Decree No. 166 to ban SOEs from procuring foreign software and IT services for CII they operate. The Decree also banned SOEs and public authorities from using foreign information technology (IT) for CII starting on January 1, 2025. The Ministry of Digital Development, Communications, and Mass Media proposed expanding the current ban on the purchase and use of foreign IT products for CII operated by public authorities and SOEs to include privately owned CII. The Ministry of Digital Development is expected to submit a draft bill to the Cabinet.

If the bill becomes law, the ban on the purchase and the use of foreign IT products for CII will be applied to all CII operators, regardless of ownership. These measures will likely severely limit the ability of foreign-controlled entities to provide IT services to CII entities, and require CII entities to migrate toward using only domestic software and hardware.

## INTELLECTUAL PROPERTY PROTECTION

Russia remained on the Priority Watch List in the 2022 Special 301 Report. Challenges to intellectual property (IP) protection and enforcement in Russia include continued copyright infringement, trademark counterfeiting, and the existence of non-transparent procedures governing the operation of collective management organizations (CMOs). The United States is also closely monitoring proposals and measures undertaken by Russia to counter international sanctions by allowing uncompensated use of IP held by right holders based in countries that have sanctioned Russia.

Russia's inadequate and ineffective protection of copyright, including with regard to online piracy, continues to be a significant problem, damaging the market for legitimate content in Russia and in other countries. Despite adoption of 2017 anti-piracy legislation, Russia remains home to several sites that facilitate online piracy, as identified in the 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List). Stakeholders continue to report significant piracy of video games, music, movies, books, journal articles, and television programming. While right holders are able to obtain court-ordered injunctions against websites and smartphone applications offering infringing content, investigations and prosecutions of the owners of the large commercial websites distributing pirated material, including software, are lacking.

Trade in counterfeit goods causes significant financial losses for U.S. right holders and legitimate businesses, and Russia remains a thriving market for counterfeit goods sourced from China. Despite increased seizures by the Federal Customs Service, certain policies hamper IP enforcement efforts. For example, the "return to sender" policy for small consignments, which returns counterfeit goods to their producer, is problematic because it does not remove such goods from channels of commerce.

CMOs for copyright can play an important role in ensuring compensation for right holders when CMO practices are fair, efficient, transparent, and accountable. However, royalty collection by CMOs in Russia continues to lack transparency and lags behind international standards. Reports indicate that right holders are denied detailed accounting reports, making it difficult to verify how much money is being collected and distributed. Also, right holders are excluded from the selection and management of CMOs.

Finally, the United States is concerned about Russia's implementation of its WTO commitments related to the protection against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. Stakeholders report that Russia is eroding protections for undisclosed data and lacks an effective mechanism for the early resolution of potential pharmaceutical patent disputes. Stakeholders also continue to express concerns regarding certain evidentiary standards applied by the judiciary.

## SERVICES BARRIERS

Russia has begun to extend its import substitution policies beyond the provision of goods to include the provision of services.

### Audiovisual Services

In January 2022, the Russian Government announced that it would require any streaming service with over 100,000 daily users to register as a Russian company and to add 20 Russian television channels to its service, including Russian news stations, forcing U.S. suppliers to become platforms for Russian state propaganda. However, affected U.S. companies suspended operations in Russia due to the invasion of Ukraine before the measure went into effect.

### Financial Services

Russia continues to prohibit foreign banks from establishing branches in Russia, which means that only local subsidiaries are allowed. Moreover, since 2014, Russia has required that foreign-based credit card companies transmit data for all transactions within Russia through the National System of Payment Cards, undermining a key competitive advantage of foreign payments suppliers, which market their self-owned processing facilities located outside of Russia as supporting their reputation for strong consumer and privacy protections. In addition, the Central Bank of Russia (CBR) offers a domestic credit card (Mir) and a system which allows cheap peer-to-peer payments for Russian retail bank customers (Faster Payment System). Providing preferential treatment for Mir payment cards, the Government of Russia has passed mandates requiring public sector employees receiving state funds and welfare benefits to migrate to Mir payment cards and making pensions accessible only through Mir bank cards. U.S. stakeholders have raised concerns about Russia's creeping financial nationalism and the potential for unfair competition in the provision of these services because the CBR is the state regulator as well as the service provider.

## BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

### Data Localization Requirements

In 2016, Russia began to enforce the first step of its data localization regime. By 2020, Russia had implemented a regime requiring that certain data collected electronically by companies on Russian citizens be processed and stored in Russia, imposing significant operational challenges on providers of data-intensive services, as well as on manufacturers who rely on those services. Russia also requires certain telecommunications and Internet service providers (ISPs) to store certain communications content locally for six months and store metadata related to such content for one year or longer, depending on the type of provider (the so-called Yarovaya Amendments), giving the Russian security services the opportunity to request those data.

### Other Digital Trade Issues

Russian ISPs must install a special device on their servers to allow the Russian security services to track all credit card transactions. Russia threatens to shut off market access to ISPs that allowed their customers to use virtual private networks (VPNs). Industry stakeholders contend that the effects of these laws limit their ability to offer a variety of services in Russia and increase the cost of doing business in Russia, particularly for small and medium-sized enterprises (SMEs). Moreover, the law may require ISPs to provide excessive access to citizens' private information, raising privacy concerns.

In 2021, Russia implemented the so-called Landing Law which requires certain information technology companies (*i.e.*, any company with a website or application with more than 500,000 daily users) to establish a physical presence in Russia. U.S. companies, particularly SMEs, contend that this local presence requirement, coupled with difficult compliance requirements, harsh penalties, and concerns about staff safety, can constrain their ability to operate in Russia.

## INVESTMENT BARRIERS

With the imposition of sanctions by the U.S. Government, numerous U.S. companies have withdrawn from the Russian market or severely limited operations. For companies with a continued presence in Russia, corruption, lack of transparency, and the threat of creeping expropriation remain barriers to a stable and predictable investment environment. Further obstacles to investment in Russia include: restrictions on foreign ownership of agricultural land and land in border areas and investment in the mining and mineral extraction sectors; inadequate dispute resolution mechanisms; weak protection of minority shareholder rights; the absence of requirements for all companies and banks to adhere to accounting standards consistent with international norms; and, problems with enforcing the rule of law. In 2022, Russia adopted a variety of measures restricting the business affairs of foreign investors from "unfriendly states" (e.g., limiting disclosure requirements in certain sectors, allowing payment of financial obligations in rubles rather than dollars, and limiting certain transactions in sensitive sectors). Finally, despite the existence of an Anticorruption Council and anticorruption legislation, with the departure of many western companies and the growing role of the state in the Russian economy, corruption is likely on the rise in Russia.

### Investment Taxes

U.S. companies have also raised concerns about Russian tax authorities' scrutiny of payments that cross Russia's borders, but remain, for tax purposes, in the legal structure of the same Russian company. This issue has arisen when a multinational company transfers an employee temporarily to the company's Russian office from another office outside Russia. 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 2022, Russia banned cross-border payments by companies from jurisdictions deemed "unfriendly" by the Russian Government.

## SUBSIDIES

U.S. stakeholders have raised concerns about the potential cost advantage to certain Russian agricultural producers resulting from the provision of subsidies for the transportation of agricultural products, including for the transportation of wheat, barley, and corn from interior regions toward export destinations. Russia has provided the subsidy since 2017, stating the measure is intended to stimulate the movement of grain exports, stabilize domestic grain prices, and support profit margins of agricultural producers. In June 2022, Russia extended the railways subsidy through June 2023. The United States is concerned that this measure directly or indirectly subsidizes exports of Russian agricultural products. The implementing decree, No. 1104 dated September 15, 2017, specially mentions several border crossings with Mongolia and the PRC and authorizes the Russian Export Center (REC) to administer the subsidy. According to Russia, the REC is a state export support institution that provides financial and non-financial export support both to agricultural and non-agricultural value-added products. Russia agreed to no longer subsidize exports of agricultural products pursuant to the 2015 Nairobi Ministerial Decision.

## STATE-OWNED ENTERPRISES

Russia's numerous SOEs play a prominent role across much of Russia's economy. The Russian Accounts Chamber has estimated that SOEs account for about 48 percent of Russia's economy. While private enterprises are theoretically allowed to compete with SOEs on the same terms and conditions, in practice, the competitive playing field can be distorted in favor of SOEs. These advantages result from SOEs' lack of transparency and lack of independence, the presence of senior Russian Government officials on their Board of Directors, subsidization by the government, access to preferential lending by state-owned banks,

unclear responsibilities of their boards of directors, misalignment of managers' incentives and company performance, inadequate control mechanisms on managers' total remuneration or their use of assets transferred by the government to the SOEs, and minimal disclosure requirements.

A specific variant of SOEs, state corporations, are completely owned by the government and operate under separate legislation and in a marketplace distorted in their favor. For example, state corporation holding structures and management arrangements (*e.g.*, senior government officials as board members) create conditions for preferential treatment, while the case-by-case legal construction of state corporations (by virtue of their separate legal framework) leaves much scope for discretion and lobbying by company insiders at the expense of private enterprises. There are six state corporations: Rosatom, VEB, Fund for Communal Housing, Deposit Insurance Agency, Roskosmos, and Rostec.

In August 2021, the Russian Government extended by two years the implementation of the 2020-2022 Privatization Program. In December 2022, the Government extended the program through 2025, with plans to fully privatize 23 federal state unitary enterprises and sell its stakes in 151 joint stock companies and 9 limited liability companies by 2025. As of December 2022, the Russian Government still maintained a list of 44 SOEs with "national significance" that are either wholly or partially owned by Russia and whose privatization is permitted only with a special governmental decree, including Aeroflot, Rosneft, Rosneftegaz, Transneft, Russian Railways, and VTB. However, Russia has been slow in implementing the privatization plan. The treatment of foreign investors in privatizations conducted to date has been inconsistent, with foreign participation at times confined to minority stakes, which creates concerns about protection for minority shareholders and corporate governance.

## OTHER BARRIERS

### Export Policies

Notwithstanding its stated intent of reducing export duties following its accession to the WTO in 2012, in 2022, Russia began to impose various export restrictions on a wide variety of products. For example, in March 2022, Russia imposed a temporary ban on exports of over 200 industrial products, including technological, communication and medical equipment, vehicles, agricultural machinery, and electrical equipment. That list was later narrowed to 100 products. The list will be in place through the end of 2022. In addition, notwithstanding the global food security crisis, Russia has imposed temporary export restrictions (*e.g.*, export bans, export quotas, or export duties) on sunflower seeds, soybeans, grain crops, white sugar, raw cane sugar, rice and rice cereal, rapeseed, millet, buckwheat, meslin, cereal and cereal pellets, crude flour, barley, rye, corn, onions, garlic, turnips, sunflower oil and bagasse, fish products, sulfur used to produce sulfur-containing fertilizers, sulfur containing fertilizer, nitrogen-containing fertilizer, as well as on non-agricultural products such as certain types of logs, ferrous waste and scrap, stainless scrap and waste, waste and scrap of other alloy steel, and waste and scrap of tungsten.

Historically, Russia has maintained high export duties on crude oil to encourage domestic refining. Since 2019, Russia has gradually reduced export duties on crude and oil products, and plans to abolish them fully in 2024. At the same time, Russia has been raising its oil-extraction tax. Furthermore, Russia plans to continue its oil-tax maneuver that envisions a gradual decline in its oil exports duty and an increase in its mineral extraction tax. The change will make domestic crude more expensive for domestic refiners. Separately, Russia maintains a 30 percent export tax on natural gas. Stakeholders claim that Russia has placed higher rail freight rates on certain raw materials intended for export, contrary to its WTO commitment to eliminate discrepancies in such rates by July 1, 2013.

# SAUDI ARABIA

## TRADE AGREEMENTS

### The United States–Saudi Arabia Trade and Investment Framework Agreement

The United States and Saudi Arabia signed a Trade and Investment Framework Agreement (TIFA) in July 2003. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Saudi Arabia.

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

As a member of the Gulf Cooperation Council (GCC), Saudi Arabia applies the GCC common external *ad valorem* tariff of five percent on the value of most imported products, with several commodity-specific exceptions. Saudi Arabia's applied tariff rates range from 6.5 percent to 40.0 percent on goods that compete with domestic industries.

In July 2021, the Saudi Government announced that preferential market access under the GCC tariff agreements no longer applies to goods made in free trade zones or using Israeli inputs. In June 2022, the Zakat, Tax and Customs Authority (ZATCA) increased customs duty rates for 99 products, primarily foodstuffs, beverages, and industrial and agricultural products. The increased duty rates range from 5.5 percent to 25.0 percent.

*Taxes*

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

### Non-Tariff Barriers

*Import Bans*

Saudi Arabia prohibits the importation of 37 categories of products, such as alcohol, pork products, and gambling devices.

*Import Licensing*

Special approval is required for the importation of 23 categories of "restricted" products, such as pharmaceutical products, agricultural seeds, wireless equipment, and drones.

*Customs Barriers and Trade Facilitation*

While Saudi Arabia cancelled its requirement that invoices and customs documentation be authenticated by the Saudi Chamber of Commerce or Saudi Embassies in the country of export, this practice is still required by the Saudi Food and Drug Authority (SFDA) for a number of products.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

Over the years, Saudi Arabia has revised technical regulations for a variety of products to reflect a preference for standards developed by the International Organization for Standardization and International Electrotechnical Commission. Saudi Arabia has been increasingly reluctant to accept other international standards that may meet or exceed Saudi Arabia's regulatory objectives, including those developed by U.S. domiciled organizations through open, transparent, and consensus-based processes. Saudi Arabia's refusal to accept these other international standards, which are often used by U.S. manufacturers, creates significant market access restrictions for certain industrial and consumer products exported from the United States, including protective footwear, automobiles, electrical equipment and appliances.

The United States continues to engage Saudi Arabia on the importance of accepting international standards that are developed consistent with the WTO Committee on Technical Barriers to Trade (TBT Committee) Decision on international standards. The United States continues to encourage Saudi Arabia to develop and implement effective mechanisms for stakeholder consultation in regulatory decision making to help ensure that interested parties have opportunities to provide comments on draft regulations and to provide reasonable time for those comments to be considered. U.S. manufacturers have noted the importance of such consultations as Saudi Arabia develops and implements Corporate Average Fuel Economy (CAFE) regulations, as well as new energy efficiency regulations for a variety of consumer and industrial products, including air conditioners, electrical appliances, lighting, electrical motors, energy usage intensity, tires, and insulation.

*Automobiles*

While Saudi Arabia has historically accepted automobiles homologated to either U.S. Federal Motor Vehicle Safety Standards or UN Economic Commission for Europe (UNECE) 1958 Agreement regulations, Saudi Arabia has taken steps toward solely adopting UNECE 1958 regulations. For example, Saudi Arabia adopted a UNECE 1958 low rolling resistance tire regulation that effectively excludes tires needed for certain U.S. sport utility vehicles (SUVs) and pickup trucks sold in the Middle East. Saudi Arabia's new electric vehicle certification likewise is based only on UNECE 1958 regulations. While Saudi Arabia has adopted U.S. CAFE standards targets, the country's draft CAFE regulation does not contain certain flexibilities used in the U.S. program.

U.S. automakers have raised concerns over growing regulatory fragmentation in the GCC. While the Gulf Standardization Organization (GSO) is supposed to set standards for the entire GCC market, individual GCC Member States have instituted unique standards for automobiles that deviate from GCC automobile standards. The United States will be monitoring this issue across GCC Member States going forward.

*Restrictions on Hazardous Substances–Electrical Goods*

Saudi Arabia notified to the World Trade Organization (WTO) its draft Technical Regulation for the Restrictions of Hazardous Substances (RoHS) in December 2020, and subsequently published a revised version in the Official Gazette in July 2021. The regulation took effect for small household electrical items

on July 4, 2022; implementation for other covered products will follow at scheduled intervals. A revised version of the regulation, published on July 29, 2022, offered additional flexibilities but does not fully address concerns outlined in detailed comments from the U.S. Government and U.S. industry, or similar comments from other trading partners and global industry.

The most significant concerns relate to discrepancies between Saudi Arabia's regulation and international best practices for such regulations. In particular, the regulation includes an onerous requirement to provide a third-party certificate of conformity from a list of Saudi Government-approved testing facilities, a form of conformity assessment that is typically required to test high-risk products, rather than relying on the more widely used conformity assessment measures generally considered appropriate for lower risk products, such as the electrical equipment covered by the RoHS regulation. Conformity assessment schemes for RoHS, such as the European Union's RoHS rules, typically rely on integrated enforcement mechanisms including a supplier's declaration of conformity (SDoC), documentation of test results and technical specifications, regulatory sanctions, liability in tort law, and mechanisms to monitor or remove nonconforming products from the market. Saudi Arabia has yet to clarify the precise scope of the regulation, provide guidance on the process for testing whole equipment and critical components of a product, or clarify a requirement for suppliers to attach information that may include sensitive intellectual property as a part of their technical file of supporting documentation. Subsequent guidance issued with the July 2022 regulation has provided some flexibility in the ability of producers to satisfy certification requirements by submitting an SDoC, though it remains unclear whether these flexibilities will be afforded to all importers or only to manufacturers and their legal representatives.

In March 2018, GCC Member States notified the WTO of a draft GSO technical regulation that would require pre-market testing by accredited labs for certain hazardous substances in electrical goods. The measure would also require each type of good to be registered annually and require sample products to be submitted prior to receiving approval for use in the GCC. The United States has raised concerns that the proposed regulatory requirements would have a significant negative impact on the imports of U.S. electrical and electronic equipment, especially as the third-party certification requirements differ from international best practices.

*Conformity Assessment*

In 2018, Saudi Arabia implemented the Saudi Product Safety Program and launched an online certification and conformity assessment process (Saber) for all imported goods entering Saudi Arabia. Saber covers both regulated and unregulated products. Importers of regulated products must use Saber to initiate a certification request. If the product receives a Product Certificates of Conformity (PCoC), the importer is then issued a Shipment Certificates of Conformity (SCoC). Products requiring PCoCs include, but are not limited to: detergents, building materials, paints, vehicle spare parts, lubricant oils, toys, and textiles. For unregulated products, the importer must use Saber to self-declare whether the product meets a voluntary standard and that the good can be imported into the Saudi market. Following this self-declaration, the importer will be issued a Requester Declaration (S-DoC). An increasing number of U.S. companies have expressed concerns with the new Saber platform, including costs, administrative burdens, and undue delays, and some have reported inconsistencies in product testing fees and clearance processes. The United States has also questioned how the program relates to GCC conformity assessment requirements.

*Halal Regulations*

Saudi Arabia suspended imports of U.S. poultry in June 2018 due to implementation of halal regulations that ban stunning of poultry prior to slaughter. U.S. officials have informed the SFDA that the U.S. production system and government regulations ensure that poultry is alive prior to the slaughter process.

In 2019, several other trading partners with similar production practices resumed exports to Saudi Arabia, while imports from the United States remain prohibited.

In 2020, SFDA's newly created division of halal oversight, the Halal Center, implemented a registration requirement for halal certifying bodies. This registration is in addition to existing requirements for registration with the Saudi Standards, Metrology and Quality Organization. These requirements have yet to be notified to the WTO, and many elements of the registration program remain unclear.

Saudi Arabia also maintains halal feed restrictions, including a ban on animal protein in cattle feed and restrictions on the feeding of beef tallow to cattle, for imports of meat products from the United States, which limit U.S. beef exports to Saudi Arabia.

*Labeling Requirements*

In August 2020, SFDA published Temporary Requirements for Products with High Caffeine Content that establishes the maximum amount of caffeine permitted in sports supplements and requires advisory statements for other caffeinated foods and beverages. The United States understands the measure entered into force in 2020 and is monitoring the extent of its implementation.

In June 2021, Saudi Arabia notified to the WTO a proposed measure to restrict the marketing and advertising of foods considered to be "of low nutritional value" to children. In August 2021, the United States submitted comments on the measure and discussed these comments with Saudi officials.

*Energy Drinks*

In January 2016, GCC Member States notified to the WTO a draft GSO technical regulation for energy drinks, which was revised in March 2022. The U.S. Government and private sector stakeholders have raised concerns through bilateral and multilateral fora regarding the draft regulation. These concerns include the proposed marketing-based definition for energy drinks and labeling requirements regarding recommended consumption. Industry stakeholders still report that caffeine-content limitations unduly target energy drinks in GCC Member States. In many cases, such limitations do not apply to other drink products that contain similar or even higher levels of caffeine, such as tea, brewed coffee, and other ready-to-drink coffee products.

**Sanitary and Phytosanitary Barriers**

The World Organisation for Animal Health (WOAH) standards on zoning and compartmentalization provide recommendations for safe international trade between countries. Despite following WOAH guidelines for zoning or compartmentalization in most cases, Saudi Arabia does not recognize the existence of United States zones or compartments in the event that highly pathogenic avian influenza occurs within the United States. The United States continues to press Saudi Arabia to act consistently with WOAH guidelines.

In October 2018, Saudi Arabia proposed maximum residue limits for pesticides applicable to meat, grains, and horticultural products, many of which are based on European Union (EU) regulations and do not conform to those set by the Codex Alimentarius Commission (Codex). Saudi Arabia is also considering a ban on several pesticides widely used in the United States. The United States continues to engage Saudi Arabia regarding concerns with these regulations.

*Facility Listing Requirements*

In 2021, Saudi Arabia notified the WTO of new requirements related to pre-export approval for multiple products, including animal and dairy products, grains, and processed vegetables. Saudi Arabia implemented the requirements for honey and seafood products on November 20, 2021, but has not indicated a concrete timeline for implementing facility requirements for other products. This regulation requires an overseas audit, and Saudi Arabia expects the interested establishments and countries to potentially pay related travel expenses. The competent authorities, which include the U.S. Health and Human Services Food and Drug Administration and the U.S. Department of Agriculture Food Safety and Inspection Service, have worked with SFDA to confirm approved U.S. facilities. Discussions between SFDA and the U.S competent authorities are ongoing.

*Certification*

In 2021, Saudi Arabia began implementation of new regulations that require trading partners to adopt model certificates. The United States has requested Saudi authorities to instead accept comparable certifications currently issued by U.S. authorities.

*Food Additives*

U.S. industry stakeholders have noted concerns that the 2021 GCC Technical Regulations applied to Additives Permitted for Use in Foodstuffs are not aligned with relevant standards for food additives from the Codex, particularly with respect to additives such as curcumins and annatto that are widely used in cheese production, and may potentially disrupt trade in food products.

*Titanium Dioxide*

In September 2020, GCC Member States notified to the WTO a draft GSO technical regulation that would remove titanium dioxide from the list of approved food additives, in line with EU food additive regulations. Titanium dioxide is an adopted food additive that is included in the Codex General Standard for Food Additives (GSFA). As such, it may be used in specified foods under the conditions of good manufacturing practices as outlined in the Codex GSFA. The U.S. Department of Health and Human Services Food and Drug Administration continues to allow for the safe use of titanium dioxide as a color additive in foods, subject to certain restrictions, including that the quantity of titanium dioxide does not exceed one percent in weight of the food. The EU banned the use of titanium dioxide as a food additive on August 7, 2022, based on a risk classification that the European Court of Justice later ruled to be based on faulty scientific analysis. The EU is determining how to respond in light of the court's ruling. Following the EU move to ban the use of titanium dioxide in animal feed, in 2021 the Codex Committee on Food Additives agreed that titanium dioxide should be re-evaluated by the Joint FAO/WHO Expert Committee on Food Additives (JECFA). JECFA is set to meet and provide its findings in June 2023. The United States has requested that GCC Member States wait until this review has been completed before considering changes to their existing regulatory approval, given the lack of data demonstrating negative health effects from allowed uses of this food additive.

## GOVERNMENT PROCUREMENT

Foreign contractors must subcontract 30 percent of the value of any government procurement, including support services, to firms that are majority-owned by Saudi nationals. An exemption is granted when no Saudi-owned company can provide the goods or services necessary to fulfill the requirements of a tender. Foreign suppliers also are required to establish a training program for Saudi nationals. The Saudi Government is in the process of reforming its procurement processes and policies to incorporate new

ambitious goals of Saudi employment and localized production. In addition to offsets, the Saudi Government is focused on localization of purchases of goods and services and increasing the percentage of Saudi nationals employed by foreign firms, known as "Saudization." Previously, the government required offsets in investments of up to 40 percent of a program's value for defense contracts, depending on the value of the contract. Saudi Arabia provides a 10 percent price preference for GCC goods for procurements in which foreign suppliers participate. Saudi Arabia offers a 30 percent price preference for medicines made with locally manufactured active pharmaceutical ingredients. The initiative aims to increase the price preference percentage granted to these products when compared to foreign counterparts during the bidding process in government competitions.

Saudi Arabia revised its Government Tenders and Procurement Law in April 2020. The law regulates the contractual relationship between a public or government entity and contractors in terms of government tenders. U.S. companies have reported that the procurement systems lack transparency. In 2018, the Ministry of Finance launched the Electronic Government Procurement System (Etimad Portal) to consolidate and facilitate the procurement process for the public sector. The General Authority for Military Industries manages Saudi Arabia's armaments procurement activities.

U.S. companies have reported long delays and difficulties in receiving payments for procurement contracts with national and regional government entities, with some delays lasting more than two years. Delays increased significantly in late 2015, when declining oil revenues prompted the Saudi Government to freeze payments to major contractors, accruing tens of billions of dollars in arrears and leading some companies to lay off workers. Since late 2020, Saudi Arabia has prioritized timelier payment to contractors and uses the Etimad Portal to facilitate payments. U.S. companies continue to report significant payment delays but report that the overall amounts owed to them in 2022 are less than what was owed to them in 2021.

In 2021, Saudi Arabia announced that by 2024 all international companies must establish their regional headquarters in Saudi Arabia or be barred from doing business with the government. While Saudi Arabia published additional information on its regional headquarters initiative in January 2022, the regulation lacked specificity regarding investor requirements, implementation and enforcement, and the incentives available to companies that relocate their regional headquarters to Saudi Arabia. The United States continues to press for more details regarding this regulation.

In September 2019, the Saudi Government issued a royal decree prohibiting government departments and agencies from granting contracts to foreign consultancy firms, except in circumstances where there are no qualified Saudi alternatives. The royal decree remains subject to interpretation, as the decree does not define the criteria for exemptions, nor does it clarify whether local branches of foreign-owned firms would be subject to the prohibition.

Saudi Arabia is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since December 2007.

## INTELLECTUAL PROPERTY PROTECTION

Saudi Arabia was removed from the Priority Watch List in the 2022 Special 301 Report due to steps the Saudi Authority for Intellectual Property took to improve its intellectual property (IP) enforcement system and to conduct strong IP awareness outreach. However, stakeholders remain concerned that the SFDA has granted marketing approval to domestic companies for subsequent versions of registered pharmaceutical products without requiring the submission of data that meets the same requirements applied to the initial applicant, even though Saudi regulations require a period of protection to be provided to the initial applicant.

## SERVICES BARRIERS

### Financial Services

Saudi Arabia limits foreign ownership in commercial banks to 60 percent of any individual bank operation, but investment banks and brokerages can be 100 percent foreign owned.

### Insurance Services

Saudi Arabia requires that all insurance companies are locally-incorporated joint-stock companies. Insurance companies must operate on a cooperative or mutual basis, in effect requiring distribution of any profits between policyholders and the insurance company.

### Professional Services

Entities providing certain professional services, including engineering, legal services, accounting, architecture, healthcare, dental, and veterinary services, must have a Saudi partner. As a general rule, the foreign entity's equity in the joint venture cannot exceed 75 percent of the total investment. In order to avoid the equity cap, a 2017 measure requires foreign engineering consulting firms that are seeking to register a local branch or subsidiary to demonstrate that they have been incorporated for at least 10 years and have operations in at least 4 different countries.

## BARRIERS TO DIGITAL TRADE

### Data Localization

In March 2018, Saudi Arabia's Communications and Information Technology Commission (CITC) issued the Cloud Computing Regulatory Framework, which contains a data localization requirement for certain categories of sensitive data. While not yet implemented, such requirements may restrict market access for cloud and other information and communication technology (ICT) services provided on a cross-border basis. In addition, the CITC would gain broad powers to require cloud and other ICT service providers to install and maintain governmental filtering software on their networks, further restricting Internet-based services. Stakeholders also raised concerns about cybersecurity control frameworks published by the National Cybersecurity Authority (NCA) in October 2018 and February 2020, which require that government entities and operators of critical national infrastructure host and store data within Saudi Arabia.

In September 2021, Saudi Arabia enacted the Personal Data Protection Law (PDPL) that would impose restrictions on cross-border data flows. Stakeholders have noted concerns that the PDPL includes unnecessary data transfer restrictions and discriminates against foreign technologies. The Saudi Arabian Data and Artificial Intelligence Authority (SDAIA) published an amended draft of the PDPL in December 2022 and postponed full enforcement to address feedback received during the public comment period. SDAIA will also publish additional Executive Regulations in 2023.

## INVESTMENT BARRIERS

### Limitations on Foreign Equity Participation

Foreign investment is prohibited in 10 sectors, including oil exploration and drilling, security services, fisheries, tourist guidance services related to religious pilgrimage, and services related to military activity. For sectors in which foreign ownership is permitted, foreign investors are generally required to satisfy several conditions, including investing more than $50 million in the Saudi economy over five years,

employing Saudi nationals as a certain percentage of the workforce, and meeting sector specific localization requirements. These conditions have limited the ability of foreign investors to exercise full ownership in these sectors.

Only "qualified foreign investors" designated by Saudi Arabia's Capital Market Authority are permitted to buy directly shares listed on the local Tadawul stock exchange, with their investments capped at 10 percent of any individual company. Cumulative foreign ownership cannot exceed 10 percent of the total Tadawul market capitalization or 49 percent of any individual company.

# SINGAPORE

## TRADE AGREEMENTS

### The United States–Singapore Free Trade Agreement

The United States–Singapore Free Trade Agreement (FTA) entered into force on January 1, 2004. The United States and Singapore meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

## SANITARY AND PHYTOSANITARY BARRIERS

*Pathogen Reduction Treatments*

After several years of engagement on pathogen reduction treatments (PRTs), the Singapore Food Agency's Food (Amendment) Regulations 2022 came into effect on July 31, 2022. As a result, Singapore permits the use of 21 PRTs in the production of beef, pork, and poultry products, including PRTs commonly used in the U.S. meat and poultry industry, such as DBDMH/hypobromous acid and CPC solution, respectively. The United States continues to work closely with Singapore in implementing the requirements of the new regulation.

## INTELLECTUAL PROPERTY PROTECTION

Despite Singapore's overall strong record on intellectual property (IP) protection and enforcement, U.S. stakeholders continue to raise concerns regarding enforcement efforts against infringing goods transshipped through Singapore and the use of unauthorized streaming services and third-party illicit streaming devices to access pirated content. In November 2021, amendments to the Copyright Act entered into force that impose civil and criminal liability for knowingly making, importing for sale, commercially distributing, or selling illicit streaming devices, and also for providing a service to enable such devices to access content from unauthorized sources. The United States will monitor the implementation of these measures.

The United States continues to urge Singapore to implement its geographical indication system in a fair and transparent manner that does not undermine market access for U.S. producers and exporters who hold trademarks or rely on the use of common names, including in connection with trade agreement negotiations and implementation.

## SERVICES BARRIERS

### Audiovisual Services

*Pay and Satellite Television*

Since 2011, Singapore has implemented regulations requiring pay television providers to cross-carry exclusive broadcasting content acquired after March 12, 2010. These rules require a pay television company with an exclusive contract for channels or content to offer that content to subscribers of other pay television suppliers over those suppliers' networks at the same retail rates. U.S. content providers remain concerned about the negative impact these requirements have on private contractual arrangements, innovation in the packaging and delivery of new content to consumers, and investment in the market. This

approach is not currently applied to over-the-top services, which serves subscribers through the Internet, rather than through dedicated cable or satellite networks.

In addition, Singapore restricts the use of satellite dishes and has not authorized direct-to-home satellite television services.

**Financial Services**

The Monetary Authority of Singapore (MAS) must approve a merger or takeover of a bank incorporated in Singapore or of a financial holding company, as well as the acquisition of voting shares in such institutions above specific thresholds: 5 percent, 12 percent, and 20 percent. The government has a policy of maintaining local banks' market share at no less than 50 percent of total resident deposits. With respect to expansion of business within Singapore, MAS will consider awarding new qualifying full bank privileges to foreign banks of countries, such as the United States, with which Singapore has entered into a free trade agreement, where there are substantial benefits to Singapore.

MAS issued its inaugural digital bank licenses to two digital full bank firms and two digital wholesale bank firms in December 2020. For digital full banks, MAS requires applicants to be controlled and headquartered in Singapore, for a majority of its employees to be Singapore citizens, and for foreign entities to form a joint venture with a Singapore company.

**Professional Services**

*Legal Services*

Except in the context of international arbitration, U.S. and other foreign law firms with offices in Singapore are not allowed to advise on Singaporean law by hiring, or entering into partnership with Singapore-qualified lawyers. In order to advise on Singaporean law, foreign firms must either form a joint venture with a Singaporean law practice (licensed as a Joint Law Venture) or get licensed as a Qualifying Foreign Law Practice (QFLP). QFLP licenses are limited. Ten have been issued since 2008; nine are still active as of March 2022. According to the Ministry of Law, the QFLP scheme is not currently open for application and there are no details available regarding further rounds of applications.

**OTHER BARRIERS**

**Healthcare Services**

U.S. stakeholders have expressed interest in greater transparency regarding the Ministry of Health's (MOH) procurement process, subsidy policies, and procedural rules regarding medical devices, and pharmaceuticals, notably for approvals of biopharmaceutical innovations.

*Pharmaceuticals*

In August 2021, Singapore introduced a list of government-approved drugs and treatments eligible for the country's basic health insurance plan available to citizens and permanent residents. It is important for Singapore to provide stakeholders with meaningful opportunities for input when considering changes to its reimbursement policies.

# SOUTH AFRICA

## TRADE AGREEMENTS

### The United States–South Africa Trade and Investment Framework Agreement

The United States and South Africa signed a Trade and Investment Framework Agreement (TIFA) on June 18, 2012, amending the original 1999 agreement. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and South Africa.

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

South Africa's average Most-Favored-Nation (MFN) applied tariff rate was 7.8 percent in 2021 (latest data available). South Africa's average MFN applied tariff rate was 8.8 percent for agricultural products and 7.6 percent for non-agricultural products in 2021 (latest data available). South Africa has bound 93.8 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 19.0 percent, including 39.0 percent for agricultural products and 15.6 percent for non-agricultural products in 2020 (latest data available). South Africa's maximum WTO bound tariff rate for industrial products is 50 percent, while its maximum WTO bound tariff rate for agricultural products is 597 percent.

U.S. exports face a disadvantage compared to European Union (EU) goods in South Africa due to the EU–South Africa Trade and Development Cooperation Agreement (TDCA) of 1999. South Africa's tariffs, when applied to imports from the EU on TDCA-covered tariff lines, average 4.5 percent. The MFN duty rate, which applies to imports from the United States, averages 18.4 percent for the same TDCA-covered lines. Key categories in which U.S. firms face a tariff disadvantage include cosmetics, plastics, textiles, motor vehicles, agricultural products and machinery.

The European Union–South African Development Community (SADC) Economic Partnership Agreement (EPA), which entered into provisional force in October 2016 and remains in force while awaiting ratification by all EU Member States, has led to greater disparities in tariff levels for U.S. exports. The United States has raised concerns about the tariff disparity in bilateral discussions with South Africa noting the unilateral tariff benefits the United States offers South African imports under the African Growth and Opportunity Act and the Generalized System of Preferences.

The South African International Trade Administration Commission (SAITAC) is currently reviewing the poultry tariff structure and considering proposals that could further hinder imports, including instituting an entry price structure and redefining tariff lines to reflect tariffs at the 6-digit, 7-digit, or 8-digit level. This tariff line change would fold different product categories together, and the South African Government could then select the highest tariff from amongst the group to represent the new product set.

The tariff-rate quota established by U.S. and South African poultry industry groups in 2016 for U.S. frozen bone-in chicken meat initially led to significant growth in exports. However, the volume of U.S. exports has fallen over the past two years due primarily to a 2020 increase in the tariff rate from 37 percent to 62 percent on bone-in chicken portions. U.S. export challenges have been compounded by export restrictions due to the highly pathogenic avian influenza in 2022. The United States continues to work with South African partners to improve access to the South African poultry market.

## Non-Tariff Barriers

*Import Bans and Import Restrictions*

The South African Department of Trade, Industry, and Competition (DTIC) prohibits the importation of certain classes and types of goods into South Africa, but in some cases an importer may get an exception from the prohibition by applying for an import permit from SAITAC. SAITAC also requires import permits on used goods if such goods are also manufactured domestically, significantly limiting importation of used goods. Other categories of controlled imports include waste, scrap, ashes, residues, and goods subject to quality specifications and regulations published by the Government of South Africa.

*Customs Barriers and Trade Facilitation*

South Africa ratified the WTO Trade Facilitation Agreement (TFA) on November 30, 2017. South Africa has not yet submitted three transparency notifications related to: (1) import, export, and transit regulations; (2) the use of customs brokers; and, (3) customs contact points for the exchange of information. These notifications were due to the WTO on February 22, 2017, according to South Africa's self-designated TFA implementation schedule.

# TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

## Technical Barriers to Trade

*Certification for Electromagnetic Compatibility Goods*

The South African Bureau of Standards (SABS) implements a program for the issuance of Certificates of Compliance (CoCs) for Electromagnetic Interference/Compatibility (EMI/EMC) of electrical and electronic goods, including an annual non-refundable fee paid by manufacturers for each CoC, fees for registering factories, and fees for model name changes. The program also requires manufacturers to have EMI/EMC testing done at SABS verified third-party labs. If testing is required from an independent lab that is not SABS verified, the manufacturer must request that the lab be verified through SABS at the expense of the lab. Ultimately, the regulation is meant to ensure that all electronic equipment entering South Africa meets the required quality-performance standards. However, some industry stakeholders have raised concerns that the five-fold increase in certification costs, the additional administrative burden, and the lack of resources in South Africa to support the new procedure will extend time to market for quickly evolving and obsolescing information and communication technology products. South Africa still accepts test results from International Laboratory Accreditation Cooperation-certified labs, but SABS also conducts a comprehensive review of the test results to ensure that the product meets South African EMC standards. The protracted review can take up to 18 months to complete, during which time the product may become obsolete.

## Sanitary and Phytosanitary Barriers

*Certification and Sealing of Containers for U.S. Meat and Poultry Exports*

In 2016, following the conclusion of health certificate negotiations on poultry, pork, and beef, South Africa's Department of Agriculture, Land Reform and Rural Development (DALRRD) agreed that a U.S. Department of Agriculture (USDA) veterinarian would sign export health certificates and accepted that the exporters would provide container and seal information below the USDA veterinarian signature on the letterhead certificate. However, DALRRD has been inconsistent in the acceptance of the agreed-upon

certificate and often requires that the USDA provide a replacement certificate to correct any clerical errors made by exporters, which causes lengthy and costly delays. Furthermore, on October 20, 2022, DALRRD effectively declared an impasse for granting all new market access for additional meat and poultry products, noting the compromise to allow the exporter to provide the information was a "one-time-exception." The U.S. Government has provided numerous and extensive explanations for U.S. export processes, noting that while USDA veterinarians examine and certify consignments of U.S. Department of Agriculture Food Safety and Inspection Service-regulated products intended for export; veterinarians are not present at each port to certify industry details such as container and seal information.

*Sail Date Based Rejections*

DALRRD occasionally rejects shipments of meat and poultry if certificates were signed after the vessel departure date. Despite repeated official requests for clarification and scope of this policy, DALRRD has not responded. Although such consignments have generally been released after USDA intervention, this causes lengthy and costly delays.

*Pork*

South Africa imposes multiple restrictions on the importation of pork. For example, South Africa imposes freezing requirements for imported pork and pork products, which the United States does not consider to be warranted. Additionally, South Africa requires certification that swine are free of pseudorabies, even though the United States achieved the successful eradication of pseudorabies in commercial herds in all 50 states in 2004. South Africa also imposes a restriction on pork cuts allowed for importation due to South Africa's concerns related to the risk profile of specific cuts for Porcine Reproductive and Respiratory Syndrome. This restriction raises concerns of consistency with current international standards.

In January 2016, the U.S. Government and DALRRD reached agreement on the content of a USDA export health certificate for the importation of some U.S. pork and pork products into South Africa. In December 2017, DALRRD began allowing the importation of five additional pork cuts from the United States. An additional two cuts were approved on October 20, 2022. However, many cuts remain ineligible.

*Poultry*

In January 2016, the U.S. Government and DALRRD reached agreement on a USDA export health certificate for the importation of U.S. poultry into South Africa. At the same time, the U.S. Government and DALRRD agreed to specific procedures with respect to *Salmonella* testing to be applied to imports of U.S. poultry. This permitted the resumption of U.S. poultry imports into South Africa. Despite this significant progress, in 2022, U.S. exporters and South African importers continued to experience challenges and inconsistencies related to South Africa's *Salmonella* testing methodology. Notably, numerous consignments were rejected for a finding of a specific serotype of *Salmonella*, a practice that appears to be inconsistent with existing agreements. Although these consignments were ultimately released, they were detained for long periods, often in excess of twenty days, creating significant storage costs.

*Horticultural Products*

South Africa prohibits imports of apples from the Pacific Northwest, except for apples originating from orchards that have been declared free from apple maggot (*Rhagoletis pomonella)*. The United States is seeking market access for apples that originate from areas where apple maggot is present, provided that the apples undergo a cold treatment protocol. During the October 2022 plant health bilateral meetings, the

United States continued to work with DALRRD to schedule site visits for South African plant health regulators to inspect U.S. production areas and cold storage processes.

In 2014, the United States requested market access for blueberries. The U.S. Department of Agriculture Animal and Plant Health Inspection Service and DALRRD are working on pest risk mitigations. During the October 2022 plant health bilateral meeting, DALRRD requested an in-person site visit to observe the blueberry harvest.

## INTELLECTUAL PROPERTY PROTECTION

The South African Government has taken some positive steps toward more effective enforcement of intellectual property (IP), including appointing additional enforcement officials, improving the training provided to these officials, and increasing public awareness of IP. However, stakeholders report significant concerns.

In March 2019, the South African Parliament passed the Copyright Amendment Bill and the Performers' Protection Amendment Bill that contain some needed modernizations of the copyright law, such as the introduction of the right of communication to the public. However, these bills also contained provisions that some stakeholders, including significant numbers of South African and international stakeholders, particularly in the creative industry, assert would weaken the adequacy and effectiveness of copyright and related rights protection in South Africa. Specific concerns include broad and ambiguous exceptions to copyright, new limitations on contractual relations between private parties, and provisions regarding technological protection measures that include overly broad exceptions and lack prohibitions on the circumvention of access controls. In June 2020, the South African President sent the bills back to Parliament citing constitutional concerns. Parliament then solicited public comments and held public hearings on the bills. On September 1, 2022, the National Assembly passed the bill and sent it to the National Council of Provinces for further consideration.

Under the SADC EPA, which entered into force on a provisional basis in 2016, South Africa agreed to prohibit the use of certain terms that may be common names by recognizing them as geographical indications in its domestic market. The United States remains highly concerned about countries negotiating product-specific IP outcomes as a condition of market access from the EU and reiterates the importance of each IP right being independently evaluated on its individual merits.

## SERVICES BARRIERS

On September 28, 2021, South Africa's president signed the Private Security Industry Regulation Amendment Act, which prescribes that a security business may only be registered to render security services in South Africa if it is at least 51 percent owned and controlled by South African citizens. The Act also permits the police minister to prescribe different percentages of domestic ownership and control required as a prerequisite for the registration of security businesses operating in different market segments. South Africa has full commitments under the WTO General Agreement on Trade in Services (GATS) with respect to investigation and security services, including with respect to national treatment for the commercial presence of foreign suppliers. The United States will continue to engage South Africa on the issue.

## BARRIERS TO DIGITAL TRADE

In April 2021, South Africa published the Draft National Policy on Data and Cloud. If the Policy's recommendations are implemented, the resulting measures would impose restrictions on the cross-border transfer of data through requirements that certain data be processed and stored locally, mandating a copy

of all data relating to South African citizens be stored locally, and imposing mandatory data sharing requirements.

## INVESTMENT BARRIERS

South Africa is generally open to foreign direct investment. It imposes local content requirements on investments in a number of sectors. In 2021, the DTIC released a policy statement on localization that complements and further defines the Economic Reconstruction and Recovery plan laid out by the South African President in October 2020, as well as a 42-product category import substitution plan. The localization plan's cornerstone is the implementation of a program to substitute at least 20 percent of imports across selected categories with local goods by 2025, with some industry specific master plans setting higher targets. For instance, the industrial master plan for textiles sets a goal for 60 percent of all clothing sold in South Africa to be locally manufactured by 2030.

Broad-Based Black Economic Empowerment (B-BBEE) and associated codes of good practice award bidding preferences on government tenders and contracts to firms with the requisite levels of company ownership and participation by Black South Africans. The B-BBEE Codes of Good Practice creates a certification system (a "B-BBEE scorecard") that rates a company's commitment to the empowerment of historically disadvantaged people in South Africa, which is an important and sustained objective of the South African Government. A strong rating is particularly important in competition for public tenders, as the B-BBEE scorecard accounts for 10 percent of a bid's assessment. It also is important for branding purposes and for managing client relationships, as a company's score can influence a client's own B-BBEE score. South Africa has made B-BBEE requirements stricter in recent years. In 2016, the South African Government created a program called Equity Equivalence for international companies that cannot meet the ownership element of B-BBEE through the direct sale of equity to local investors.

### Other Investment Restrictions

In October 2020, the South African Government published a draft land expropriation bill for public comment that would amend South Africa's 1975 Expropriation Act to explicitly allow expropriation of property, including land, without compensation. The National Assembly also established a committee to engage in a parallel process to amend South Africa's constitution to explicitly allow for expropriation without compensation. After the constitutional amendment failed to garner enough votes in December 2021, the land expropriation bill was adopted by the National Assembly on September 28, 2022. The bill introduces instances where no compensation could be paid for expropriated land, something which is not legal under South Africa's constitution.

## STATE-OWNED ENTERPRISES

State-owned enterprises (SOEs) play a significant role in the South African economy in key sectors such as electricity, transport (air, rail, freight, and pipelines), and telecommunications. Limited competition is allowed in some sectors (*e.g.*, telecommunications and air). South Africa's interest in these sectors often competes with and discourages foreign investment.

On July 25, 2022, South Africa's president announced a series of proposed measures to address the country's ongoing energy crisis. These measures included unbundling Eskom, South Africa's state-owned electricity utility, into separate generation, transmission, and distribution units. This is intended to allow independent power producers to supplement Eskom's declining generating capacity and provide price competition. To unbundle the transmission unit, Eskom created the National Transmission Company South Africa SOC Limited (NTCSA) on December 20, 2021 as a wholly-owned subsidiary, but as of December 31, 2022 the NTCSA was not licensed to operate.

## ENVIRONMENT

South Africa's Renewable Energy Independent Power Producer Procurement Programme (REIPPPP) is a government-led procurement program that aims to increase the share of renewable energy in the national grid by procuring energy from independent power producers (IPPs). The REIPPPP is an important component of South Africa's overarching Integrated Resource Plan for electricity and makes clear targets for the procurement of renewable energy. However, foreign companies seeking to bid on REIPPPP tenders often face a number of hurdles, including local content requirements that are difficult to meet as South Africa's producers are not always able to provide the quantity of materials necessary for a particular project. Recently, to address the ongoing energy crisis, South Africa reduced the local content requirement for bid round five of the REIPPP from 100 percent to 35 percent, which stakeholders have seen as a welcome move.

# SWITZERLAND

## TRADE AGREEMENTS

### The United States-Switzerland Trade and Investment Cooperation Forum Agreement

The United States and Switzerland signed the Trade and Investment Cooperation Forum Agreement on May 25, 2006. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Switzerland.

## IMPORT POLICIES

### Tariffs

Switzerland's average Most-Favored-Nation (MFN) applied tariff rate was 5.6 percent in 2021 (latest data available). Switzerland's average MFN applied tariff rate was 32.4 percent for agricultural products and 1.3 percent for non-agricultural products in 2021 (latest data available). Switzerland has bound 99.7 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 7.6 percent.

In September 2021, the Swiss Parliament approved amendments to the Customs Tariff Act that would abolish tariffs on all industrial imports, while leaving agricultural tariffs unchanged. The amendments will enter into force on January 1, 2024. The elimination of industrial tariffs is expected to remove duties that currently apply to almost 26 percent of U.S. non-agricultural exports to Switzerland.

*Agriculture*

U.S. agricultural market access to the Swiss market is limited by high tariffs on certain products, preferential tariff rates for products from other trading partners, and certain government regulations.

Swiss agriculture is highly subsidized and regulated with price controls, production quotas, import restrictions, and tariffs all supporting domestic production. Imports of a broad range of agricultural products, particularly those that compete with Swiss products, are subject to seasonal import duties, quotas, and import licensing. Agricultural products not produced in Switzerland, such as tropical fruit and nuts, tend to have lower tariffs.

Swiss trade groups and certification associations also impose some barriers to agricultural imports that compete with Swiss products. In particular, the registration fee for bovine genetics for U.S. bulls remains many times higher than the fee for domestic bulls.

### Non-Tariff Barriers

*Import Licensing*

Switzerland maintains a complex import licensing regime, primarily to facilitate the allocation of tariff-rate quotas (TRQs). TRQ-related non-automatic licenses are required for imports of various animal, dairy, fresh fruit, and vegetable products.

## SANITARY AND PHYTOSANITARY BARRIERS

Switzerland aligns many of its sanitary and phytosanitary (SPS) measures with those of the European Union (EU). As outlined in the SPS section of the EU Chapter in this National Trade Estimate Report, specific trade concerns include measures that unnecessarily restrict trade without furthering safety objectives because they are not based on science, are maintained without sufficient scientific evidence, or are applied beyond the extent necessary that negatively impact market access for U.S. agricultural products.

*Agricultural Biotechnology*

Switzerland's restrictive phytosanitary measures for agricultural biotechnology products have impeded access to the Swiss market. In particular, Switzerland maintains a moratorium on the planting of biotech crops and the marketing of products derived from animal biotechnology. In March 2022, the moratorium was extended for the fourth time until 2025. However, by mid-2024, the Swiss Government must present approval rules on how genetically modified organisms without foreign genetic material can be exempted from the moratorium. As of December 2022, Switzerland had only approved one biotech soybean product and three biotech corn products for food and feed use, and only eleven total enzymes, vitamins, and sugars produced by or derived from modern agricultural biotechnology for food use.

## INTELLECTUAL PROPERTY PROTECTION

Switzerland generally maintains high standards of intellectual property (IP) protection and enforcement, and makes important contributions to promoting such protection and enforcement internationally. Although Switzerland was removed from the Special 301 Report in 2020 after many years of engagement, U.S. copyright holders continue to have concerns that Switzerland remains a host country for websites offering infringing content and the services that support them, and about amendments to Switzerland's Copyright Act that came into force on April 1, 2020. These concerns include: continuing uncertainty regarding the application of the amended provisions of the Copyright Act; alleged difficulties in using IP addresses to pursue civil claims of copyright infringement; a "private use" exception that permits personal use of a single copy of a work even if derived from an unauthorized source; and, a lack of sufficient "know-your-customer" protocols for data centers and internet service providers. The United States is carefully monitoring the Swiss Government's implementation and interpretation of the new legislation as well as its effectiveness.

## SERVICES BARRIERS

### Audiovisual services

A "unique distributor clause" in Switzerland's Film Act requires a single distributor to have exclusive control over all language versions of a film for all forms of distribution, including theatrical release, DVDs, and video-on-demand. In 2021, the Swiss Parliament passed a new law requiring non-domestic video-on-demand services to pay four percent of their revenues sourced from Switzerland into a fund to support Swiss film production. The law also requires a 30 percent quota of European-produced content in their video-on-demand offerings, which will apply as of January 1, 2024.

### Insurance Services

Managers of foreign-owned insurance company branches must reside in Switzerland. Public monopolies provide fire and natural disaster insurance in 19 of 26 cantons and workers' compensation insurance within certain industries.

## BARRIERS TO DIGITAL TRADE

### Data Localization Requirements

Swiss law restricts the transfer of personal data outside of Switzerland, except to specific countries Switzerland has determined provide adequate data protection under Swiss law or when other specific requirements are met, such as the use of standard contract clauses or binding corporate rules. Restrictions on the flow of data have a significant effect on the conditions for enabling the functionality embedded in smart devices.

On September 8, 2020, the Federal Data Protection and Information Commissioner of Switzerland issued an opinion concluding that the Swiss–U.S. Privacy Shield Framework does not provide an adequate level of protection for data transfers from Switzerland to the United States pursuant to Switzerland's Federal Act on Data Protection. The Swiss action followed a July 2020 judgment by the Court of Justice of the European Union, which invalidated an earlier European Commission decision on the adequacy of the protection provided by the EU–U.S. Privacy Shield Framework. The Swiss Government had determined in January 2017 that the Swiss–U.S. Privacy Shield Framework provided U.S.-based organizations with a mechanism to comply with Swiss data protection requirements when transferring personal data from Switzerland to the United States.

On October 7, 2022, the U.S. President signed the Executive Order on Enhancing Safeguards for United States Signals Intelligence Activities to implement the U.S. commitments announced with the European Commission President in March 2022. The U.S. Government will remain in close contact with the Swiss Government to discuss obtaining a new adequacy decision to enable the transfer of personal data from Switzerland to the United States based on the enhanced safeguards that are implemented through the Executive Order and the accompanying regulations.

# TAIWAN

## OVERVIEW

The United States and Taiwan have had in place a Trade and Investment Framework Agreement (TIFA), signed by the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO) (formerly the Coordination Council for North American Affairs), since 1994. This Agreement is the primary mechanism for discussing a broad range of trade and investment issues between the United States and Taiwan. Meetings of the TIFA Council are typically co-led by a Deputy United States Trade Representative and Taiwan's Deputy Minister of Economic Affairs, under the auspices of AIT and TECRO. The last TIFA Council meeting was held virtually on June 29, 2021.

In addition to engagement under the TIFA, the United States and Taiwan, under the auspices of AIT and TECRO, announced the launch of the United States–Taiwan Initiative on 21st-Century Trade on June 1, 2022. The United States and Taiwan intend to use this new initiative and their ongoing engagement with the U.S. Congress and U.S. stakeholders to advance and deepen the important U.S.–Taiwan economic and trade relationship, to promote shared values, and to address shared challenges and opportunities in eleven key trade areas, including: agriculture, anticorruption, digital trade, environment, good regulatory practices, labor, non-market policies and practices, small and medium-sized enterprises, standards, state-owned enterprises, and trade facilitation.

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

Taiwan's average Most-Favored-Nation (MFN) applied tariff rate was 6.66 percent in 2021 (latest data available). The average MFN applied tariff rate was 17.6 percent for agricultural products and 4.8 percent for industrial products in 2021 (latest data available). Taiwan has bound 100 percent of its tariff lines at the World Trade Organization (WTO), with an average bound tariff rate of 6.9 percent.

Taiwan maintained tariff-rate quotas (TRQs) on multiple products when it became a WTO Member in January 2002, and then phased several of them out over the years. However, many TRQs on agricultural products remain in place today. Agricultural TRQs cover 16 products, including rice, peanuts, bananas, and pineapples.

Taiwan has recourse to special safeguards (SSGs) for agricultural products covered by TRQs. SSGs, which are permitted under Article 5 of the WTO Agreement on Agriculture, allow Taiwan to impose additional duties when import quantities exceed SSG trigger volumes or import prices fall below SSG trigger prices. Because Taiwan previously did not import many of these products, its SSG trigger volumes are relatively low. As of December 31, 2022, Taiwan has recourse to an SSG for 14 agricultural product categories, including poultry meat, certain types of offal, and milk.

*Taxes*

Taiwan taxes rice wine for cooking and distilled rice wine (*mijiu*) at a lower rate than that applied to alcoholic products consumed as beverages, even though *mijiu* is consumed as an alcoholic beverage. The United States and other trading partners continue to express their concerns to the Taiwan authorities that

steps should be taken to ensure that imported alcoholic beverages are not taxed at a higher rate than domestically produced alcoholic beverages, including *mijiu*.

### Non-Tariff Barriers

*Quantitative Restrictions*

In certain years, the Taiwan authorities have rejected bids from U.S. rice exporters under its country-specific quota (CSQ) regime, arguing that high U.S. prices exceeded Taiwan's ceiling price. Taiwan's ceiling price mechanism is not made public, raising concerns that prices are arbitrarily set lower than the levels bid by U.S. exporters, causing the tenders to fail. In 2018, five percent of the U.S. CSQ (3,134 metric tons) was released to global tender. In 2019, Taiwan filled the U.S. CSQ of 64,634 metric tons, but with 12,000 metric tons of that quota filled with a low-grade specification normally intended for animal feed. In 2020 and 2021, the U.S. CSQ was filled by December 1 with no issues reported. In 2022, Taiwan filled only 61 percent (39,355 metric tons) of the U.S. CSQ with the remainder (25,279 metric tons) released to global tender, the biggest shortfall since 2014. U.S. Government and industry concerns over rice market access persist, both in terms of quantity and quality of the rice.

*Customs Barriers*

Taiwan requires that genetically engineered (GE) and non-GE raw materials, such as corn and soybeans, enter under separate tariff lines. The GE products are evaluated in comparison to their non-GE counterparts and, once approved, are comingled with the non-GE products in the agricultural supply chain. Thus, there is no scientific or technical basis for Taiwan's separate tariff lines for GE and non-GE raw materials.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Agricultural Biotechnology Regulations*

Taiwan has banned the use of biotechnology food ingredients and processed food with biotechnology food ingredients in school meals since December 2015. The United States continues to highlight the lack of a scientific basis for this ban and to urge its removal.

*Country of Origin Labeling – Pork*

On January 1, 2021, Taiwan implemented country of origin labeling requirements for a range of pork products, including processed pork products. The relevant measures were notified to the WTO in September 2020. Taiwan's presentation of the labeling requirements to the public as a means to ensure the food safety of U.S. pork products, while simultaneously implementing maximum residue limits (MRLs) for ractopamine in imported pork, inaccurately implied that there is a food safety concern with U.S. pork products, including pork produced with ractopamine. (*For further information, see the Sanitary and Phytosanitary Barriers section.*) The United States submitted comments through the USA WTO TBT Enquiry Point, raising concerns with these labeling requirements. The United States has raised concerns about the labeling requirements bilaterally with Taiwan, including on the margins of the October 2020 and February 2021 WTO Committee on Technical Barriers to Trade meetings, the June 2021 TIFA Council meeting, and the 2022 meetings of the TIFA Agriculture Working Group.

*Auto Standards*

Taiwan adopted the United Nations Economic Commission for Europe (UNECE) auto standards when it became a WTO Member in January 2002. In April 2008, Taiwan's Ministry of Transportation and Communications (MOTC) introduced a regulation that allows the importation of a limited number of imported vehicles that are not UNECE-compliant but do comply with U.S. Federal Motor Vehicle Safety Standards (FMVSS), which provides an equivalent level of safety. MOTC's regulation limited the number of FMVSS-compliant vehicles on the road in Taiwan to 100 units per car model in 2021, and this number will be reduced to 75 units per car model by 2023. Some vehicle manufacturers in the United States want to periodically introduce unique new U.S.-made models in order to stimulate interest in their brands. However, if the vehicles are FMVSS-compliant but not UNECE-compliant, exports of those vehicles cannot exceed the limit set by MOTC.

**Sanitary and Phytosanitary Barriers**

*Import Bans, Import Licensing, and Other Restrictions – Beef and Beef Products*

Taiwan banned imports of U.S. beef and beef products following the detection of an animal with bovine spongiform encephalopathy (BSE) in the United States in 2003. In October 2009, the United States and Taiwan reached an agreement on a protocol, signed by AIT and TECRO, to expand market access to fully re-open the Taiwan market to all U.S. beef and beef products for human consumption. However, Taiwan subsequently implemented a number of barriers to U.S. beef and beef products.

On January 1, 2021, Taiwan lifted its ban on imports of U.S. beef and beef products from cattle 30 months of age and older, which had been in place since 2010. The removal of the ban includes U.S. beef and beef products derived from Canadian-born cattle aged 30 months and over, provided the Canadian cattle are raised in the United States for at least 100 days prior to slaughter in the United States.

Taiwan has not addressed other longstanding barriers to U.S. beef products. Claiming BSE concerns, Taiwan continues to ban imports of certain U.S. beef products (*e.g.*, ground beef). Imports of these products are permitted under the 2009 AIT-TECRO beef protocol. Taiwan imposes onerous port-of-entry inspection procedures that are not science-based on certain U.S. beef offal products. The United States continues to urge Taiwan to open its market fully to U.S. beef and beef products based on science, the World Organisation for Animal Health (WOAH) guidelines, the United States' negligible risk status for BSE, and the 2009 AIT-TECRO beef protocol.

*Import Bans – Animal Byproducts*

Taiwan continues to restrict the importation of bovine blood products for animal consumption and bulk shipments of tallow from the United States, citing concerns related to BSE. The WOAH guidelines recognize these commodities as safe-to-trade, regardless of the BSE risk status of the exporting country. The United States continues to urge Taiwan to open its market to U.S. bovine blood products for animal consumption and bulk shipments of U.S. tallow, based on the WOAH guidelines.

*Maximum Residue Limits – Beta-agonists*

Taiwan has not implemented Codex Alimentarius Commission (Codex) MRLs for ractopamine in imported beef products other than imported beef muscle (*e.g.*, offal). On January 1, 2021, Taiwan implemented Codex MRLs for ractopamine in imported pork muscle, fat, and liver. Taiwan also implemented MRLs for ractopamine in imported pork kidney and other edible parts (*e.g.*, offal other than kidney and liver) that are more restrictive than the Codex MRLs. The United States is concerned that Taiwan's MRLs for imported

pork kidney and other edible parts do not reflect consumption exposure risk. The United States is also concerned that Taiwan's method of testing for ractopamine residue is not aligned with methods of analysis for ractopamine recommended by Codex, and could provide inaccurate results. The United States continues to ask that Taiwan align its methods of testing for ractopamine residue with the methods recommended by Codex.

Apart from ractopamine, Taiwan has not established MRLs for other beta-agonist compounds or provided a rationale to support this policy. The United States continues to urge Taiwan to implement science-based MRLs without undue delay and to accept and approve new applications for MRLs for beta-agonists based on science and in a timely manner.

*Maximum Residue Limits – Agrochemicals*

The United States has raised concerns with various aspects of Taiwan's process for establishing MRLs for pesticides, such as the limited opportunities for applicants to provide additional information during the review process and the inconsistent application of crop groups to import tolerances. The United States will continue to encourage Taiwan to further improve its MRL regulatory system for pesticides in order to facilitate trade.

*Tolerance Levels – Potato Products*

On occasion, Taiwan rejects shipments of U.S. chipping potatoes due to a 2018 regulation that implemented specific restrictions on sprouting for imported potatoes. Entire shipments have been rejected, even though sprouting does not pose a food safety risk, and potatoes with sprouts were previously removed as part of a normal sorting process prior to 2018. The United States, in coordination with U.S. industry and with regulators in Taiwan, is pursuing technical engagement on an appropriate response.

## INTELLECTUAL PROPERTY PROTECTION

In May 2019, Article 87.1.8 and Article 93 of Taiwan's Copyright Act were amended to combat the use of illicit streaming devices. However, right holders report that online piracy remains widespread. Additionally, right holders continue to report serious challenges with respect to the unauthorized use of textbooks and copyrighted teaching materials, particularly via on-campus digital platforms. On May 4, 2022, Taiwan further amended the Copyright Act to allow criminal prosecution without a complaint from the right holder for online piracy over the threshold of approximately $32,800 in damages. As of December 31, 2022, the Executive Yuan had not yet announced an implementation date for the amended Copyright Act.

Draft amendments to other articles of the Copyright Act, which were sent to the Legislative Yuan in October 2017 for review, remain pending. While the draft amendments represented progress in some areas, they also contained potentially overly-broad exceptions to copyright protection and obstacles to criminal enforcement, in addition to troubling provisions relating to licensing and the role of collective management organizations. These draft amendments were resubmitted to the Legislative Yuan by the Executive Yuan in April 2021. As of December 31, 2022, they were still being reviewed by the Legislative Yuan.

On June 8, 2022, the Legislative Yuan approved amendments to the National Security Act to establish misappropriation of trade secrets in the national core key technologies as a violation of national security laws, with both criminal and administrative penalties. The amendments provide that obtaining secrets of national core key technologies by theft, embezzlement, fraud, duress, unauthorized reproduction, or by other improper methods, or using or disclosing such trade secrets, can be punished by imprisonment for

between 5 to 12 years, with possible fines ranging between approximately $164,000 and $3.28 million being imposed.

As part of implementation of the amendments, the National Science and Technology Council was tasked with determining criteria for national core key technologies. Stakeholders have urged the NSTC to consult with related ministries and industries before finalizing the core key technology list.

Amendments to the Patent Act entered into force on July 1, 2022. A new Article 60-1 of the Patent Act clarified the legal basis for a patent owner's patent infringement suit and a generic drug applicant's declaratory judgment of non-infringement suit under the mechanism for early resolution of potential patent disputes.

## SERVICES BARRIERS

### Financial Services

In September 2019, the Financial Supervisory Commission (FSC) issued amendments to the Regulation Governing Internal Operating Systems and Procedures for the Outsourcing of Financial Institution Operation. The amendments address, for the first time, the use of cloud computing services by financial institutions. To provide cloud computing services, financial institutions must undergo an application process. The application requires the submission of up to 17 documents, followed by a review process that can take more than 6 months. Cloud service suppliers and financial institutions operating in Taiwan have expressed concerns over the lack of transparency and the lack of any standardized criteria used during the application process. While banks have started to receive permission from the Banking Bureau of FSC, insurance, securities, and futures companies are still waiting for the Insurance Bureau and the Securities and Futures Bureau to issue further guidance and instructions for applying for permission to use cloud services.

## INVESTMENT BARRIERS

Taiwan prohibits or limits foreign investment in certain sectors, including agricultural production, chemical manufacturing, bus transportation, sewage and water services, and social services such as public education, health, and childcare.

Foreign ownership in the manufacturing of certain chemical materials and metals, television and radio programming services, and postal activities is prohibited. Foreign ownership in telecommunications, power transmission and distribution, piped distribution of natural gas, and high-speed rail is limited to 49 percent direct ownership. For foreign ownership of telecommunications, combined direct and indirect foreign ownership is limited to 60 percent. The foreign ownership ceiling on airline companies, airport ground handling companies, forwarders, air cargo terminals, and catering companies is 49 percent, with each individual foreign investor subject to an ownership limit of 25 percent. Taiwan also maintains government investment in certain key companies. For example, MOTC owns 35 percent in Chunghwa Telecom, the largest domestic telecommunications company, and 43 percent in Taiwan High Speed Rail Corporation, the domestic high-speed rail provider.

Taiwan's Ministry of Economic Affairs is revisiting a proposal to amend the Statute for Investment by Foreign Nationals to bolster inbound investment while also addressing national security concerns. The United States continues to emphasize the importance of transparency, consistency, predictability, and timeliness to any investment review regime.

## OTHER BARRIERS

### Pharmaceuticals

In the pharmaceuticals sector, U.S. stakeholders continue to highlight the lack of transparency and predictability with respect to pricing approval procedures, including during renegotiations of managed entry agreements and under recent applications of Health Technology Reassessments. Stakeholders raise concerns about lengthy pricing approval timelines and lack of transparency in the calculation of drug expenditure targets, including the horizon scanning process. U.S. stakeholders have also expressed concerns over the National Health Insurance Administration's (NHIA) drug expenditure target program's inconsistent treatment of different forms of patented drugs with respect to price adjustments and the calculation of annual drug expenditure targets.

### Medical Devices

In Taiwan, self-pay options are available for implanted medical devices and a range of other commonly used medical devices that are not approved for NHIA reimbursement. These medical devices must be issued a self-pay code. According to U.S. stakeholders, hospitals that ask patients to self-pay for devices without a code are subject to administrative penalties by NHIA. NHIA began assigning temporary self-pay codes in April 2014, but it also requires a review of new therapeutic procedures for which the medical device is used. U.S. stakeholders have raised concerns with these procedures, highlighting that increased process transparency and faster issuance of temporary self-pay codes are needed to be responsive to patient demand.

# THAILAND

## TRADE AGREEMENTS

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

The United States and Thailand signed a Trade and Investment Framework Agreement (TIFA) on October 23, 2002. This Agreement is the primary mechanism for bilateral discussions of trade and investment issues.

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

Thailand's average Most-Favored-Nation (MFN) applied tariff rate was 11.5 percent in 2021 (latest data available). Thailand's average MFN applied tariff rate was 31.2 percent for agricultural products and 8.4 percent for non-agricultural products in 2021 (latest data available). Thailand has bound 75.2 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 28.0 percent.

*Taxes*

Wine imports are subject to a 54 percent tariff and six different taxes; taken together, the effective duty and tax burden is nearly 400 percent. Industry has raised concerns about the import tariffs on wine and disparate *ad valorem* taxes that appear to favor domestic white liquor.

*Import Fees*

Thailand imposes food safety inspection fees in the form of import permit fees on all shipments of uncooked meat. The current fee level was set in October 2016 at 7 baht per kg (approximately $202 per metric ton (MT)) for imported uncooked meat for food or feed and at 3 baht per kg (approximately $86/MT) for imported uncooked meat for purposes other than food or feed. These fees appear to be disproportionate to the cost of services rendered. Under the Thai Animal Epidemics Act of 2014, the Ministry of Agriculture and Cooperatives (MOAC) Department of Livestock Development (DLD) has discretionary authority to increase these import fees up to five-fold.

### Non-Tariff Barriers

*Import Restrictions*

Despite Thailand's 20-year Alternative Energy Development Plan (2018-2037), which aims to increase biofuels consumption, Thailand restricts the import of biofuels intended for fuel use. Fuel ethanol imports require approval and issuance of permits by Thailand's Ministry of Energy, but to date the ministry has not issued any approvals or permits. Thailand originally aimed to phase out premium gasoline containing 10 percent ethanol blends (Octane 91 E10) by 2018 and octane 95 E10 E85 between 2023 and 2027, with the intention of making 20 percent ethanol blends (E20) the primary gasohol. However, concerns over sufficient feedstock availability in Thailand has repeatedly delayed the full transition from E10 to E20.

*Import Licensing*

Import licenses are required for the importation of many items, including: wood, petroleum, industrial machinery, textiles, pharmaceuticals, cosmetics, firearms and ammunition, and food and agricultural items including plants, seeds, processed meats, and salt. In some cases, imports of certain items not requiring licenses are subject to extra fees and certificate of origin requirements. Additionally, a number of products are subject to import controls under miscellaneous laws.

Thailand imposes domestic purchase requirements on imports of several products subject to tariff-rate quotas (TRQs), including coffee, tea, potatoes, corn, soybeans, and soybean meal. Thailand also imposes a domestic purchase requirement on imports of feed wheat, which is not subject to a TRQ.

*Customs Barriers and Trade Facilitation*

Thailand provides incentives to customs officials who initiate investigations or enforcement actions. Thailand is one of the only major U.S. trading partners that still has such an incentive system. This incentive system has been a cause of concern for many years among Thailand's trading partners due to the potential for corruption and the cost, uncertainty, and lack of transparency associated with the customs penalty and reward system. To address these problems, at least in part, Thailand amended the Customs Act in 2017. The amendment caps incentives at 20 percent of the sale price of seized goods (or of the fine amount) with a cap of 5 million baht (approximately $156,000). The amendment also limits post-audit inspections to five years from the date of import or export. While a welcome development, it does not appear that the reduction of this remuneration would be sufficient to address the issue of potential conflict of interest or excessive personal incentives.

The Customs Department is conducting a five-year review (2019 through 2024) of the customs penalty and reward system to determine whether its laws and regulations need to be revised to increase fairness and reduce corruption. The review will study the revenue impact of the penalty and reward system enacted under the 2017 law and compare incentive programs used in other countries.

*Price Controls*

The Thai Government, through the Central Committee on Price of Goods and Services, has the legal authority to control prices or set *de facto* price ceilings for essential daily-use items such as food and consumer products; farm-related products (fertilizers, pesticides, animal feed, tractors, rice harvesters); construction materials; paper; petroleum; and, medicines. The controlled list is reviewed at least annually, but the price-control review mechanisms are non-transparent. In practice, the Thai Government influences prices in the local market through its control of state monopoly suppliers of products and services, such as in the petroleum, oil, and gas sectors.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Labeling Requirements on Alcoholic Beverages*

Thailand's Office of Alcohol Control administers regulations on the labeling of alcoholic beverages. Thailand developed two guidelines in 2016 and 2017 to clarify specific enforcement procedures. The guidelines were intended to control the language and images used on the labels of alcoholic beverages. However, certain requirements in the guidelines were not clearly defined, which led to uncertainty among beverage producers. This has created difficulties in implementing and enforcing the regulations. The

United States has raised concerns about the potential for uneven application of the guidelines given the unclear language.

In June 2020, the Thai Alcohol Beverage Business Association and 15 other organizations from related industries filed a petition with the Office of the Council of State (OCS) requesting that the Alcoholic Beverage Control Act be amended. The OCS conducted six hearings with petitioners and relevant government agencies, including the Thai Food and Drug Administration (Thai FDA) and the Excise Department between August 2020 and April 2021. Following these engagements, the OCS issued a report recommending multiple amendments to the Alcoholic Beverage Control Act to enhance fairness in advertising, labelling requirements, packaging, selling venues, and selling time. However, the legislative process to incorporate these recommendations had not begun as of the end of 2022.

*Medical Devices*

Between February 2019 and 2021, the Thai FDA completed publication of approximately 70 new regulations for medical device registration governing classification, technical documentation requirements, fee schedule, and transition plans. Industry stakeholders have expressed concern with the limited opportunities for stakeholder consultation during the development process, which may result in challenges implementing these regulations.

*Agricultural Biotechnology*

Thailand's regulations prohibit the cultivation of genetically engineered (GE) crops, but allow imports of processed food containing ingredients derived from GE organisms (including microorganisms), GE cotton lint, and GE soybeans and GE corn for feed and industrial uses.

After notifying the WTO of the draft regulation on labeling of genetically modified (GM) foods in July 2019, the Ministry of Public Health (MOPH) published two regulations on GM foods in the Royal Gazette in June 2022. Both notifications came into force December 4, 2022. The regulations require importers who import processed food containing genetically modified organisms or products derived from such to specify certain GE events that are included in the Positive List (Appendix 1) or Temporary Approved List (Appendix 6) of the MOPH Ministerial Regulation No. 431 Re: Food Derived from Genetically Modified Organisms (GMOs). The United States is concerned that the regulations may delay or disrupt the importation of all processed foods containing GE organisms or products and ingredients derived from them (including plants, animals or microorganism) into Thailand.

The Ministry of Natural Resources and Environment (MONRE) held public hearings in early 2020 on a revised draft of the Biodiversity Act, which was approved in principle by the cabinet in early 2022 and as of the end of 2022 was still awaiting the review of the OCS. The Biodiversity Act includes biosafety regulations covering research, field trials, and commercialization of GE plants, animals, and microorganisms. The draft Biodiversity Act's definition of biosafety covers access to biological resources, fair and equitable sharing of benefits arising from utilization of biodiversity, and the Cartagena Protocol on Biosafety's provision on living modified organisms' effects on biodiversity.

**Sanitary and Phytosanitary Barriers**

*Import Ban on Agricultural Chemicals*

In October 2019, Thailand's National Hazardous Substances Committee (NHSC) recategorized three agricultural chemicals, or active ingredients, as Type 4 toxic substances, a category of chemicals for which production, importation, exportation, or possession is prohibited in Thailand. The three agricultural

chemicals included two herbicides (glyphosate and paraquat) and an insecticide (chlorpyrifos). The NHSC later reversed its decision for glyphosate, but kept the recategorization for paraquat and chlorpyrifos. On June 1, 2020, the Ministry of Public Health (MOPH) prohibited the domestic use of paraquat and chlorpyrifos. On June 1, 2021 the MOPH banned the importation of these chemicals and the Ministry of Public Health began enforcing limits of detection between 0.005 mg/kg and 0.02 mg/kg for both paraquat and chlorpyrifos for the following three food categories: (1) food grains; (2) fresh vegetables and fruits; and, (3) meat, milk, and eggs.

*Audits of Facilities for Imports of Animal-Derived Products*

Thailand's Department of Livestock Development (DLD) requires audits of production facilities in the exporting country to allow the importation of several animal-derived products, including meat, meat and bone meal, and feather meal. Each audit approval is valid for five years. In addition, the DLD imposes five-year facility audit approvals for imported animal feed ingredients derived from or containing poultry products. The United States has recommended that Thailand adopt a systems approach, which would recognize the U.S. inspection system as equivalent to that of Thailand's, to reduce the expense and burden of this audit requirement. The DLD conducted a fact-finding trip in late 2019, but has not yet submitted the questionnaire to the U.S. Department of Agriculture to proceed with the audit.

*Import Restrictions on Beef and Beef Products*

Thailand restricts imports of beef offal treated with beta-agonists. The DLD confirmed that fresh tongue, cheek meat, oxtail, tendon, hanging tender, inside skirt, and outside skirt are categorized as muscle cuts and are thus not affected by this ban. In September 2018, the DLD conducted an audit of the U.S. production system and transmitted its draft findings to the United States in March 2019. In its report, the DLD notably requested confirmation that U.S. beef and beef products for export to Thailand are not derived from cattle treated with beta-agonists, including ractopamine, a condition that would potentially bar entry of U.S. beef offal into the Thai market.

*Plant Quarantine Restrictions*

Thailand requires fumigation for shipments of distiller's dried grains with solubles (DDGS) due to the detection of quarantine pests in August 2018. In October 2021, the United States began working with Thailand to establish science-based fumigation requirements for U.S. DDGS exports to Thailand that include both methyl bromide and phosphine fumigation. This work is ongoing.

*Import Restrictions on Pork*

In 2012, after the Codex Alimentarius Commission established maximum residue limits (MRLs) for ractopamine in cattle and pig tissues, Thailand indicated it would lift its ban on imports of pork from countries that allow ractopamine use, including the United States. However, Thailand has not yet established MRLs for ractopamine in pork, which effectively prevents the importation of U.S. pork products. In 2019, Thailand and the United States agreed to review potential risk management options for Thailand to develop an MRL for ractopamine. However, due to lack of progress on the issue, effective December 30, 2020, the United States revoked approximately one-sixth of Thailand's duty-free trade preferences under the U.S. Generalized System of Preferences (GSP) program.

*Import Bans on Poultry*

Thailand has imposed a ban on U.S. live poultry and poultry meat due to the sporadic presence of highly pathogenic avian influenza in the United States. The ban applies to all such U.S. products, notwithstanding

World Organisation for Animal Health guidelines that recommend importing countries regionalize their bans rather than apply them on a country-wide basis. In addition, Thailand has banned U.S. turkey meat since late 2014. Thailand sent officials to conduct a production-system audit of U.S. turkey in July 2019 and determined in November 2020 that the United States failed the system approach audit. The United States continues to negotiate with the DLD to regain market access for uncooked U.S. turkey.

*Lack of Transparency for Imports of New Processed Meat Products*

The DLD's regulatory authority was extended in 2018 to include "processed foods made or derived from animal carcass" including sausage, salami, ham, bacon, smoked meat products, pickled meat products, cured meat products, honey and related products, and salty/processed eggs and egg yolks. Since then, the DLD has not approved any new processed meat products, claiming that a new import protocol was still being developed, and that market access requests could be submitted, either through government-to-government channels or individually. The DLD has not yet published or notified draft import procedures, despite repeated requests from the U.S. Government to do so.

## GOVERNMENT PROCUREMENT

Thailand's Public Procurement Act (PPA) is the primary legal authority governing public sector procurement. The PPA applies to the national and local governments, but excludes public-private partnership projects, state-owned enterprises directly engaged in commercial activities, and military units. The PPA allows for consideration of factors other than lowest price in procurement decisions, such as life-cycle cost analysis and total cost of ownership. Due to insufficient training and the large number of appeals of value-based or performance-based awards, most agencies, in practice, default to a lowest-cost technically acceptable procurement methodology.

Thailand's National Science and Technology Development Agency (NSTDA) introduced a Thai Innovation List in 2016 to develop domestic industrial capacity in target economic sectors, such as construction, agriculture, healthcare, telecommunications, defense, automotive, and transportation. Only authorized Thai majority-owned companies may list products on the Innovation List. The Innovation List, which currently has approximately 500 entries, grants special government procurement privileges for listed products. For example, Thai Government agencies and public hospitals must allocate at least 30 percent of their budgets for pharmaceutical products, medical products, and nutritional supplements on this list. More than 200 products, all of which are generic, are included on the list.

Thailand is not a Party to the WTO Agreement on Government Procurement (GPA), but it has been an observer to the WTO Committee on Government Procurement since June 2015.

## INTELLECTUAL PROPERTY PROTECTION

Thailand remained on the Watch List in the 2022 Special 301 Report. Thailand continues to make progress on intellectual property (IP) protection and enforcement. For example, Thailand recently amended the Copyright Act and acceded to the World Intellectual Property Organization (WIPO) Copyright Treaty. The Thai Customs Department issued new rules related to IP recordation and seizures of IP infringing goods, and the Department of Intellectual Property entered into a Memorandum of Understanding with stakeholders to combat the sale of counterfeit goods. However, concerns remain.

Although the sale of counterfeit goods in physical markets significantly decreased due to the impact of the COVID-19 pandemic and travel restrictions, as Thailand has begun to re-open, physical sales of counterfeit goods have re-emerged among popular tourist destinations. The 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List) identified MBK Mall as a physical market with a large

number of counterfeit goods in Bangkok. Moreover, the availability of counterfeit and pirated goods online continues to be a concern. Other U.S. concerns include online piracy by devices and applications that allow users to stream and download unauthorized content, overly broad exceptions to technological protection measures, unauthorized collective management organizations, the widespread use of unlicensed software in the private sector, the backlog in pending pharmaceutical patent applications, and cable and satellite signal theft. The United States will continue to monitor these issues.

The United States continues to encourage Thailand to provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. In addition, the United States continues to urge Thailand to engage in a meaningful and transparent manner with all relevant stakeholders before adopting new IP laws, regulations, or guidelines.

## SERVICES BARRIERS

### Audiovisual Services

The 2008 Motion Picture and Video Act authorizes Thailand's Film Board to establish ratios and quotas limiting the importation of foreign films. The Film Board had not exercised this authority, however, as of December 31, 2022. Foreign investment in terrestrial broadcast networks is limited to 25 percent of registered capital and voting rights.

### Financial Services

Thailand limits the number of licenses for foreign bank branches and subsidiaries and only sporadically accepts applications for new foreign banking operations. Thailand has not held a round of applications for new licenses since 2013, when Thailand granted new subsidiary licenses to two foreign banks.

In 2018, the Bank of Thailand expanded the types of service points allowed for foreign bank operations to include physical branches, off-premises ATMs, and appointed agents. Foreign subsidiaries may operate up to 40 service points, while foreign branches may open a maximum of three service points.

Foreign investors are authorized to establish wholly-owned bank subsidiaries. Foreign investment in existing domestic banks is limited to 25 percent of shares, although the Bank of Thailand can raise this amount to 49 percent on a case-by-case basis. In addition, the Minister of Finance, with a recommendation from the Bank of Thailand, may authorize foreign ownership above 49 percent if it is deemed necessary to support the stability of a financial institution or the overall financial system during an economic crisis.

Foreign banks with approval from the Bank of Thailand can also establish a representative office in Thailand, but a representative office can only conduct liaison and research activities, while any form of commercial banking, finance, or credit foncier business is not allowed. A representative office is also under the Bank of Thailand's supervision oversight.

Since 2013, Thailand has required in-country processing of all domestic retail debit electronic payment transactions for debit cards issued in Thailand. This requirement means foreign suppliers are precluded from supplying these services across borders and must establish a local presence and build processing facilities in Thailand. When a card is accepted on more than one network, at least one of those networks must be a domestic debit card network. Under the 2016 Thai Bank Chip Card Standard, the Bank of Thailand requires financial institutions that issue debit cards to issue cards with local-standard chips. Merchants and financial institutions are required to have equipment that can accept local-standard chips.

Foreign equity in life and non-life insurance companies is initially limited to less than 25 percent of the total number of voting shares that have been sold. Foreign directors may hold no more than 25 percent of the initial board of director seats. The Thai Government allows a company to increase the foreign equity in the company up to 49 percent and the seats held by foreign directors up to one-half of the board, if the company meets conditions relating to improving efficiency and competitiveness. In addition, the Ministry of Finance, with the recommendation of the Office of Insurance Commission, may permit a company to have foreign ownership exceeding 49 percent, or foreign directors comprising more than one-half of the board, or both, under certain circumstances, such as for the purpose of strengthening the overall stability of the insurance sector.

## BARRIERS TO DIGITAL TRADE

### Technology

The Cybersecurity Act (CSA) entered into force in May 2019. The law is designed to enhance cybersecurity within government agencies and critical information infrastructure (CII) sectors. U.S. stakeholders have also raised concerns that the law could be implemented in a manner that gives NCSA broad powers to enter premises and to monitor, test, freeze, or seize computers without sufficient protections or opportunities to appeal. In 2021, the National Cybersecurity Agency (NCSA) published implementing regulations for the CSA that define CII. The seven sectors classified as CII are: (1) national security; (2) essential government services; (3) banking and finance; (4) information technology and telecommunication; (5) transportation and logistics; (6) public utilities (including electricity, petroleum and natural gas, and water utilities); and, (7) health. The NCSA continues to develop regulations and guidance to implement the CSA, and issued a regulation on a cybersecurity oversight committee in 2022. The United States is providing capacity building and technical assistance to the NCSA to help Thailand develop a more secure and resilient cyber ecosystem.

### Data Localization

Thailand's Personal Data Protection Act (PDPA) came into force on June 1, 2022. The legislation creates a Personal Data Protection Committee (PDPC) that is empowered to fine companies for noncompliance up to 5 million baht (approximately $156,000). The PDPA restricts the transfer of personal data outside of Thailand, except to specific countries that the PDPC has determined provide adequate data protection or when other specific requirements in the PDPA are met. The United States will continue to engage with Thailand to promote interoperability between Thai and U.S. approaches to data protection to facilitate the cross-border flow of data between Thailand and the United States.

### Internet Services

Thailand's Computer Crime Act provides the government expansive authority to regulate online content. A "Computer Data Filtering Committee" has power to obtain court approval to block a range of websites, including those that the Committee finds disseminate information violating public order.

According to U.S. stakeholders, the Computer Crime Act raises particular concerns for online services that host non-IP-protected, user-generated content. The Act establishes a liability shield for online service providers with respect to non-IP-protected, user-generated content if they comply with requirements to remove certain content within specified timeframes. However, the mandated timeframes vary across content types and are as short as 24 hours for some types of content. Without strict compliance, service providers may be subject to penalties and treated as if they had created the offending content themselves.

Some U.S. stakeholders also note that the Computer Crimes Act has improved the environment for enforcement against online piracy with respect to copyright-protected content.

In August 2021, the Thailand Electronic Transactions Development Agency (ETDA) introduced the Draft Royal Decree on the Supervision of Digital Platform Services. The draft decree imposes burdensome obligations on foreign businesses, including a local presence requirement, and creates criminal liability for local representatives for non-compliance with the draft decree, as well as broad authority for the ETDA to impose additional obligations. The draft decree was approved by the Thai cabinet in October 2021 and was published in the Royal Gazette on December 22, 2022.

## INVESTMENT BARRIERS

The Foreign Business Act (FBA) lays out the framework governing foreign investment in Thailand. Under the FBA, non-Thai nationals and non-majority Thai owned entities are prohibited from holding majority ownership in many sectors, but U.S. investors registered under the United States–Thailand Treaty of Amity and Economic Relations (AER) are generally exempt. Nevertheless, the privileges under the AER do not exempt U.S. investments from the prohibitions on majority foreign ownership in the following areas: communications; transportation; fiduciary functions; banking involving depository functions; the exploitation of land or other natural resources; and, the domestic trade in indigenous agricultural products. The practice of professions is reserved for Thai nationals.

## LABOR

In April 2020, the United States partially suspended Thailand's tariff benefits under the GSP program due to Thailand's failure to take steps to afford workers in Thailand internationally-recognized worker rights, particularly with regard to freedom of association. Approximately one-third of Thailand's GSP-eligible trade, for which the United States is a relatively important market for Thailand, were excluded from duty-free treatment. As of December 31, 2022, partial suspension of duty-free treatment under GSP remained in effect.

## OTHER BARRIERS

In general, U.S. stakeholders have expressed concern that Thai Government processes for revising laws and regulations affecting trade and investment lack consistency and transparency.

### Bribery and Corruption

Corruption continues to hamper Thailand's economy and trade, despite ongoing legislative and administrative efforts to address the problem.

Stakeholders say that irregular payments and bribes are often paid to obtain favorable judicial decisions. The National Anti-Corruption Commission (NACC) is the primary independent body vested with powers and duties to counter corruption in the public sector. The NACC is responsible for investigating and prosecuting corruption involving high-ranking government officials and politicians. The Public Sector Anti-Corruption Commission under the Ministry of Justice investigates and prosecutes corruption cases involving lower-level government employees. While several agencies have jurisdiction over corruption issues, their actions are not always complementary. Thai law enforcement's investigative and prosecutorial capacity is limited, and Thai laws focus predominantly on abuse of office rather than financial or asset-related malfeasance. Anticorruption mechanisms continue to be employed unevenly and for political purposes; and the lack of transparency in many administrative procedures serves to facilitate corruption.

In 2018, a new anticorruption law replaced the 1999 Organic Act on Countering Corruption and its various amendments. The new anticorruption law, the "Act Supplementing the Constitution Relating to the Prevention and Suppression of Corruption," maintained a key provision criminalizing bribe-giving by legal entities, but expanded the definition of legal entities to include any foreign company (registered abroad but operating in Thailand) and its associated persons (employees, joint venture partners, agents, etc.). Mandatory fines for bribery must be equal to or up to double the amount of the benefit received from the corrupt act.

# TUNISIA

## TRADE AGREEMENTS

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

The United States and Tunisia signed a Trade and Investment Framework Agreement (TIFA) on October 2, 2002. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Tunisia. The most recent meeting of the United States–Tunisia Trade and Investment Council, established under the TIFA, was held in May 2021.

## IMPORT POLICIES

### Tariffs

Tunisia's average Most-Favored-Nation (MFN) applied tariff rate was 11.6 in 2016 (latest data available). Tunisia's average MFN applied tariff rate was 31 percent for agricultural products and 8.3 percent for non-agricultural products in 2016 (latest data available). Tunisia has bound 58 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 57.9 percent.

Goods imported into Tunisia can be subject to tariff rates as high as 200 percent. Agricultural goods are subject to customs tariffs ranging from zero percent to 50 percent, with most agricultural imports within the 36 percent to 50 percent range. All imported goods subject to tariffs are assessed a customs administrative fee amounting to three percent of the total duties paid on the import.

The 2022 Budget Law, passed on December 29, 2021, instituted 20 percent to 50 percent tariff increases on consumer products that have locally-manufactured equivalents. The law included higher tariffs on some goods with no local equivalent such as bananas (zero percent to 50 percent), mobile phones (zero percent to 20 percent), coffee (36 percent to 50 percent) and cosmetic products and perfumes (30 percent to 43 percent). Moreover, tariffs were increased to 50 percent on imported apparel and bedding, shoes, and food products such as cheese, honey, chocolate, candies, juices, beer, and wine. Tariffs were also increased to 43 percent on construction materials and products with local equivalents such as marble, gypsum, paint, wood, aluminum, ceramics, glassware, and tools.

### Non-Tariff Barriers

Tunisia maintains a number of non-tariff barriers. Approximately three percent of imported goods, including agricultural products, automobiles, and textiles, require an import license issued by the Ministry of Trade and Export Development. Tunisia also imposes certain quotas, especially for imported consumer goods that compete with local products. Importers of these goods must request an allotment from the Tunisian Government to receive an import license. The licenses are typically valid for 12 months after issuance by the Ministry of Trade and Export Development. Several agricultural products are also subject to burdensome technical import requirements established in a book of specifications.

On October 17, 2022, Tunisia implemented a new control system on imports of consumer goods mandating that, in order to acquire an import license for certain products, the importer must provide several documents, including: an invoice from the exporting factory, a certificate from an official authority in the exporter's country attesting to the factory's legal status, proof of product trademark, and documents affirming the product's safety and quality. Imports of raw materials, semi-finished products, equipment and spare parts for industries, services, and handicrafts are exempted. The list of affected products include: fragrances,

cosmetics, underwear, shoes, household appliances, vegetables and fruits, spices, flour, chocolate, and non-alcoholic drinks.

*Agricultural Subsidies and Domestic Support*

Since 2018, Tunisia has not responded to questions raised in the WTO Committee on Agriculture in connection with its agricultural domestic support and export subsidy outlays.

*Customs Barriers and Trade Facilitation*

Customs processing remains cumbersome and, for the most part, reliant on paper documents, despite some steps in 2019 to digitize certain procedures. Inconsistent application of customs processes within the Tunisian Customs Administration can be a significant obstacle for importers. Risk management and other targeting is primarily conducted manually by reviewing large volumes of entry documents in paper form, although Tunisia expanded its simplified customs clearance process for authorized operators from 56 companies in 2019 to 122 companies in 2022.

Tunisia notified the latest update to its customs valuation legislation to the WTO in May 2011, but has not yet responded to the WTO Checklist of Issues describing how the Customs Valuation Agreement is being implemented.

Tunisia ratified the WTO Trade Facilitation Agreement (TFA) in July 2020. Tunisia has not yet submitted two transparency notifications related to: (1) import, export, and transit regulations; and, (2) customs contact points for the exchange of information. These notifications were due to the WTO on February 22, 2017, according to Tunisia's self-designated TFA implementation schedule.

## INTELLECTUAL PROPERTY PROTECTION

Tunisia has made some progress with respect to intellectual property (IP) protection and enforcement. However, the prevalence of, and trade in, counterfeit and pirated goods, including illicit Internet Protocol Television (IPTV) content, remains a concern. Stakeholders have also expressed concern about the lack of an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. The United States will continue to engage with Tunisia to improve IP protection and enforcement in the region.

## BARRIERS TO DIGITAL TRADE

The Tunisian Dinar is convertible for limited current account transactions only. Tunisian citizens cannot open foreign currency bank accounts, with some exceptions. This limits Tunisians' ability to purchase goods and services online or receive payments from foreign digital firms. Moreover, individual users of "Digital Technology Charge Cards" (the government-approved method for certain firms and entities to make purchases of foreign goods and services online) are limited to the equivalent of 1,000 dinars (approximately $310) in annual purchases, while companies are limited to 10,000 dinars (approximately $3,100), and startups are limited to 100,000 dinars (approximately $31,000). These relatively low thresholds are fixed in dinars so the actual value of the allotments has been impacted by currency fluctuations.

## INVESTMENT BARRIERS

Entering Tunisia's domestic market, particularly the services sector, remains difficult for foreign investors. Foreign ownership is limited to 49 percent in non-industrial sectors, and the process of investing is

particularly challenging in areas that are not government priorities (*i.e.*, where there are no public tenders). Under Tunisia's investment code, high-value joint ventures with a foreign investor must be approved by the Tunisian Government, which assesses the potential benefit of the investment to the Tunisian economy. U.S. investors in Tunisia frequently complain about delays, lack of transparency regarding rules and fees, competition from state-owned enterprises (SOEs), and other bureaucratic complications in the process of registering a business. Foreign ownership of businesses in the agricultural sector is capped at 66 percent, and foreign investors may not directly own agricultural land.

On April 27, 2022, the Tunisian Government adopted Presidential Decree #2022-317, through which it changed its 2018 policy requiring government authorization for investment in a list of 100 economic activities in various sectors. The decree eliminates government authorization requirements for 27 business activities and allows foreign and local investors to open businesses under conditions detailed in books of specifications without waiting for a government license, with a focus on boosting investment in sectors such as tourism, transportation, finance and renewable energy.

## STATE-OWNED ENTERPRISES

SOEs compete with the private sector in industries such as telecommunications and maintain monopolies in key economic sectors considered sensitive by the government, such as transportation and the distribution of water.

## OTHER BARRIERS

Although Tunisia continues to make efforts to expand opportunities for businesses, U.S. companies across a range of sectors report that cumbersome, time-consuming government processes and inconsistent regulatory practices make it difficult to enter and operate in the Tunisian market.

### Foreign Exchange

Tunisian law prohibits the export of foreign currency from Tunisia as payment for imports prior to the presentation of documents to the importer's bank confirming shipment of the merchandise from the country of origin. In addition, the Central Bank of Tunisia prohibits Tunisian purchasers from using foreign currency to pay for specific imported goods until their banks confirm that they have sufficient foreign currency in their accounts. These requirements remain a source of confusion and difficulty for some U.S. companies.

The Tunisian Central Pharmacy maintains a monopoly on pharmaceutical imports. Some U.S. companies complain that they encounter reimbursement and payment delays of up to one year.

# TURKEY

## TRADE AGREEMENTS

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

The United States and Turkey signed a Trade and Investment Framework Agreement on September 29, 1999. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Turkey.

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

Turkey's average Most-Favored-Nation (MFN) applied tariff rate was 10.7 percent in 2021 (latest data available). Turkey's average MFN applied tariff rate was 41.1 percent for agricultural products and 5.8 percent for non-agricultural products in 2021 (latest data available). Turkey has bound 50.5 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 28.9 percent. In recent years, Turkey has taken advantage of substantial differences between its applied and WTO bound tariff rates to increase tariffs significantly across multiple sectors. Since 2019, Turkey has increased the number of additional customs duties imposed on imports from third countries, affecting a wide range of sectors. The overall applied MFN average rate has increased to 17.5 in 2022, up from 10.0 percent in 2019.

In 2020, the Turkish Government announced additional temporary import tariffs of between 2 and 50 percent for more than 4,000 products. The extra import duties were originally scheduled to be lifted by the end of September 2020. Although some have been removed in response to specific requests from importers, many of these tariffs have been extended indefinitely. None of the additional tariffs exceed Turkey's WTO bound tariff rates. These additional duties are not applied to imports originating from the European Union (EU), European Free Trade Association, or other countries that have preferential trade agreements with Turkey.

In accordance with its customs union agreement with the EU, Turkey exempts from tariffs non-agricultural products imported from the EU and applies the EU common external tariff to third-country non-agricultural imports, including those from the United States. Turkey also exempts from tariffs non-agricultural products imported from other trading partners with which it has free trade agreements.

On June 21, 2018, Turkey imposed additional duties on multiple U.S. exports in retaliation against the United States' March 2018 decision to impose tariffs on imports of Turkish steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. The retaliatory duties were levied on more than 20 goods of U.S. origin, including an additional 60 percent tariff on passenger cars and parts, a 70 percent tariff on distilled spirits, a 30 percent tariff on leaf tobacco, a 25 percent duty on rice, and a 10 percent tariff on wood products and tree nuts.

Turkey continues to maintain high tariff rates on many imported food and agricultural products. Tariffs on fresh fruit imports range from 15 percent to 146 percent, while tariffs on poultry imports are between 40.0 percent and 121.5 percent. On March 4, 2022, Turkey eliminated import tariffs on vegetable oils and oilseeds through the end of 2022; however, on September 15, 2022, the sunflower oil tariff reverted to 10 percent and on October 27, 2022, Turkey increased the tariff on sunflower seeds to 5 percent.

In 2018, Turkey established zero tariff-rate quotas (TRQs) on wheat, barley, and corn, later adding quotas for pulse and rice imports via the Turkish Grain Board (TMO). The quota amounts authorized for calendar year (CY) 2022 were the same as for CY 2021 and allowed for duty-free wheat imports up to 1,500,000 tons, barley imports up to 700,000 tons, corn imports up to 700,000 tons, rice imports up to 100,000 tons, and pulse imports up to 100,000 tons. On September 8, 2021, Turkey temporarily eliminated tariffs on all imports of wheat, corn, barley, rye, oats, chickpeas, and lentils. On December 31, 2021, due to ongoing food price inflation, Turkey extended this temporary elimination of tariffs until December 31, 2022. During 2022, the TMO imported more than the listed TRQs of wheat, barley, and corn using the general tariff exemption and re-sold some of these grains on the domestic market for lower fixed prices.

*Taxes*

On May 27, 2022, Turkey increased the Special Consumption Tax (OTV) on "List 3" items, including alcoholic beverages, fruit juices, soft drinks and tobacco products, in line with the domestic producer price index (PPI) inflation rate determined by the Turkish Statistical Institute. U.S. producers note that the OTV tax is in addition to the value-added tax (VAT) and tariffs on domestic and imported alcohol, and accounts for approximately 65 percent of the price of beer and distilled spirits in Turkey. U.S. companies have complained since 2020 about a requirement of the Turkish Tobacco and Alcohol Market Regulatory Authority that importers pay three months excise taxes in advance of sale in order to obtain necessary tax stamp strips (applied to bottles by hand), whereas domestic producers need only pay the excise tax within thirty days after sale. U.S. liquor companies have noted a rapid increase in the number of counterfeit products on the Turkish market in the last year due to the rapidly increasing cost of alcohol in Turkey and the additional tariffs on U.S. brands.

**Non-Tariff Barriers**

*Agricultural Subsidies and Domestic Support*

Although Turkey has large agricultural support programs in place, which include price support programs and input subsidies, Turkey is significantly overdue on its required WTO notifications regarding agricultural domestic support and export subsidies. Turkey's most recent domestic support notifications were submitted in 2020, covering the years 2014 to 2016, and raised concerns that Turkey had exceeded its WTO commitments regarding trade-distorting domestic support in those years. Turkey's most recent export subsidy notifications were submitted in 2019, covering the calendar years 2010 to 2013. Turkey has yet to notify operational changes in export subsidy measures pursuant to the 2015 Nairobi Ministerial Decision on Export Competition. Turkey has provided no additional updates for subsequent years. The United States and several other WTO Members regularly raise concerns about the accuracy, completeness, and timeliness of Turkey's domestic support notifications, as well as the amount of Turkey's domestic support at the WTO.

U.S. exporters have expressed concerns about Turkey's subsidies, inward processing program for wheat, and Turkey's reimbursement of freight costs for certain exports. They report that they do not believe a monitoring system exists to ensure that the quality and characteristics of imported wheat are the same as the domestic wheat used in exported flour and wheat products. Such monitoring is a required component of an inward processing scheme under the WTO Agreement on Subsidies and Countervailing Measures.

*Import Restrictions*

Since 2015, Turkey has banned the importation of nearly all refurbished parts, which affects products in several sectors, including computer equipment and medical devices. Turkey also requires that construction

equipment, tractors, and agricultural equipment be imported during the year in which individual units are manufactured, effectively limiting (given long lead times for shipment) the amount of U.S. exports of such equipment to Turkey.

*Import Licensing*

Turkey requires import licenses for some agricultural products and for various products that need after-sales service, such as photocopiers, advanced data processing equipment, and diesel generators. U.S. firms complain that a lack of transparency in Turkey's import licensing system results in costly delays, demurrage charges, and other uncertainties that inhibit trade.

*Customs Barriers and Trade Facilitation*

Turkish documentation requirements for many imports are onerous, inconsistent, and non-transparent, often resulting in shipments being delayed at Turkish ports. U.S. exporters of certain industrial goods, and of food products such as rice, dried beans, pulses, sunflower seeds, wheat, and walnuts, have reported concerns with decisions by Turkish customs authorities on the valuation of some of their products. Furthermore, the Ministry of Trade periodically mandates tracking and monitoring stipulations for certain imports, which includes an onerous registration process and requirement to re-register annually and no help line or informational service to provide guidance to exporters throughout the registration process. In March 2020, the Ministry of Trade expanded its mandatory foreign exporter registration process to a list of 31 agricultural commodities, including, among others, almonds, walnuts, peanuts, peanut butter, tea, garlic, bananas, fresh peppers, flaxseed, rapeseed, and sunflower seed products.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Pharmaceuticals – Good Manufacturing Practices Certification*

Turkey's amended Regulation on the Pricing of Medicinal Products for Human Use, which took effect on March 1, 2010, requires foreign pharmaceutical producers to secure a Good Manufacturing Practices (GMP) certificate based on a manufacturing plant inspection by Turkish Ministry of Health (MOH) officials before their products can be authorized for sale in Turkey. The requirement that Turkish authorities themselves perform the inspections (versus the earlier practice of relying on authorities from the exporting country, such as the U.S. Department of Health and Human Services Food and Drug Administration or European Medicines Agency) led to severe delays in obtaining GMP certifications for many pharmaceutical products because of an MOH inspection backlog. The delay in GMP inspections prolonged MOH's already lengthy processes for granting final approvals for pharmaceutical products to be sold on the Turkish market. Since 2016, following repeated U.S. requests to Turkey that it accelerate approvals, the MOH has authorized parallel submissions (rather than sequential submissions) of GMP inspection and marketing approval applications for MOH-designated "Priority One" (*i.e.*, highly innovative and/or lifesaving) pharmaceutical products imported from U.S. and EU firms. While a positive step, as of December 31, 2022, the MOH had not applied this approach to all pharmaceutical product applications. As a result, U.S. manufacturers report that GMP inspection-related delays have effectively closed the Turkish market to certain new drugs awaiting registration and approval.

*Food and Feed Products – Traceability Requirements*

The 2010 Biosafety Law mandates traceability procedures for movement of animal feed products produced using agricultural biotechnology, including a requirement that each handler maintain traceability records

for 20 years. Those who do not keep such records have been prosecuted by Turkish authorities for both criminal and civil violations.

**Sanitary and Phytosanitary Barriers**

*Agricultural Biotechnology*

Although Turkey notified the 2010 Biosafety Law to the WTO Committee on Sanitary and Phytosanitary Measures prior to its original enactment, the Turkish Government has failed to notify any subsequent revisions to the law, its implementing regulations, or its various regulatory controls. U.S. agricultural biotechnology developers have expressed reluctance to seek regulatory approvals in Turkey for individual products due to onerous liability requirements imposed by the Biosafety Law, unclear procedures for the assessment required to receive approval, and concerns regarding the protection of applicants' confidential information.

The agricultural biotechnology oversight authority within the Turkish Government rests with the Ministry of Agriculture and Forestry (MAF). The MAF assesses agricultural biotechnology products through both a Risk Assessment Committee and a Socio-economic Assessment Committee under the Ministry's Agricultural Research and Policies Directorate General (TAGEM). The Ministry has approved no agricultural biotechnology products for food use and rejected several applications for feed use, without providing any scientific justification. The lack of approvals for new agricultural biotechnology products from August 2017 until January 2021 led to severe market access problems for U.S. exports, with U.S. soybean shipments to Turkey falling from hundreds of millions of dollars annually to effectively zero. In January and February 2021, the Turkish Government approved three new soybean products and two new corn products, and renewed approval for three existing soybean products that were set to expire. The MAF subsequently cancelled the approval of five corn products that were set to expire on December 24, 2021. In 2022, the MAF approved seven new soybean and corn products, but cancelled seven other previously-approved soybean and corn products. As of December 31, 2022, 36 soybean and corn products produced using agricultural biotechnology are allowed for import into Turkey for animal feed use (15 soybean products and 21 corn products). Turkish officials have said they want to keep the total number of approved products at 36, without providing justification for that limit. Nine additional applications remain outstanding and have been pending since 2015, despite the law's official 270-day review timeline. Some of the Turkish agricultural associations that previously submitted applications for the approval of these products have declined to sponsor their renewals, citing the challenging and non-science-based review system.

Turkey's delays in completing science-based reviews are especially burdensome in light of its impractical low-level presence policy. If a shipment tests positive for any amount of unapproved agricultural biotechnology product or ingredient, the cargo is rejected and cannot be used for feed or food. There is an exception to this prohibition for unapproved products with pending agricultural biotechnology approval applications for use in feed; such products are allowed to be present up to a 0.1 percent threshold. Additionally, there is a tolerance for up to a 0.9 percent presence in a shipment for approved (but not declared) agricultural biotechnology products intended to be used for feed.

Turkey has also imposed unpredictable testing requirements for detecting unapproved products of agricultural biotechnology in certain U.S. food and feed imports, including wheat, rice, and other commodities. Turkish authorities' testing of wheat imports has been limited to just U.S. products, even though wheat imports from any other country would be equally likely to test positive for trace amounts of unapproved biotechnology products. Furthermore, there is currently no genetically engineered wheat or rice in commercial production in the United States. The testing requirements have effectively precluded

U.S. wheat shipments to Turkey. Before the application of these non-science and non-risk-based requirements, the United States shipped hundreds of millions of dollars of both wheat and rice annually.

*Food Safety*

Turkey's efforts to harmonize its national food safety laws with EU requirements have the potential to impede U.S. trade where these requirements are not based on international standards or science-based decision-making. The MAF is already planning to adopt a pesticide reduction schedule outlined in the EU's Farm-to-Fork and European Green Deal strategies. Additionally, on October 2, 2020, a Turkish court ordered the MAF to cancel its regulatory approval of the commonly used herbicide glyphosate due to unproven safety concerns. The MAF has appealed the decision and announced no plans to repeal the approval while the appeal is ongoing. However, officials have stated that Turkish policy on this issue will be shaped by EU policy rather than on scientific risk assessments.

The importation of live animals, certain animal products, and certain plant materials requires a control certificate from the MAF. The issuance of this certificate is not automatic and has presented challenges for U.S. exports of live cattle, meat products, hides, and animal genetics upon arrival at Turkish ports.

*Plant Health*

Turkey has sporadically rejected imports of U.S. unmilled rice due to detection of the white tip nematode. Turkey considers the white tip nematode to be a quarantine pest even though this nematode is widespread in Turkey. Due to the risk of a detection of the nematode upon arrival, southern U.S. rice exporters have stopped shipping to Turkey.

In 2021, Turkish customs officials denied at least one dozen containers of U.S. cotton for the presence of unauthorized plant materials (*e.g.*, cotton seed particles) in the bales. Pictures and other statements sent by Turkey to U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service officials showed a normal number of small seed particles and materials in the raw cotton, left behind by the ginning process. Despite protests from Turkish importers that the small particles are routine in imports from all supplying countries and the cotton meets industry standards, the shipments were destroyed or exported to third countries.

*Animal Health*

Turkey is an important transit point for U.S. poultry shipped to Iraq and the Middle East. Turkey has banned the transit of poultry meat imports from high pathogenic avian influenza (HPAI)-affected U.S. states even months after regions have been declared disease free. This has blocked many shipments of poultry products transiting Turkey to other countries in 2022. Although Turkey implements regionalization within its own country and for its own poultry exports, Turkey does not accept regionalization at the county level for imports of live poultry or poultry products from the United States. Instead, Turkey bans exports from an entire U.S. state if HPAI or low pathogenic avian influenza occurs in a single area of that state. World Organisation for Animal Health trade guidelines call on countries to base trade restrictions on sound science and, whenever possible, limit restrictions to those animals and animal products within a defined region that pose a risk of spreading the disease of concern.

Turkey also requires certificates for dairy products and eggs to be signed by a veterinarian and will not accept USDA Agricultural Marketing Service (AMS) inspectors' attestations, despite the U.S. products meeting scientific and technical requirements outlined in the certificates. In 2018, the USDA negotiated a certificate with Turkish officials for a limited number of dairy products by Harmonized System code for which Turkey agreed to accept AMS inspectors' signatures. However, this technical restriction prevents

U.S. exports to Turkey of other dairy products not covered by the negotiated certificate, despite commercial demand.

## GOVERNMENT PROCUREMENT

Turkish Government contracting officials are authorized to issue tender documents with provisions that restrict foreign companies' participation and that award price advantages of up to 15 percent (particularly for high technology products) to domestic bidders. Although the Turkish procurement law requires government contracting agencies to consider best value pricing, the lowest-cost bids are selected in most tenders. In a scenario involving the procurement of highly technical goods or services, this may prevent consideration of bids from firms with the highest capacity and best abilities, including U.S. firms, *i.e.*, those that provide a greater number of services, lower life cycle costs, and higher quality products.

Certain other features of the Turkish procurement system have the effect of severely limiting the ability of U.S. companies to participate in government tenders. First, Turkish procurement law mandates the use of model contracts, *i.e.*, standard forms, which many government procuring agencies refuse to modify. These model contracts make it difficult for U.S. companies to formulate proposals that are fully responsive to procuring agencies' requirements. In addition, foreign companies, including those with Turkish subsidiaries, have reported difficulties complying with onerous documentation requirements imposed by contracting agencies. Turkey frequently issues regulations that exempt urgent projects and procurements from requirements of the Turkish Public Tender Law, allowing entities to conduct tenders or negotiations on an invitational basis. While these exempted tenders technically are open to foreign as well as domestic firms, in practice few of these have been awarded to foreign firms unless they were offering goods or services that were urgently needed and not available in Turkey.

In the energy generation sector, obtaining a license to generate electricity above 5 megawatts (MW) from solar or wind the Ministry of Energy and Natural Resources requires producers to source the majority of their equipment from manufacturers located in Turkey. Organized industrial zones and power generation operations producing less than 5MW of electricity for consumption within the organized industrial zone are exempt from this requirement.

Turkish military procurement policy generally mandates the inclusion in contracts of various "commercial offset" requirements. These specifications typically encourage localization commitments by bidding firms, including in the areas of foreign direct investment (FDI) and technology transfer.

Turkey's Industrial Cooperation Program gives civilian ministries the authority to impose commercial offset requirements in procurement contracts. A foreign company that wins a government procurement contract may be required to produce a certain percentage locally or with a local partner, or transfer technology in order to provide its products and services. The Turkish Government has imposed offsets in the transportation, telecommunications, and energy sectors, among others.

Since July 2019, the Turkish Government prohibits public institutions and organizations from using cloud-computing services.

Turkey is not a Party to the WTO Agreement on Government Procurement but has been an observer to the WTO Committee on Government Procurement since June 1996.

## INTELLECTUAL PROPERTY PROTECTION

Turkey remained on the Watch List in the 2022 Special 301 Report due to intellectual property (IP) issues that represent barriers to U.S. exports and investment.

U.S. industry sources report significant problems involving the export from and trans-shipment through Turkey of counterfeit goods, as well as software piracy, piracy of printed works, and online piracy. These sources report that the judicial system, including judges, prosecutors, and police, fails to adequately address IP-related crime. IP enforcement additionally suffers from a lack of prioritization among government bodies of efforts to combat IP crimes. USTR identified the Tahtakale market in Istanbul in the 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List) as a major transit hub for counterfeit goods coming from China into European and Middle Eastern markets.

Turkey's Industrial Property Law entered into force in 2017, which consolidated under a single law the provisions for protecting trademarks, designs, utility models, patents, and geographical indications and improved the legal framework for technology commercialization and transfer. The law also aimed to increase the Turkish Patent Office's capacity with additional staff.

U.S. pharmaceutical companies continue to raise concerns that Turkey does not adequately protect against the unfair commercial use as well as unauthorized disclosure, of test or other data submitted to obtain marketing approval for pharmaceutical products. They also have reported concerns about the timing of resolving pharmaceutical patent disputes.

## SERVICES BARRIERS

### Professional Services

Turkish citizenship is required to practice as an accountant, a certified public accountant, or a lawyer representing clients in Turkish courts.

### Audiovisual Services

Turkey's Radio and Television Supreme Council published the Regulation on the Transmission of Radio, Television, and On-Demand Services on the Internet on August 1, 2019. The regulation requires providers of Internet streaming services to establish a commercial presence in Turkey and to obtain a broadcasting license. Such licensing requirements are unnecessarily burdensome for Internet streaming services and may limit the ability of foreign firms to supply such services on a cross-border basis.

### Financial Services

Turkey's Law on Payments and Security Settlement Systems, Payment Services and Electronic Money Institutions (E-Payment Law) requires information systems used by financial firms for keeping documents and records to be physically located within Turkey. Many U.S. firms, which utilize a globally distributed network architecture, view these requirements as unworkable. The implementation of the E-Payment Law has led one prominent U.S. firm to suspend its operations in Turkey.

## BARRIERS TO DIGITAL TRADE

### Data Localization

The 2016 Law on the Protection of Personal Data restricts the transfer of personal data outside of Turkey, except to a specific country that the Personal Data Protection Authority (KVKK) has determined provides adequate data protection under Turkish law (the KVKK has not published a list of such countries) or when other specific requirements are met, such as explicit consent from the data subject or specific approval from the KVKK. Restrictions on the flow of data have a significant effect on the conditions for the cross-border supply of numerous services and for enabling the functionality embedded in smart devices.

In early 2018, the Capital Markets Board of Turkey published the Communique on Information Systems Management, which requires publicly traded companies to keep their primary and secondary information systems, data, and infrastructure within Turkey. In addition, Circular 2019/12, published in July 2019, requires public institutions and organizations to store certain critical information and data, such as health records and biometric data, domestically.

### Internet Services

The Law on the Regulation of Broadcasts via the Internet and Prevention of Crimes Committed through Such Broadcasts (Law No. 5651) gives the Ministry of Transport and Infrastructure Information and Communication Technologies Authority (BTK) the responsibility to enforce bans on Internet content deemed offensive by the Turkish courts. BTK has used its authority to block access to various Internet-based service suppliers, including U.S. suppliers. As of July 2020, Law No. 5651 also requires social media platforms with more than one million daily visits from users in Turkey to appoint a Turkey-based representative and rapidly respond to content removal requests. Social media platforms are also required to store user data in Turkey. Penalties for non-compliance include escalating fines, the blocking of advertisement, and bandwidth restrictions.

In October 2022, the Parliament approved Law No. 7418, the Law Amending Press Law and Certain Laws, which criminalizes publishing what the Turkish Government considers disinformation on social media and raises potential privacy concerns and risks for third-party social media companies. The new law's provisions relate to information and communication technology firms, with fines that could reach up to 3 percent of global revenue and throttling of bandwidth by up to 95 percent. The ultimate effect of this regulation will be determined by implementation regulations that are currently being drafted.

On July 1, 2022, the Turkish Parliament implemented a new Law on Regulation of E-Commerce (Law No. 6563) as a follow-on to an investigation by the Turkish Competition Authority. The investigation found "structural market failures and potential competition concerns" in the $22 billion Turkish electronic commerce sector. The new law will come into effect in 2024, and would impose horizontal and vertical sector bans and restrictions, electronic commerce license fees, prohibitions on companies selling their own brands, and advertising restrictions. The ultimate effect of this regulation will be determined by implementation regulations that are currently being drafted.

### Digital Services Taxation

The United States and Turkey are among the 137 jurisdictions to have joined the October 8, 2021 OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting on Base Erosion and Profit Shifting Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy. On November 22, 2021, the United States and Turkey issued a joint statement that describes a political compromise reached on a transitional approach to existing Unilateral Measures while

implementing Pillar 1. Under the transitional approach in the joint statement, digital services taxation (DST) liability that accrues during the transitional period prior to implementation of Pillar 1 will be creditable in defined circumstances against future income taxes due under Pillar 1. In return, the United States terminated the existing Section 301 trade action on goods of Turkey, and committed not to take further trade actions against Turkey with respect to its existing DST until the earlier of the date the Pillar 1 multilateral convention comes into force or December 31, 2023. USTR, in coordination with the U.S. Department of the Treasury, is monitoring the implementation of the political agreement on the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting as pertaining to DSTs, the commitments under the joint statement, and associated measures.

## INVESTMENT BARRIERS

Turkey maintains a liberal legal regime for FDI and generally accords foreign investors the same treatment as domestic investors. However, as economic and democratic reforms have stalled or even regressed since 2020, foreign investors have become more cautious about investing, citing FDI inhibitors including opacity in government decision-making; concerns about the government's commitment to the rule of law; and high levels of foreign exchange-denominated debt held by Turkish non-financial corporations.

## OTHER BARRIERS

### Export Restrictions and Prohibitions

On March 4, 2022, Turkey banned exports of cooking oil, including sunflower, corn, and soybean oils, as well as bulk olive oil. The ban on exports of olive oil was lifted on July 9, 2022. On August 27, 2022, Turkey lifted the export bans on all other vegetable oils except sunflower seed oil. The bans caused trade disruptions on imports (olive oil especially), and Turkey never notified any of these export bans to the WTO, despite requests from the United States and other WTO Members to do so.

### Restrictions on Pharmaceutical Reimbursement and Official Exchange Rate for Government Purchases

*Reimbursement Restrictions*

Since 2017, the Turkish Government has restricted reimbursement for pharmaceutical products sold in Turkey. U.S. pharmaceutical companies have expressed concern that the Turkish Government has refused to adjust adequately the official exchange rate used for government purchases of imported pharmaceutical products.

In 2018, the Turkish Government released two lists totaling approximately 200 pharmaceutical products for which the government would deny reimbursement unless they were manufactured in Turkey. Since government reimbursement covers most pharmaceutical products sold in Turkey, U.S. firms assert that denying reimbursement would seriously undermine their ability to market their products in Turkey if they do not manufacture them locally. The government has also previewed plans to "de-list" an additional three tranches of products but has not specified a timeline nor taken any action to implement these further measures.

*Restrictions on Official Exchange Rate for Purchases*

U.S. pharmaceutical companies claim they cannot bring some next-generation drugs to the Turkish market due to the Turkish Government's maintenance of an official exchange rate for reimbursement of pharmaceutical products that the companies assert amounts to an artificially low reimbursement rate. In

2009, companies negotiated with the MOH to sell their products in Turkey using an exchange rate of 1.95 Turkish lira/1.00 Euro (€) for government reimbursements of pharmaceutical products. The government codified this arrangement in a 2009 law and agreed in that law to adjust the exchange rate with changes over 15 percent compared to the 2009 baseline. According to U.S. industry, in the ensuing years, the exchange rate has shifted against the lira on several occasions, resulting in an effective price discount in the Turkish market. In 2015, the government, faced with multiple court rulings against it for failing to implement the 2009 law properly, decided to reimburse companies each year for only 70 percent of the previous year's average daily market exchange rate without providing a legitimate basis for doing so. In 2019, the government reduced the utilized exchange rate to 60 percent of the previous year's average exchange rate. In July 2022, the government increased the exchange rate used by 25 percent in response to drug shortages.

**Delayed Reimbursement by Public and University Hospitals for Medical Devices and Pharmaceuticals**

The lack of prompt payments by Turkish hospitals remains a concern for U.S. pharmaceutical and medical device companies. Beginning in 2014, Turkish public and university hospitals have repeatedly delayed payments to medical device and pharmaceutical suppliers due to budgetary constraints.

In 2017, the Ministry of Finance took over from the MOH a multi-year debt of $485 million and made substantially discounted payments of up to 27 percent to medical device companies and 9 percent to pharmaceutical companies. After negotiations with the MOH, most U.S. companies agreed to the discounted payments.

Between 2018 and 2020, receivables from public and university hospitals continued to increase, and by September 2020, they surpassed $2 billion. In October 2020, the Ministry of Finance again assumed this debt from the MOH and offered to reimburse companies in two installments (October 2020 and January 2021) in exchange for accepting a 25 percent discount for medical devices and an 18 percent discount for pharmaceuticals. While most of the U.S. companies again agreed to the discounted payments, some did not.

# UKRAINE

**NOTE**: *On February 24, 2022, Russia began a premeditated and unprovoked full-scale invasion of the sovereign nation of Ukraine. This chapter of the National Trade Estimate Report reports primarily on the significant trade and investment barriers in Ukraine before that date. The U.S. Government recognizes that the ability of the Government of Ukraine and the U.S. Government to engage on or address these barriers remains limited and unpredictable.*

## TRADE AGREEMENTS

### The United States–Ukraine Trade and Investment Cooperation Agreement

The United States and Ukraine signed a Trade and Investment Cooperation Agreement (TICA) on April 1, 2008. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Ukraine.

## IMPORT POLICIES

### Tariffs

Ukraine's average Most-Favored-Nation (MFN) applied tariff rate was 4.4 percent in 2021 (latest data available). Ukraine's average MFN applied tariff rate was 9.1 percent for agricultural products and 3.7 percent for non-agricultural products in 2021 (latest data available). Ukraine has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 5.8 percent.

### Taxes

The standard value-added tax (VAT) rate in Ukraine is 20 percent. Ukraine employs an automated VAT refund system, but the efficacy of that system has been inconsistent, and U.S. companies continue to report that the State Tax Service frequently delays VAT refunds by many months. For example, the State Tax Service's delayed publication of updated guidelines for companies led to a significant backlog of invoices. In addition, the State Fiscal Service continues to request original documents confirming business transactions within very short deadlines. Companies also report requests for documentation that go beyond what is required by law. The United States has raised concerns about such delays and requests.

### Non-Tariff Barriers

*Customs Barriers and Trade Facilitation*

While Ukraine's MFN applied tariff rates are relatively low, U.S. businesses have raised concerns that Ukraine's State Customs Service (SCS) assigns higher and seemingly inconsistent customs values to imports than are reflected in the transaction price as provided in the import documentation. Such practices may raise concerns under WTO rules and appear contrary to the Ukrainian law that requires the SCS to rely primarily on the transaction price in determining customs value. Furthermore, it appears that SCS uses its internal valuation database as a mechanism to establish the minimum values of the goods, rather than for risk analysis purposes only. Specifically, even a slight decrease in the invoice value (as compared to historical prices), or the mere fact that the declared value is lower than the "risk indicators" (which are not publicly available), may result in an increased declared value of the goods. U.S. businesses also report that the SCS has begun sending goods for laboratory tests or additional risk audits more frequently, delaying

shipments and raising costs. The United States has frequently raised concerns about these practices with the SCS.

*Other Market Access Barriers*

Importers of U.S. products complained for years about inspection officials at ports of entry taking larger numbers of samples than needed for laboratory testing due to a faulty and arbitrary definition of "uniform allotment" (*i.e.*, batches identified for sampling). Sampling and testing, particularly of expensive products, such as caviar, fish, or chilled meat, and the associated testing fees, poses a significant burden on importers. In 2018, Ukraine adopted legislation establishing the main principles for a governmental food and feed control system, including rules governing sampling at the border. Nevertheless, stakeholders claim that testing continues to be excessive. The United States has asked that Ukraine ensure these regulations are consistent with Ukraine's WTO obligations.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY MEASURES

### Technical Barriers to Trade

*Conformity Assessment Procedures – European Union Technical Regulations and Regimes*

As part of its Association Agreement (AA) with the European Union (EU), including the provisions to establish a Deep and Comprehensive Free Trade Area, and since being granted candidate status for EU membership in June 2022, Ukraine is moving to approximate EU technical regulations and the EU's regulatory regime (including the EU's conformity assessment procedures). Some U.S. industry stakeholders have expressed concerns that this process may lead Ukraine to adopt measures that raise concerns regarding technical barriers to trade. U.S. trade could be negatively affected if Ukraine adopts EU regional standards as a basis for its technical regulations instead of international standards. The United States continues to press Ukraine to ensure that, as it approximates its legislation to that of the EU, it does so in a manner that is consistent with its WTO obligations and that it does not unnecessarily burden U.S. exports. Further, the U.S. Government has urged Ukraine to make full use of the WTO notification procedure to ensure that new regulations and conformity assessment practices are transparent and comply with Ukraine's international obligations. Separately, Ukraine has launched a pilot program to create an electronic platform to publicize draft regulatory measures, accept public comments, and provide its responses to those comments.

*Product Labeling*

Ukraine's law On Provision of Food Information to Consumers, in effect since August 2019, was adopted to approximate EU labeling requirements. U.S. stakeholders have raised concerns about potential conflicts between the requirements in this law (*e.g.*, requiring dietary information per 100 grams) and the provisions in other measures (allowing products imported from the United States to include "per serving" dietary information). The United States has sought clarification on how the dietary information must be presented on labels of imported goods.

On April 1, 2021, Ukraine added additional labeling requirements through the adoption of regulations entitled On Approval of the Procedure and Special Requirements for Labelling and the List of Foodstuff for which Indication of Country of Origin or Place of Origin is Mandatory. This measure would require a label specifying the country of origin or place of provenance for beef, pork, poultry products, honey, and olive oil, and is scheduled to take effect on May 18, 2024. The regulation was adopted to fulfill Ukraine's obligations under its AA with the EU. These new requirements require detailed monitoring and transfer of information about the food products' country or place of origin throughout the entire animal/bird production

and sales cycle so that this information can be stated on the product label. Ukraine notified this measure to the WTO in May 2021.

**Sanitary and Phytosanitary Barriers**

*Import Certification*

In November 2019, Ukraine implemented import requirements for products of animal origin (Order 553). Ukraine notified the draft requirements to the WTO in June 2019. The product scope covered by the measure includes live animals, reproductive materials, seafood, composite products, and animal feed. To enforce these import requirements, Ukraine adopted 72 generic veterinary certificates for the relevant products of animal origin to closer align with EU model certificates. The certificates capture numerous product-specific requirements outlined in Order 553 that do not appear to be science-based and require the exporting country's regulators to certify that exports are in compliance with "Ukrainian legislation" rather than in compliance with the attestations contained within the certificate itself. Requiring certification to a foreign country's legislation without citing the applicable legislation within the certificate is contrary to international practice. Order 553 was initially interpreted to provide that, unless the exporting country and Ukraine have mutually recognized systems equivalence, Ukraine's food safety agency cannot negotiate veterinary certificates that differ from Ukraine's generic forms. After several bilateral meetings and written exchanges with the United States, the Government of Ukraine agreed to accept as valid previously negotiated U.S.–Ukrainian export certificates for products of animal origin. However, these certificates cannot be renegotiated. If Ukraine were to refuse to recognize the existing bilateral export certificates and the United States were forced to trade under Ukraine's generic certificates, U.S. exports of the relevant animal-based products might be shut out of the Ukrainian market. The United States continues to work with Ukraine to ensure that market access for U.S. agricultural exports is not disrupted as Ukraine continues to implement its import regulations.

*Approved Exporters List*

Under Article 61 of the law On State Control over Enforcement of Regulations on Food and Feed Safety, Animal Biproducts, Animal Health and Wellbeing, U.S. establishments (facility/farm/genetics center) can export animal-based products (including live animals, reproductive materials, composite products, animal feed, and seafood) to Ukraine only if they are on Ukraine's Approved Exporters List. Only those facilities that exported to Ukraine historically (between 2013 and 2018) or are approved to export to the EU are included on the list. Ukraine has cited the need to harmonize their legislation with that of the EU, as well as its preference to maintain its trading relationship with historical exporters, as the rationale. However, Ukraine's procedure for adding "historical exporters" is lengthy and problematic, requiring establishments to collect and confirm data on historical exports between 2013 and 2018. In order to add a new-to-market establishment to Ukraine's list, that establishment must undergo an audit. Although basic principles of foreign individual audits are published, specific rules and requirements for the procedure are unclear, and the process itself is cost-prohibitive for small and medium-sized producers. As a result, some U.S. establishments will be unable to export to Ukraine until they complete an expensive and time-consuming EU approval process, or the United States undergoes a country-wide food safety systems audit. The United States has engaged Ukraine on this topic in various meetings and continues to work with Ukraine to resolve this issue.

*Food Safety Standards*

Ukraine has adopted several food safety requirements that mimic EU standards as it deepens its economic relationship with the EU. These measures were notified to the WTO between 2018 and 2021. U.S. exporters (primarily exporters of products of animal origin) are concerned that Ukraine's adoption of EU

standards (*e.g.*, hormone use, antimicrobial resistance) as its national standards, particularly those that are not in line with international standards or based on a risk assessment, could make it significantly more difficult to export certain products to Ukraine. Many of these Ukrainian requirements are related to agrochemicals, veterinary drugs, and hygiene requirements, among others. The United States is working with Ukraine to introduce science-based international practices into Ukraine's rule-making process. In addition, the United States has encouraged Ukraine to make full use of the WTO sanitary and phytosanitary (SPS) notification procedure to ensure that Ukraine's process for adopting new SPS measures is transparent and complies with Ukraine's international obligations.

U.S. industry has raised concerns with the Government of Ukraine about many aspects of Ukraine's biotechnology regime, largely due to the fact that Ukraine's regulatory system for biotechnology products is still in development. While Ukraine's agricultural biotechnology law, which has been in effect since 2007, outlines basic principles for governing biotechnology products, Ukraine has not yet implemented a holistic regulatory regime for registration of biotechnology products either for cultivation or trade of food and feed. Without a fully developed regulatory system, U.S. biotechnology and biotechnology-derived products that could benefit Ukrainian farmers, such as U.S. seeds and genetics, cannot be imported into Ukraine. Further, by law, cultivation of biotechnology products is limited to only registered agricultural biotechnology products. As of September 2022, Ukraine's official registry of biotechnology products did not contain any entries. As a result, no biotechnology product can be legally cultivated in Ukraine or exported to Ukraine from the United States or any other third country. Ukraine has indicated its intent to develop legislation that would introduce a registration system mirroring the EU's controls on biotechnology crops, but, as of December 2022, no such law has been adopted. Ukraine's approximation of its biotechnology policy to conform to that of the EU could result in additional barriers to market access for U.S. exports of biotechnology products. (*For further information on the EU's agricultural biotechnology policies, see the Sanitary and Phytosanitary Barriers section of the EU Chapter of this NTE Report*.)

The United States has initiated meetings and workshops over the past few years outlining the benefits of biotechnology crops. The United States continues to work with the Government of Ukraine to facilitate the development and implementation of an effective, science and risk-based regulatory framework for products of biotechnology, and to help meet Ukraine's economic and sustainability goals since biotechnology crops can help farmers adapt to climate change, increase yields on existing farmland, and strengthen global food security.

## GOVERNMENT PROCUREMENT

On July 14, 2022, amendments to Ukraine's law On Public Procurement entered into force, establishing local content requirements in public procurement of urban transport, utility equipment, railway transport, aerospace products and energy engineering products by giving preference to domestic producers in government tenders if they can demonstrate at least 10 percent (40 percent by 2028) local content. However, following consultations with the U.S. Government, and consistent with Ukraine's WTO commitments, the law exempts from the local content provisions those procurements subject to the WTO Agreement on Government Procurement (GPA). U.S. stakeholders remain concerned that the opaque mechanism for determining the degree of localization could increase the risk of corruption in the procurement process.

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

## INTELLECTUAL PROPERTY PROTECTION

Due to Russia's premeditated and unprovoked full-scale invasion of Ukraine in February 2022, the 2022 Special 301 review of Ukraine was suspended. During the preceding year, the United States had engaged

with Ukraine on concerns regarding Ukraine's intellectual property (IP), including in the areas of: (1) the administration of the system for collective management organizations that are responsible for collecting and distributing copyright royalties to right holders; (2) the use of unlicensed software by government agencies; and, (3) the implementation of effective means to combat widespread online copyright infringement. The United States continues to monitor Ukraine's IP regime and welcomes opportunities to engage with Ukraine on the protection and enforcement of IP.

## SERVICES BARRIERS

### Audiovisual Services

Ukrainian law requires dubbing instead of subtitling of foreign-language films to be shown on television or through video-on-demand, limits screening of foreign-language films to 10 percent of all screenings per month per movie theatre, and applies a 20 percent VAT to the screenings of foreign-language films with subtitles. The United States will remain engaged with Ukraine to help ensure fair treatment of U.S. suppliers, including with respect to transparency of subscription data and the implementation of amendments to Ukraine's law On Media.

## INVESTMENT BARRIERS

Foreign investors are prohibited from owning agricultural land, producing bioethanol, engaging in certain publishing activities, and investing in gas transmission systems, electricity grids, and various plants and factories.

## OTHER BARRIERS

### Corruption

Businesses in Ukraine have historically suffered from abusive investigative activities by Ukrainian law enforcement personnel, and Ukraine's court system offers little protection from corruption and abuse. Business complaints mainly concern the illegality of some law enforcement agencies' actions, including abuse of power, corruption, and unlawful pressure. The United States will continue to work with Ukraine to ensure strong anticorruption institutions, support for law enforcement reform, and a transparent and predictable business environment based on the rule of law.

# UNITED ARAB EMIRATES

## TRADE AGREEMENTS

### The United States–United Arab Emirates Trade and Investment Framework Agreement

The United States and the United Arab Emirates (UAE) signed a Trade and Investment Framework Agreement (TIFA) in March 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and the UAE.

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

As a member of the Gulf Cooperation Council (GCC), the UAE applies the GCC common external *ad valorem* tariff of five percent on the value of most imported products, with several commodity-specific exceptions. The UAE exempts 811 items from customs duties, including imports by philanthropic societies and the diplomatic corps, military goods, personal goods, used household items, gifts, and returned goods.

*Taxes*

In 2016, GCC Member States agreed to introduce common GCC excise taxes on carbonated drinks (50 percent), energy drinks (100 percent), and tobacco and electronic smoking products (100 percent). U.S. beverage producers report that the current excise tax structure for carbonated drinks, which also applies to sugar-free carbonated beverages but exempts sugary juices—many of which are manufactured domestically within GCC countries—disadvantages U.S. products and fails to address public health concerns. The UAE implemented the tax on carbonated drinks in October 2017 and expanded the tax in 2019 to include a 50 percent excise tax on all beverages with added sugar, except for beverages with naturally occurring sugars. In December 2019, the UAE expanded the list of products covered by the excise tax, instituting rates of 100 percent on electronic smoking devices and 100 percent on liquids used in smoking devices.

U.S. defense contractors are exempt from the five percent UAE value-added tax (VAT) on goods and services provided to the U.S. military in the UAE, as stipulated in the bilateral Defense Cooperation Agreement. However, the UAE has not issued a formal decree to establish a process for managing these exemptions and submitting reimbursement claims for prior VAT payments. U.S. industry continues to seek reimbursement for VAT claims dating back to January 2019.

### Non-Tariff Barriers

*Import Bans and Restrictions*

The UAE restricts the import of a number of products including alcoholic beverages and products, industrial alcohol-denatured, methyl alcohol, methylated and medicated spirits, pork products, medicinal substances, printed matter such as magazines and videos, photographic material, fireworks, firearms and ammunition, explosives, drugs, and agricultural pesticides. In March 2019, the UAE Ministry of Climate Change and Environment (MOCCAE) issued Decree No. 98 banning the import of all waste-derived fuel.

On March 21, 2022, the UAE Cabinet issued Resolution No. 19 of 2022 establishing a fee for licensing approved air cargo carriers at $27,226 per annum. In July 2022, Dubai Customs also issued Notice No. 07/2022 regarding a temporary ban on the export and re-export of iron scrap and paper waste with effect from September 30, 2022, until March 19, 2023. U.S. industry raised concerns over these bans on iron scrap export.

*Import Licensing*

Only UAE-registered companies can obtain licenses to import goods. This licensing requirement does not apply to goods imported into free trade zones. Importation of certain goods for personal consumption also does not require an import license.

*Documentation Requirements*

The UAE requires that documentation for all non-agricultural products imported from the United States be authenticated by the Embassy of the UAE in the United States, including delivery orders from the shipping or line agents, original supplier commercial invoices, certificates of origin, and packing lists. Stakeholders report that this consularization requirement is burdensome and costly.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Automobiles*

U.S. automakers raised concerns about implementation challenges of the UAE Emergency Call (eCall) and Digital Audio Broadcasting (DAB+) requirements. The UAE requires full integration of DAB+ radio, an expensive feature, but the UAE does not have any active DAB+ broadcast stations. The UAE also has its own electric vehicle regulations, which are not consistent with regulations developed by the Gulf Standardization Organization (GSO).

U.S. automakers have raised concerns over growing regulatory fragmentation in the GCC. While the GSO is supposed to set standards for the entire GCC market, individual GCC Member States have instituted unique standards for automobiles that deviate from GCC auto standards. The United States will be monitoring this issue across GCC Member States going forward.

*Restrictions on Hazardous Substances – Electrical Goods*

In March 2018, GCC Member States notified the World Trade Organization (WTO) of a draft GSO technical regulation that would require pre-market testing by accredited labs for certain hazardous substances in electrical goods. The measure would also require each type of good to be registered annually and require sample products to be submitted prior to receiving approval for use in the GCC. The United States has raised concerns that the proposed regulatory requirements would have a significant negative impact on the imports of U.S. electrical and electronic equipment, especially as the third-party certification requirements differ from international best practices.

*Conformity Assessment and Marking Requirements*

The Emirates Conformity Assessment Scheme (ECAS) monitors industry compliance with UAE standards for goods to be sold in the country. ECAS, initially notified to the WTO in 2004, applies to items such as textiles, building materials, energy drinks, dairy, juice, honey, and organic products. In addition, obtaining

the Emirates Quality Mark (EQM) is mandatory for bottled drinking water, natural mineral water, and ice for human consumption. The application of ECAS and EQM to these items duplicates the regulatory system overseen by MOCCAE.

*Halal Regulations*

In 2015, the UAE published the regulation, Animal Slaughtering Requirements According to Islamic Rules, which has been especially onerous for U.S. poultry exporters as it disallows electric stunning. Electric stunning is a standard industry practice with the objective of reducing the suffering of the animal prior to slaughter and is accepted in many overseas halal markets. In June 2019, the UAE notified to the WTO a draft update to the regulation. While the 2019 draft is a marked improvement and largely resolves issues with poultry stunning, it does not resolve other issues, such as bleed times for ruminants, requirements for a Muslim to operate equipment, random sample and record keeping, allowed travel distances, and slaughtering methods. As of December 31, 2022 the UAE revisions to the standard had yet to be fully adopted.

*Energy Drinks*

In January 2016, GCC Member States notified to the WTO a draft GSO technical regulation for energy drinks, which was revised in March 2022. The U.S. Government and private sector stakeholders have raised concerns through bilateral and multilateral fora regarding the draft regulation. These concerns include the proposed marketing-based definition for energy drinks and labeling requirements regarding recommended consumption. Industry stakeholders still report that caffeine-content limitations unduly target energy drinks in GCC Member States. In many cases, such limitations do not apply to other drink products that contain similar or even higher levels of caffeine, such as tea, brewed coffee, and other ready-to-drink coffee products.

**Sanitary and Phytosanitary Barriers**

*Livestock*

In March 2020, MOCCAE issued Resolution No. 98 on imported livestock. The resolution aims to define and register imported animals, including camels, cattle, sheep, and goats, for the purposes of controlling animal diseases and protecting public health. According to the resolution, the Abu Dhabi Agriculture and Food Safety Authority will create accounts for all importers of livestock under the identification system of producing animals. Article 4 of the resolution stipulates that an importer must provide identification marks for imported animals according to MOCCAE's import permit system, and MOCCAE bans any changes or modification to the animal's identifications. The MOCCAE specified that live sheep, goats, cows, birds, day-old chicks, and hatching eggs are authorized for import from the United States. Only camels are not authorized for import from the United States.

*Food Additives*

The UAE policy on food additives restricts the range of U.S. products permitted for export to the UAE market by referencing only Codex Alimentarius Commission (Codex) and European Union (EU) food additive standards rather than establishing its own national food additive approval process. Incongruences in U.S. and EU food additive approvals result in a bar to exports to the UAE of products containing food additives that are widely available, utilized, and considered safe within the United States.

Until Codex formally adopts the extensive backlog of food additive dossiers, the United States has requested the UAE recognize food additive standards established in the United States as well as those of the EU.

On October 13, 2022, the Abu Dhabi Department of Culture and Tourism released a new set of rules for selling alcoholic beverages in the UAE. The new rules stipulate that the minimum strength of alcoholic beverages is 0.5 percent; wine shall be free from vinegar taste or smell; and, beer shall not contain artificial sweeteners, flavors, and colorants, except for caramel.

U.S. industry stakeholders have noted concerns that the 2021 GCC Technical Regulations applied to Additives Permitted for Use in Foodstuffs are not aligned with relevant standards for food additives from the Codex, particularly with respect to additives widely used in cheese production, such as curcumins and annatto, and may potentially disrupt trade in food products.

*Titanium Dioxide*

In September 2020, GCC Member States notified to the WTO a draft GSO technical regulation that would remove titanium dioxide from the list of approved food additives, in line with EU food additive regulations. Titanium dioxide is an adopted food additive that is included in the Codex General Standard for Food Additives (GSFA). As such, it may be used in specified foods under the conditions of good manufacturing practices as outlined in the Codex GSFA. The U.S. Department of Health and Human Services Food and Drug Administration continues to allow for the safe use of titanium dioxide as a color additive in foods, subject to certain restrictions, including that the quantity of titanium dioxide does not exceed one percent in weight of the food. The EU banned the use of titanium dioxide as a food additive on August 7, 2022, based on a risk classification that the European Court of Justice later ruled to be based on faulty scientific analysis. The EU is determining how to respond in light of the court's ruling. Following the EU move to ban the use of titanium dioxide in animal feed, in 2021 the Codex Committee on Food Additives agreed that titanium dioxide should be re-evaluated by the Joint FAO/WHO Expert Committee on Food Additives (JECFA). JECFA is set to meet and provide its findings in June 2023. The United States has requested that GCC Member States wait until this review has been completed before considering changes to their existing regulatory approval, given the lack of data demonstrating negative health effects from allowed uses of this food additive.

*Agricultural Biotechnology*

In May 2020, the UAE issued Federal Law No. 9 regarding the biosafety of agricultural biotechnology products. The law prohibits the import, export, re-export, transit, production, and circulation of any agricultural products with biotechnology content of equal to or higher than 0.9 percent. For agricultural products with a biotechnology content less than this threshold, a permit is required. On August 16, 2022, the UAE Cabinet issued Resolution No. 84 of 2022 regarding the executive bylaws for Federal Law No. 9 of 2020 regarding the biological safety from genetically modified organisms and their products. The decree places several restrictions, requirements, and specifications for the import, transport, circulation, and re-export of such products.

## GOVERNMENT PROCUREMENT

U.S. companies have raised concerns regarding a lack of transparency in the UAE's government procurement processes, in addition to lengthy delays and burdensome procedures to receive payment.

On March 16, 2022, the UAE Ministry of Economy announced a new vision for the UAE National Program for Emirati small and medium-sized enterprises (SMEs), which would give an advantage to Emirati SME-

owners by providing them with several new incentives and preferential services, including: registration for federal government procurement tenders, business services from telecoms to internal audits, and easier access to funding.

Foreign defense contractors also continue to raise concerns about satisfying contractual obligations through a Tawazun Economic Program Agreement (TEPA) as administered by the Tawazun Economic Council (TEC). The TEPA is referred to as an "offset agreement" by defense contractors, and despite TEC's recent reforms of the program, as reflected in the 2019 Tawazun Economic Program Policy Guidelines, satisfying offsets in the UAE remains a challenge for U.S. defense contractors.

A new federal center for In Country Value (ICV) strategy was established in July 2020 to expand local content procurement preferences. In March 2021, the UAE enhanced the ICV program as part of its ten-year comprehensive strategy, "Operation 300 Billion," implementing programs and initiatives to increase ICV through the promotion of local products on a global level and through building an attractive business environment for local and international investors to boost productivity.

U.S. firms have raised concerns that the ICV program is not transparent and that ICV criteria change frequently. On October 3, 2022, the UAE announced the expansion of its ICV program to the emirates of Ras Al Khaimah and Fujairah.

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

## INTELLECTUAL PROPERTY PROTECTION

In 2021, the UAE was removed from the Special 301 Watch List after resolving concerns with intellectual property (IP) protection of pharmaceutical products, making progress on long-standing IP enforcement issues, and increasing transparency with stakeholders. In addition, the UAE significantly increased enforcement actions against sellers of counterfeit goods at the Ajman China Mall, which was removed from the 2021 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List). The Deira District markets in Dubai remain on the 2022 Notorious Markets List. The UAE has continued showing improvement with the judicial system's treatment of IP cases and a series of major legal reforms to its IP laws.

However, entertainment industry stakeholders continue to seek a mechanism to establish a collection management organization for music royalties. Right holders are likewise calling for the Telecommunication and Digital Regulatory Authority to engage with domain name registrars and other intermediaries to facilitate effective enforcement actions against copyright infringement, encourage customs authorities to ban the importation of illegal set-top boxes, and put more restrictions on free or paid subscription-based services that unlawfully retransmit TV channels containing copyrighted content.

## SERVICES BARRIERS

### Distribution Services

Federal Law No. 11 of 2020 amended the Commercial Agency Law No. 18 of 1981 to require that all commercial agents within the UAE must either be a UAE national, a UAE public joint stock company (PJSC) owned at least 51 percent by UAE nationals, a UAE private entity owned by a PJSC meeting the previous requirements, or a UAE private entity 100 percent owned by UAE nationals. Legislation issued on December 13, 2022 appears to address this issue.

### Insurance Services

Foreign insurance companies are allowed to operate independently in the UAE only as branches. Foreign equity in domestic insurance companies is limited to 49 percent.

A May 2019 resolution on regulations for reinsurance businesses requires that at least 51 percent of the capital of any insurance company incorporated in the UAE be owned by natural persons who are UAE or GCC nationals, or by legal persons fully owned by UAE or GCC nationals. However, a foreign reinsurance company may seek a license from the regulator to operate as a branch.

In September 2020, the UAE Cabinet amended provisions of the Council of Ministers Resolution No. 31 of 2019 concerning regular Economic Substance Requirements for many financial and commercial firms. This amendment subjects foreign-owned financial firms, including banks, insurers, and purveyors of other financial products, to onerous reporting requirements, while companies that are majority owned by UAE nationals are exempt from these requirements.

### Telecommunications Services

The UAE Government maintains majority ownership in Etisalat and du, which are the only telecommunications service suppliers, Internet service providers and mobile phone operators in the UAE. In January 2021, both telecommunications providers raised their foreign investment cap to 49 percent, though actual foreign ownership is only 8.35 percent for Etisalat and less than one percent for du.

## BARRIERS TO DIGITAL TRADE

### Data Localization

In January 2022, the Federal Decree-Law No. 45 of 2021 regarding personal data protection (the Data Protection Law) came into effect. The Data Protection Law restricts the cross-border movement of data unless the Emirates Data Office determines that certain countries or territories provide adequate data protection, the UAE accedes to bilateral or multilateral agreements related to personal data protection with the countries to which the personal data is to be transferred, personal data is transferred under a transferred under a standard contract, personal data is transferred based on consent, or other specific circumstances exist. Details on these measures will be further clarified in the executive regulations for implementing the Data Protection Law, which are under draft. Restrictions on the flow of data have a significant effect on the conditions for enabling the functionality embedded in smart devices, among other effects. The United States will continue to engage with the UAE to promote interoperability between the UAE and U.S. approaches to data protection to ensure the cross-border flow of data between the UAE and the United States.

### Internet Services

Etisalat and du block access to most over-the-top Internet-based communications services, such as Voice over Internet Protocol services, video communication services, and messaging services. UAE regulators have declined to intervene, effectively prohibiting market access for foreign suppliers of such services. In March 2020, the UAE regulators announced the temporary availability of five applications to support distance learning and remote working amid the COVID-19 pandemic. In 2021 and 2022, UAE regulators continued allowing these applications on a temporary basis. Stakeholders raised concern that nationally controlled telecom services in the UAE have consistently controlled access to, and quality of, foreign Internet-based communications services, creating significant market access barriers for U.S.-based Internet

services and apps. UAE regulators continue to insist that only national providers can provide these forms of communications services.

## INVESTMENT BARRIERS

### Limitations on Foreign Equity Participation

Pursuant to amendments to the UAE Commercial Companies Law in 2020, there is no longer a requirement that UAE nationals own at least 51 percent of the shares of a UAE company. In 2021, the UAE began to implement these legislative changes that allow 100 percent foreign ownership of certain companies, although foreign investment remains restricted for commercial agencies or companies engaged in strategic activities, including the military, banking, insurance and re-insurance, and telecommunication sectors, or professional activities such as consultancies.

The UAE has generally limited land ownership to Emiratis or other GCC citizens, who may then lease the land to foreigners. In 2019, the Abu Dhabi Government issued Law 13 allowing foreign individuals and companies wholly or partially owned by non-UAE nationals to own freehold interests in land located within certain investment areas of Abu Dhabi. The law also allows PJSCs to own a freehold interest in land and property anywhere in Abu Dhabi, provided at least 51 percent of the company is owned by UAE nationals. Outside of these parameters, foreign ownership of land is limited to a long-term lease of up to 99 years, renewable upon the agreement of both parties.

# UNITED KINGDOM

## TRADE AGREEMENTS

Following a June 2016 referendum, the United Kingdom (UK) formally left the European Union (EU) on January 31, 2020 (Brexit). To avoid any break in existing legal coverage and mechanisms, the UK Government enacted the European Union (Withdrawal) Act 2018 to incorporate EU laws and regulations into domestic UK law, replacing references to EU entities and laws and regulations with corresponding UK references. As a result, beginning January 1, 2021, the UK and EU had virtually identical legal and regulatory structures, although the UK is now generally free to change its laws and regulations independent of the EU. In September 2022, the UK Government introduced the Retained EU Law (Revocation and Reform) Bill that would give the government ministers new powers to keep, repeal, or amend any EU retained law and end the special status of retained EU law in domestic UK law by the end of 2023. The proposed legislation also includes a sunset date by which all remaining retained EU law will cease to have effect at the end of 2023 unless affirmatively assimilated into domestic UK law. The sunset date may be extended for specified pieces of retained EU law until 2026.

The UK and EU negotiated a new trade agreement, the UK–EU Trade and Cooperation Agreement (TCA), that as of January 1, 2021, continues tariff-free and quota-free access to each other's markets without binding each other's regulatory regimes. Under the TCA, if domestic regulatory systems diverge in ways that significantly affect trade, either side may seek to rebalance the agreement by modifying market access commitments.

On December 31, 2020, the United States and the UK completed the transition of five existing United States–EU agreements to new United States–UK agreements. These five agreements covered aspects of bilateral trade in wine, distilled spirits, marine equipment, telecommunication equipment, electromagnetic capability, pharmaceutical products (good manufacturing practices), and covered insurance and reinsurance. Additional information regarding the agreements can be found on the Office of the U.S. Trade Representative's website. The United States and the UK have also ensured the transition of mechanisms supporting trade in organic products and recognition of veterinary health certificates.

## IMPORT POLICIES

### Tariffs

*United Kingdom Global Tariff*

The UK's average Most-Favored-Nation (MFN) applied tariff rate was 3.9 percent in 2021 (latest data available). The UK's average MFN applied tariff rate was 10.0 percent for agricultural products and 3.0 percent for non-agricultural products in 2021 (latest data available). The UK has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 5.3 percent.

The UK has duties on approximately 5,000 tariff lines, including on certain agricultural products, ceramics, chemicals, bioethanol, and vehicles. Tariffs on some products such as bananas, raw cane sugar, and apparel, which tend not to be import sensitive for the UK, are maintained to provide for preferential access for imports from developing countries into the UK compared to the MFN rate. The UK has some high tariffs that affect U.S. exports, such as rates of up to 25 percent for some fish and seafood products, 10 percent for trucks, 10 percent for passenger vehicles, and up to 6.5 percent for certain fertilizers.

*Tariff-Rate Quotas*

Under the UK Global Tariff, some products are covered by a tariff-rate quota (TRQ). TRQs apply to a variety of agricultural products that the United States exports in significant quantities, including beef, pork, and rice.

**Non-Tariff Barriers**

*Customs Barriers and Trade Facilitation*

The UK continues to implement changes to its border control measures following its exit from the EU, particularly for goods imported from the EU. Additional import controls on EU goods that were to be implemented in 2022 were postponed to a future date to be determined. The UK Government said it would announce details of a new regime of border import controls, but as of December 31, 2022, it had not done so. The so-called Target Operating Model would be applicable equally to goods from the EU and goods from the rest of the world, and the UK Government has targeted the end of 2023 as the introduction date for the new regime. Until such time, however, U.S. exports to the UK are subject to certain requirements (*e.g.*, safety and security declarations and health certifications) and prohibitions or restrictions (*e.g.*, the export of chilled meats) that are not applicable to EU exports to the UK. U.S. companies have also raised concerns with periodic delays at several border locations due to inadequate infrastructure or staffing. In addition, on October 1, 2022, the UK introduced a new system for businesses to use to declare the import of goods; the same system will be used to declare exports as of March 31, 2023. During this transition period, the amount of time required for U.S. goods to enter or depart the UK could increase.

*Northern Ireland-specific Border Controls*

Northern Ireland is subject to separate arrangements under the Protocol on Ireland/Northern Ireland (the Protocol) that accompanied the agreement between the UK and the EU addressing the UK's withdrawal from the EU. Checks on goods moving from Great Britain into Northern Ireland began on January 1, 2021, although certain food products and medicines received grace periods before checks came into force. In September 2021, the UK Government announced it would extend those grace periods indefinitely, pending the outcome of negotiations with the EU on implementation of the Protocol, which are ongoing. In June and July 2022, the EU launched or resumed several infringement proceedings against the UK alleging a failure to carry out its obligations under the Protocol, including under applicable EU customs requirements, supervision requirements, risk controls, and sanitary and phytosanitary (SPS) rules. With respect to medicines, in April 2022, the EU concluded changes to its regulations to facilitate the flow of medicines from Great Britain to Northern Ireland. On February 27, 2023, the UK and the EU jointly announced the Windsor Framework to address issues regarding the Protocol. When implemented, the Windsor Framework would apply UK regulations regarding food safety, value-added tax and excise rates, and medical licensing for goods and services remaining within Northern Ireland, and would retain Northern Ireland's place in the UK internal market and access to the EU market.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

**Technical Barriers to Trade**

Upon withdrawal from the EU, the UK transposed existing EU technical regulations and requirements into UK law in 2021, thus creating close initial alignment between UK and EU technical regulations and requirements. Specific trade concerns outlined in the technical barriers to trade (TBT) section of the EU Chapter in this National Trade Estimate Report thus remain with respect to the UK. There have been, and

will likely continue to be, divergences between the two regimes, as changes to some EU regulations have not been, or will not be, automatically reflected in the UK regulatory regime and vice versa.

**Sanitary and Phytosanitary Barriers**

Upon withdrawal from the EU, the UK transposed existing EU SPS measures into UK law in 2021, thus creating close initial alignment between UK and EU SPS measures. Specific trade concerns outlined in the SPS section of the EU Chapter in this National Trade Estimate Report thus remain with respect to the UK. These include measures that unnecessarily restrict trade without furthering safety objectives because they are not based on science, are maintained without sufficient scientific evidence, or are applied beyond the extent necessary that negatively impact market access for U.S. agricultural products. Specifically, the UK remains closely aligned to EU policy on pesticide approvals, regulation, and maximum residue limits (MRLs). However, there have been, and will likely continue to be, divergences between the two regimes, as changes to some EU SPS measures have not been, or will not be, automatically reflected in the UK SPS measures and vice versa.

*Agricultural Biotechnology*

U.S. exports of processed foods and beverages to the UK have been constrained by market conditions and local legislation pertaining to genetically modified (GM) food products. Due to long-standing negative perceptions in the U.K. of agricultural biotechnology, UK supermarkets and food manufacturers formulate their grocery products to exclude GM ingredients. The UK retained EU legislation post-Brexit, and there has been no attempt to amend the legislation to allow GM products into the UK market, with the exception of specific agricultural biotechnology products for animal feed that require approval. The UK now has the autonomy to establish its own regulatory and policy approach for agricultural biotechnology products, including crops and animals. The UK is aiming to transition away from the retained EU policy approach for agricultural biotechnology products, beginning with genome-edited products, and with the intention of subsequently addressing GM products. In early 2021, the UK launched a regulatory review that proposes a tiered approach to food and animal feed approvals based on product characteristics rather than on the technology involved in its production. In May 2022, the Genetic Technology (Precision Breeding) Bill was introduced in Parliament. It is an enabling act that is intended to simplify the process for product development and then marketing for sale. This will only apply to genome-edited products that are indistinguishable from those produced with conventional breeding techniques. This approach also paves the way for modernization of the UK's full suite of agricultural biotechnology regulations.

*Agricultural Chemicals, Pesticide Regulations*

In May 2021, UK officials indicated that the UK would follow a risk-based approach to reviewing and approving agricultural chemicals and pesticides, as they established their post-Brexit regulatory policies. However, U.S. agricultural exporters are increasingly concerned that the UK might retain the EU's hazard-based approach to regulating agricultural chemicals and pesticides, which often results in restrictions that are not justified by science and that could result in reductions of important MRLs, creating barriers to trade and disrupting U.S. crop and food and agriculture exports to the UK. In 2022, the UK notified two measures to the WTO that proposed lowering MRLs that are important for U.S. growers, based on risk assessments that were completed while the UK was a member of the EU. In November 2022, the UK indicated it will continue to follow the EU's hazard-based approach to MRLs while it develops its own regulatory processes.

**GOVERNMENT PROCUREMENT**

The UK is a Party to the WTO Agreement on Government Procurement.

*UK Space Agency*

Participation in European Space Agency (ESA) procurements, to which the UK contributes funding, is generally only open to economic operators in ESA Member States. U.S. companies are generally prohibited from competing on ESA contracts. A significant amount of money is allocated by the UK to ESA. For example, the UK Space Agency allocated £376.4 million (approximately $437.0 million) to ESA in its 2021–2022 budget, which is approximately 76 percent of the UK Space Agency's total budget.

## INTELLECTUAL PROPERTY PROTECTION

The UK generally maintains high levels of intellectual property (IP) protection and enforcement. However, U.S. stakeholders have expressed concern that the UK music copyright collective fails to remunerate U.S. artists for radio broadcasts and public performances of their music in the UK. The United States will continue to monitor developments with the UK's IP system.

*Geographical Indications*

The UK geographical indications (GI) program limits the use of the geographical names for food, drink, and agricultural products (including beer, cider, and perry), spirit drinks, wine, and aromatized wine. The UK schemes use the following designations: Protected Designation of Origin (PDO); Protected Geographical Indication (PGI); and Traditional Speciality Guaranteed (TSG).

The UK schemes are open to producers from the UK and other countries. All existing products that were registered under the EU GI schemes as of December 31, 2020, remain covered under the UK GI schemes, including both UK and EU GIs.

The United States is monitoring the impact of the UK's schemes for the protection of GIs on prior trademark rights and on market access for U.S. goods that rely on the use of common names.

## SERVICES BARRIERS

*Professional Qualifications*

There is generally no reciprocity with the UK for medical certifications, qualifications, and degrees.

Permission to act as a chartered accountant requires the applicant to have professional experience in the UK, thus preventing experienced U.S. certified public accountants (CPAs) from obtaining authorization to practice in the UK. Efforts are being made to address this through professional bilateral arrangements. For example, U.S. accountancy bodies have entered into a mutual recognition agreement with the Institute of Chartered Accountants of Scotland (ICAS), which streamlines many of the requirements for U.S. CPAs to obtain ICAS authorization, and for ICAS accountants to seek authorization as a U.S. CPA. Under the agreement, ICAS committed to seeking dispensation from its oversight regulator, the UK Financial Reporting Council (FRC), to recognize auditing experience obtained in the United States toward ICAS's practical auditing experience requirement. Notwithstanding initial positive statements, more recently the FRC has resisted these efforts, endangering the ongoing viability of the ICAS agreement and any further agreements with UK chartered accountancy institutes. U.S. regulators have indicated that they will continue to engage with the UK on this issue.

## BARRIERS TO DIGITAL TRADE

### Data Localization

The UK Data Protection Act, which is modeled after the EU General Data Protection Regulation (GDPR), took effect in May 2018. Because of the UK's assertion of extraterritorial jurisdiction for the Act, in addition to the Act's broad impact on many areas of the economy, U.S. companies have expressed concerns that there remains a need for clear and consistent guidance in its implementation and enforcement. The Act restricts the transfer of the personal data of UK "data subjects" (any natural person whose personal data is being processed) outside of the UK, except to specific countries that the UK has determined provide adequate data protection under UK law or when other specific requirements are met, such as the use of standard contract clauses or binding corporate rules. On July 18, 2022, the UK Government introduced in Parliament the Data Protection and Digital Information bill, which is intended to update and simplify the UK's data protection framework via changes to the Data Protection Act and the UK GDPR, among other regulations. As of December 31, 2022, the bill was still under consideration in the UK's House of Commons. The United States will continue to engage with the UK to promote interoperability between UK and U.S. approaches to data protection to ensure the cross-border flow of data between the UK and the United States.

### Interactive Computer Services

*Online Harms*

On May 11, 2022, the UK Government reintroduced a proposed "Online Safety" bill that was first introduced in the prior parliamentary session. If enacted, this legislation may impose a new "duty of care" on a wide range of online service providers to reduce the distribution of harmful online content. This legislation also may place additional obligations on larger companies that the UK determines provide "high risk" services. The bill remains under consideration in the UK's House of Commons.

### Digital Services Taxation

The United States and the UK are among the 137 member jurisdictions to have joined the October 8, 2021, OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy, which called for all Parties to commit not to introduce DSTs in the future. On October 21, 2021, the United States, Austria, France, Italy, Spain, and the UK issued a joint statement that describes a political compromise reached among these countries "on a transitional approach to existing Unilateral Measures while implementing Pillar 1." According to the joint statement, digital services taxation (DST) liability that accrues to Austria, France, Italy, Spain, and the UK during a transitional period prior to implementation of Pillar 1 will be creditable in defined circumstances against future corporate income tax liability due under Pillar 1. In return, the United States terminated the existing Section 301 trade actions on goods of Austria, France, Italy, Spain, and the UK and committed not to take further trade actions against these countries with respect to their existing DSTs, provided that the country follows through on the agreement described in the joint statement, until the earlier of the date the Pillar 1 multilateral convention comes into force or December 31, 2023. USTR, in coordination with the U.S. Department of the Treasury, is monitoring the implementation of the political agreement on the OECD/G20 Two-Pillar Solution as pertaining to DSTs, the commitments under the joint statement, and associated measures.

## SUBSIDIES

*Government Support for Airbus*

After 15 years of litigation, in October 2019, the WTO authorized the United States to take $7.5 billion in countermeasures in the dispute against the EU, France, Germany, Spain, and the UK regarding their illegal subsidies for the Airbus consortium.

On June 17, 2021, the United States and the UK announced a cooperative framework to address the large civil aircraft disputes and agreed to future cooperation to overcome any disagreements in the sector. Over many years, the UK, together with other EU Member States, have provided subsidies to their Airbus-affiliated companies to aid in the development, production, and marketing of Airbus's large civil aircraft. As part of the cooperative framework, the United States and UK will not impose countermeasures in the form of tariffs for five years and will work together to address non-market practices in the aircraft sector. The United States and the UK established a working group to address these issues on an ongoing basis. The working group met in April and December 2022.

# URUGUAY

## TRADE AGREEMENTS

The United States and Uruguay signed a Trade and Investment Framework Agreement (TIFA) on January 25, 2007. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Uruguay.

## IMPORT POLICIES

### Tariffs

Uruguay's average Most-Favored-Nation (MFN) applied tariff rate was 10.3 percent in 2021 (latest data available). Uruguay's average MFN applied tariff rate was 10 percent for agricultural products and 10.3 percent for non-agricultural products in 2021 (latest data available). Uruguay has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 31.5 percent.

Uruguay is a founding member of the Southern Common Market (MERCOSUR), formed in 1991, which also includes Argentina, Brazil, and Paraguay. MERCOSUR's Common External Tariff (CET) ranges from zero percent to 35.0 percent *ad valorem* and averages 12.5 percent. In July 2022, MERCOSUR countries agreed to a 10 percent reduction of the CET for over 80 percent of product lines. Any good imported into Uruguay (not including free trade zones) is subject to the payment of the CET to Uruguay's customs authority. If the product is then re-exported to another MERCOSUR country, the CET must be paid again to the second country. MERCOSUR approved a Common Customs Code (CCC) in 2010 and launched a plan to eliminate the double application of the CET within MERCOSUR in 2021. However, only Argentina has ratified the CCC, and it has not taken effect.

### Non-Tariff Barriers

*Customs Barriers and Trade Facilitation*

Uruguay charges a consular fee on imports, currently at five percent *ad valorem*, up from two percent in 2018. The imposition of consular fees disadvantages U.S. exports to Uruguay by increasing costs and imposing additional formalities that are unrelated to the services provided by the customs authority.

U.S. express delivery service suppliers have raised concerns about restrictions on packages imported to Uruguay, including low-value packages under the $200 *de minimis* threshold. These shipments are restricted to non-commercial shipments and cannot exceed three shipments per recipient per year.

## INTELLECTUAL PROPERTY PROTECTION

The United States urges Uruguay to ensure transparency and procedural fairness in the protection of geographical indications (GIs) and to ensure that the grant of GI protection does not deprive interested parties of the ability to use common names, particularly as Uruguay proceeds with the European Union (EU)–Mercosur Trade Agreement.

# VIETNAM

## TRADE AGREEMENTS

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

The United States and Vietnam signed a Trade and Investment Framework Agreement (TIFA) in June 2007. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Vietnam.

## IMPORT POLICIES

### Tariffs and Taxes

*Tariffs*

Vietnam's average Most-Favored-Nation (MFN) applied tariff rate was 9.6 percent in 2021 (latest data available). Vietnam's average MFN applied tariff rate was 17.1 percent for agricultural products and 8.4 percent for non-agricultural products in 2021 (latest data available). Vietnam has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 11.7 percent. Vietnam also maintains import tariff-rate quota regimes for salt, tobacco, eggs, and sugar.

Vietnam's Law on Tariffs (No. 107), which includes an applied tariff schedule (Decree 122/2016/ND-CP), has been in effect since September 2016. Inputs imported for software production, medical equipment production, shipbuilding, and petroleum activities that cannot be produced domestically are eligible for tariff exemptions. Tariff exemptions and refunds are also applied to the following: animal breeds, plant varieties, fertilizers, and plant protection products that are not produced domestically; machinery, inputs, and spare parts used for money printing; and, goods imported or exported for the purpose of environmental protection.

Although the majority of U.S. exports to Vietnam face tariffs of 15 percent or less, consumer-oriented food and agricultural products continue to face higher rates. In recent years, Vietnam has increased MFN applied tariff rates on a number of products, including sweeteners (such as fructose and glucose), shelled walnuts, ketchup and other tomato sauces, inkjet printers, soda ash, and stainless-steel bars and rods. Most of the products for which tariffs have increased are also produced by companies in Vietnam.

On November 15, 2021, Vietnam issued Decree 101/2021/ND-CP, revising its MFN tariff rates for corn, wheat, and frozen pork. The decree eliminated the MFN tariff on all classes of wheat, lowered the duty on corn from five percent to two percent, and lowered the duty on frozen pork from 15 percent to 10 percent. The tariff reductions for wheat and corn entered into force on December 30, 2021, while the reduction for frozen pork entered into force on July 1, 2022.

Decree 125/2017/ND-CP (Decree 125) increased the number of MFN duty-free tariff lines by 149 lines, from 3,133 to 3,282, effective January 2018. The decree also doubled tariff rates for used passenger vehicles. In addition, Decree 125 reduced tariff rates to zero percent for automotive parts that cannot be produced domestically (Harmonized System (HS) heading 98.49), applicable until 2022. In July 2020, Decree 57/2020/ND-CP came into effect, which revised and supplemented Decree 125. It applies a zero percent tariff rate through 2024 for materials, inputs, and spare parts (HS heading 98.49) to be used for car production and assembly that domestic companies are not able to manufacture.

In December 2021, Decree 101/2021/ND-CP, revising Decree 122/2016/ND-CP, Decree 125/2017/ND-CP and Decree 57/2020/ND-CP, took effect. It added oil seeds and oleaginous fruits for seeding and engine control unit or use in motor vehicles to the zero percent tariff rate list. The tariffs of goods under HS heading 71.13 were reduced from 25 percent to zero percent and for HS heading 71.14 were reduced from 30 percent to 1 percent, while the tariffs of goods under HS heading 25.05 were increased from zero percent to 10 percent to 30 percent (staged) and the tariffs of goods under HS heading 25.16 were raised from zero percent to 3 percent to 17 percent to 30 percent (staged). The Decree also extended the zero percent tariff rate of materials, inputs and spares of HS heading 98.49 to be used for car production and assembly that are not domestically manufactured, regulated in Decree 57/2020/ND-CP, through 2027.

From August 2022, according to Decree 51/2022/ND-CP revising Decree 122/2016/ND-CP, Decree 125/2017/ND-CP and Decree 57/2021/ND-CP, the tariff rate for petroleum products under HS heading 27.10 was reduced from 20 to 10 percent.

*Taxes*

Vietnam's Law 106/2016/QH13 increased the special consumption taxable base for imported alcoholic beverages from the import price to the sales price received by the importer, thereby significantly increasing the tax burden on importers relative to domestic producers.

**Non-Tariff Barriers**

*Import Bans and Restrictions*

Vietnam prohibits the commercial importation of some products, including certain children's toys, second-hand consumer goods, used parts for vehicles, used internal combustion engines of less than 30 horsepower, certain encryption devices and encryption software, refurbished medical devices, and certain cultural products.

Vietnam maintains import prohibitions on certain used information technology (IT) products. Decision 18/2016/QD-TTg eases import prohibitions on some used IT products, if these products meet various technical regulations and standards. The products covered under the decision include used IT goods that are: (1) imported in conjunction with the relocation of means of production of a single organization; (2) imported for the control, operation, and inspection of activities in one or all parts of a system or production line; (3) imported for software production, business outsourcing, or data processing for foreign partners; or, (4) re-imported after overseas repairs under warranty. The decision also covers refurbished goods and components no longer in production that are imported to replace or repair those being used domestically.

*Trading Rights*

Companies are allowed to import all goods, except for a limited number of products that may only be imported by state trading enterprises. These products include cigars and cigarettes, materials for gold bar production, fireworks, newspapers, journals and periodicals, and recorded media for sound or pictures (with certain exclusions). Vietnamese law provides that foreign-invested enterprises with export trading licenses may buy agricultural products only from local traders.

*Price Registration and Stabilization*

Under Vietnam's Price Law, the Ministry of Finance (MOF) has the authority to apply price controls on a set list of products, including petroleum products, electricity, liquefied petroleum gas, nitrogen fertilizers,

pesticides, animal vaccines, salt, milk products for children under the age of six, sugar, rice, and basic human medications.

*Product Registration Requirements – Imported Pharmaceuticals*

Some U.S. stakeholders continue to express concerns about the impact on foreign firms of product registration requirements for imported pharmaceuticals. Decree No. 54/2017/ND-CPD, which came into effect in July 2017, permits foreign pharmaceutical companies to establish importing entities. The international business and pharmaceutical community welcomed this step but continues to have concerns about warehousing, distribution, and licensing requirements, as well as the lack of a transition period for companies to establish a foreign-invested entity.

Circular 32/2018/TT-BYT (Circular 32), which was in force from September 2019 to October 2022, regulated the drug registration process in Vietnam and required the Drug Administration of Vietnam to coordinate with diplomatic missions and foreign regulating agencies to verify the authenticity of legal documentation of pharmaceutical products, including the Certificate of Pharmaceutical Product (CPP), in drug registration dossiers necessary for the issuance or renewal of the marketing authorization for a drug. Vietnam subsequently replaced Circular 32 with Circular 08/2022/TT-BYT on the Guidelines for Implementation of the Law on Pharmacy (Circular 8), which came into force on October 20, 2022. U.S. industry indicates that there may still be challenges with implementing the new regulation and will continue to work with the Ministry of Health (MOH). In response to the ongoing backlog of drug registration renewals and applications, the Vietnam National Assembly issued in January 2023 Resolution 80/2023/QH15, which allows marketing authorizations (MAs) of drugs and drug raw materials that are expiring between January 1, 2023, and December 31, 2024, and MAs that have been previously extended, to continue until December 31, 2024, if those drugs and drug raw materials meet certain requirements. The MOH is responsible for reviewing and publicizing the list of MAs that meet the requirements in a public and transparent manner. On February 8, 2023, the MOH publicized the first batch of pharmaceutical MAs to maintain validity until the end of 2024, covering 8,800 medicines from both the local and foreign industries. The United States will continue to monitor the implementation of the drug registration process in Vietnam.

*Medical Devices*

In November 2021, Vietnam issued Decree No. 98/2021/ND-CP, which superseded several decrees dating back to 2016 related to the management and product clearance of medical devices. Industry reports that a backlog of more than 10,000 product dossiers has accumulated at the Department of Medical Equipment and Construction (DMEC) under the Ministry of Health, in part due to DMEC not accepting product clearances already completed by regulatory authorities in other countries. As a result of the backlog, industry has raised new concerns about the expiration of import licenses and market authorization for certain medical equipment products as of January 1, 2023. The United States will continue monitoring developments related to the implementation of the new decree.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Technical Barriers to Trade

*Labeling*

Decree 111/2021/ND-CP, which revised Decree 43/2017/ND-CP on Goods Labeling and became effective on February 15, 2022, requires imported goods to Vietnam to have a label in Vietnamese added by merchants. The updated decree requires significantly more information to appear on all labels and also

imposes a range of additional specific requirements that vary depending on the product category. Importers have reported challenges entering the Vietnam market due to uncertainty and inconsistency in product classifications, which make it difficult for importers to comply with labeling requirements.

*Glyphosate*

In April 2020, the Ministry of Agriculture and Rural Development (MARD) issued Circular 06/2020 to extend the use of crop protection products containing glyphosate in Vietnam to June 30, 2021. Despite the United States' request that Vietnam conduct a thorough scientific review of the chemical, Vietnam banned the use of glyphosate on July 1, 2021.

**Sanitary and Phytosanitary Barriers**

*Importation Approvals for Genetically Engineered Products*

Vietnam completed the approval of the final seven remaining biotechnology products applications for corn, soybeans, cotton, and alfalfa in 2021. These approvals bring the total number of biotechnology products approved for food and feed import in Vietnam up to 52. Vietnam has become one of the main markets in which developers are seeking approvals in advance of the commercialization of biotechnology products like corn and soybeans. However, Vietnam has not acknowledged any new applications for food and feed use since the beginning of 2022, which is exacerbating concerns about the unpredictable nature of its approval process.

*Commercialization of Genetically Engineered Crops and Varieties*

Vietnam continued throughout 2022 to suspend the approval of new genetically engineered (GE) corn hybrids for cultivation. Although Vietnam issued Decree 118/2020/ND-CP to supplement its regulations on risk assessment for GE crops, MARD continues to block the review of pending field-testing reports. In addition, MARD did not provide sufficient guidance in the national standard issued in 2021 on the field testing of resistance traits for biotechnology corn varieties. This presents a challenge for biotechnology developers who seek to register new biotechnology hybrids under the 2018 Crop Production Law.

*Food Safety Procedures*

In February 2018, Vietnam adopted Decree 15/2018/ND-CP (Decree 15) on the enforcement of the Food Safety Law, which provides guidance on self-declaration, labeling, import inspection, and registration for export to Vietnam of food products of plant and animal origin. Although Decree 15 simplified the self-declaration for importation of food products, some aspects of the decree created uncertainty, with different line ministries, and even departments within MARD, appearing to contradict each other regarding its interpretation. For example, MARD and MOH provided contradictory interpretations regarding the definition of "processed products," which are exempt from the facility registration process under Decree 15. Despite requests by the United States and other trading partners, Vietnam refused to notify Decree 15 to the WTO.

In October 2020, the Vietnam General Department of Customs (GDVC) submitted a proposal to reform the food safety and quality inspection process for imported goods, under which the GDVC would become the primary authority. In March 2021, the GDVC issued a new draft decree to revise Decree 15. The new draft decree covers foods and agricultural products, and would create a two-step registration for import inspection by merging the self-declaration (for food safety) and conformity announcement (for quality inspection) into the registration for import inspection. As requested by the United States, Vietnam notified this draft decree to the WTO Members in July 2021. As of December 2022, the Government of Vietnam had not yet

approved the draft decree. The United States continues to monitor the development of this draft decree to avoid any potential impacts on trade of food and agricultural products.

*Ban on Offal Products*

Despite MARD lifting Vietnam's ban on the importation of so-called "white offal," such as poultry gizzards, and beef and pork stomach and intestines, in September 2013, Vietnam has not approved new U.S. facilities to export these products. Plans for Vietnam to conduct an onsite audit of U.S. facilities were indefinitely postponed purportedly due to the outbreak of African Swine Fever in Vietnam.

*Products of Plant Origin*

In January 2015, Vietnam implemented a new Plant Health Law and decrees updating its regulatory regime in the areas of plant health quarantine, pesticide regulation, and import and export of plant origin products. These measures included Circular 30/2014/TT-BNNPTNT, which contains a list of articles for which pest risk assessments (PRAs) must be provided before the article can be imported into Vietnam. Since the MARD directive was issued, the United States has submitted PRA information for a range of commodities, including citrus and stone fruit. In some instances, the PRA approval process has been slow, which has delayed approvals for potential U.S. exports of products of plant origin.

In December 2020, Vietnam issued Circular 15/2020/TT-BNNPTNT promulgating the National Technical Regulations (NTR) 192 on the phytosanitary requirements for imported regulated articles. NTR 192 sets a zero tolerance on all quarantine pests regulated under Circular 35/2014/TT-BNNPTNT issued in 2014, including Canadian thistle (*Cirsium arvense*). Circular 15/2020/TT-BNNPTNT took effect on June 25, 2021.

## GOVERNMENT PROCUREMENT

Vietnam's 2013 Law on Procurement provides the basic framework for government procurement and generally promotes the purchase of domestic goods or services in government procurement when they are available. U.S. exporters do not receive any guaranteed access to the Vietnamese government procurement market.

Vietnam is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since December 2012.

## INTELLECTUAL PROPERTY PROTECTION

Vietnam remained on the Watch List in the 2022 Special 301 Report. Despite positive developments in 2020 and 2021, such as the issuance of the national intellectual property (IP) strategy, continued public awareness campaigns and training activities, reported improvements on border enforcement in some parts of the country, and the National Assembly's approval in June 2022 of the amended Law on Intellectual Property, which took effect in January 2023, the United States remains concerned about IP protection and enforcement in Vietnam, including in the digital environment. Capacity and resource constraints, corruption, and poor coordination among enforcement agencies continue to pose challenges to effective IP enforcement. Piracy and sales of counterfeit goods online and in physical markets continue to be a concern. Two physical markets in Vietnam, Saigon Square Shopping Mall in Ho Chi Minh City and Tan Tanh Market in the Lang Son Province, are included on the 2022 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List). Vietnam continues to rely heavily on administrative actions and penalties to enforce IP, but these have failed to deter counterfeiting and piracy. In addition, the United States has concerns about the lack of clarity in Vietnam's system for protecting against the unfair commercial use as

well as the unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. The United States continues to discuss these issues with Vietnam. The United States also continues to monitor the implementation of IP provisions pursuant to Vietnam's commitments under trade agreements with third parties.

## SERVICES BARRIERS

### Audiovisual Services

Decree 71/2022 (Decree 71) amending Decree 06/2016 on the Management, Provision and Use of Radio and Television Services was enacted on October 1, 2022. Decree 71 expands the scope of regulation of Decree 06 from traditional broadcasting services to Internet-enabled subscription video services. The licensing requirement for cross-border platforms remains unclear and potentially in conflict with the 2022 Law on Cinema, given that Decree 71 appears to impose localization and licensing requirements—and potentially forced JVs—on online, over-the-top (OTT) radio and television services, the definition of which includes films, while the Law on Cinema specifically allows foreign OTT suppliers to offer films without a license or establishing locally.

### Retail Services

Foreign investors who seek to open additional retail establishments beyond the first store in Vietnam are subject to an economic needs test, which is conducted by local authorities and approved by MOIT. Retail outlets of less than 500 square meters located in shopping malls that are not classified as convenience stores or mini supermarkets are exempt from the economic needs test requirement.

### Financial Services

Foreign investors may establish 100 percent foreign-owned bank subsidiaries or may take ownership interests in domestic "joint stock" banks (*i.e.*, commercial banks with any percentage of private ownership) or "joint venture" banks (*i.e.*, banks set up by joint venture agreement, typically between domestic and foreign partners). Total equity held by foreign institutions and individual investors in domestic joint stock banks is limited to 30 percent, while total equity held by a foreign strategic investor (defined as a foreign credit institution meeting certain criteria related to capacity to help develop the Vietnamese banking partner) is limited to 20 percent. Foreign equity in joint venture banks is limited to 50 percent. Over the last two years, foreign banks have raised concerns about provisions in the Law on Credit Institutions, which limits the lending of foreign bank branches in Vietnam based on their local charter capital, rather than on the global capital of the parent bank.

*Electronic Payment Services*

In 2016, two Vietnamese payment processing networks were consolidated into a *de facto* monopoly, the National Payments Corporation of Vietnam (NAPAS), which is partially owned by the State Bank of Vietnam. Vietnam then issued Circular 19/2016/TT-NHNN (Circular 19) mandating that all domestic and cross-border retail credit and debit transactions be processed through NAPAS starting in January 2018. Circular 19's requirements would have prohibited foreign electronic payment services suppliers from supplying services on a fully cross-border basis (*i.e.*, without involving NAPAS). In December 2019, Vietnam issued Circular 28, which amended Circular 19 to apply only to domestic retail electronic payment transactions when a payment card, including an internationally-branded payment card, is presented at the merchant point of sale (excluding domestic online transactions) and extended the deadline for implementation to January 1, 2021. The measure is now implemented, such that international payment companies are routing domestic card present transactions through NAPAS.

*Insurance*

In June 2022, Vietnam passed a new Insurance Law, which will go into effect January 1, 2023. The law sets out a five-year transition period to allow insurers to comply with a new risk-based capital adequacy model. The new law does not include data localization requirements and it addresses many of the other concerns the United States raised against the January 2021 draft of the law, including limitations on the cross-border supply of certain insurance services, uncertainty concerning the types of juridical forms available for foreign insurance companies, and limitations on the use of third-party services. The United States continues to monitor this issue.

**Telecommunications Services**

Vietnam permits foreign participation in the telecommunications sector, with varying equity limitations depending on the sub-sector. According to the Law on Telecommunication 41/2009/QH12, for domestic companies that provide basic telecommunication services with infrastructure, foreign ownership is generally capped at 49 percent; for companies that supply telecommunications services without infrastructure, foreign ownership is capped at 65 percent. Vietnam allows foreign ownership of up to 70 percent for virtual private network (VPN) suppliers and for ASEAN-nationality companies providing value-added telecommunication services without infrastructure. Facilities-based operators are required to be state-controlled firms, meaning that the state, through the relevant line ministry, must hold 51 percent or more of equity. In October 2022, the Ministry of Information and Communications (MIC) released for public comment a draft revision to the Law on Telecommunication 41/2009/QH12, which proposed to expand the scope of the law to include Internet of Things (IoTs), data center services, cloud-computing services, and OTT communication services. The draft law also includes provisions stating that OTT communication services must enter a contract with a local entity to provide messaging or calling services into Vietnam, and data center and cloud services must register with the MIC and comply with MIC requirements for security and content control.

## BARRIERS TO DIGITAL TRADE

*Law on Cybersecurity*

Vietnam's Law on Cybersecurity (No. 24/2018/QH14) took effect in June 2018. Article 26 of the Law stipulates that domestic and foreign enterprises that provide services on telecommunications networks or the Internet, or other value-added services in cyberspace in Vietnam, and that conduct activities of collecting, exploiting, analyzing and processing data must store such data physically within the borders of Vietnam in a period of time specified by the government. Such data include personal information, data about service users' relationships, or data generated by service users. Foreign service suppliers must establish a branch or representative office in Vietnam.

Decree 53/2022/ND-CP on Implementing the Law on Cybersecurity (Cybersecurity Decree) became effective on October 1, 2022. The Cybersecurity Decree requires all domestic companies, including foreign-invested subsidiaries in Vietnam, to store a copy of Vietnamese user data on servers located within Vietnam and establish a physical office in Vietnam that would be under the jurisdiction of Vietnamese law enforcement. If international firms, that do business in Vietnam are found to be in violation of the Law on Cybersecurity, then Vietnam's Ministry of Public Security (MPS) could force the firms to localize their data as well, following a 12-month notification period.

**Internet Services**

*Online Advertising Services*

Decree 70/2021/ND-CP amending Decree No. 181/2013/ND-CP (Decree 181) on advertising went into effect on September 15, 2021. The new decree eliminates requirements for cross-border advertising service providers to offer their services through a local advertising agency. Under the updated decree, suppliers of cross-border advertising services still must inform Vietnamese authorities in writing 15 days before running an advertisement in Vietnam.

*Internet-Based Content Services*

Vietnam continues to allow access to the Internet only through a limited number of Internet service providers, all of which are state-controlled companies or companies with substantial state control. Vietnam restricts or blocks access to certain websites that it deems politically or culturally inappropriate. Decree 72/2013/ND-CP (Decree 72) on the management, provision, and use of Internet services and online information prohibits the use of Internet services to: oppose the government; harm national security, social order, and safety; or, propagandize war, terrorism, hatred, violence, or superstition. In March 2018, Vietnam issued Decree 27/2018/ND-CP (Decree 27) to amend and supplement Decree 72. Decree 27 consolidates existing content, server localization, and data retention requirements for social networks and information websites.

MIC's Circular 38/2016/TT-BTTT (Circular 38) on Cross-border provision of General Information, which implements Decree 72, requires offshore service providers with a certain number of users in Vietnam to comply with online content restrictions. Specific requirements under Circular 38 apply to offshore entities that provide public information into Vietnam (including websites, social networks, online applications, search engines, and other similar forms of services) and either: (a) have more than one million hits from Vietnam per month, or (b) lease a data center to store digital information in Vietnam in order to provide services.

In July 2021, MIC/ABEI released a draft amendment to Decree 72 (and Decree 27) that would impose burdensome, impractical, or technically infeasible requirements on a wide range of suppliers of Internet services and content providers. These include unreasonably short takedown timeframes and insufficient due process for companies providing "public information across the border" to contest any allegation of illegality; impractical licensing, data localization, and local presence requirements for social media services; infeasible content filtering responsibilities; and, unnecessary registration and licensing procedures. MIC also proposed to require local Internet service and infrastructure providers to assist in enforcing the requirements. The United States submitted comments on the draft in September 2021. In the latest draft submitted to the Government of Vietnam for final signature, the MIC removed the data localization and local presence requirements. However, the draft Decree still contains content censorship measures, data localization requirements that are likely to overlap with Cybersecurity and draft Personal Data Privacy Decrees, and a burdensome registration and licensing regime for the electronic gaming industry social media industries, while broadening the scope of regulation to data center and cloud services.

*Personal Data Protection Regulation*

On February 9, 2021, MPS issued a draft Personal Data Protection decree. The draft would impose registration requirements for processing sensitive personal data, and require companies to store in Vietnam the original or a copy of the personal data of Vietnamese users, seek approval to transfer personal data across borders, and maintain a three-year history of data transfers. Many of these requirements appear infeasible for companies seeking to supply services in Vietnam on a cross-border basis. In the event of a

data breach, a company's ability to transfer data across borders could be terminated. The United States has highlighted a number of its concerns with the draft measure, including through comments submitted to Vietnam in April 2021. Though the National Master Plan for Citizen Data Management and Application directed the MPS to complete the draft Personal Data Protection decree by May 2022, the draft has not been approved yet since the National Assembly noted that Vietnam would need a new law to address the broader data privacy issue.

*Electronic Transactions*

In 2022, the MIC released a draft revision to the Electronic Transaction Law and presented it to the National Assembly for hearing in November 2022, awaiting final vote in May 2023. The draft law addresses electronic signatures, electronic contracts, consumer protection, data privacy, and classification of data "reliability." However, the draft adds ambiguity over compliance obligations for "digital platforms," as well as registration burdens for cross-border electronic signature and electronic transaction services providers. Similar to the other regulations, the draft contains potential overlaps with the MPS' cybersecurity and draft personal data protection regulations, as well as the MIC-led Information Security Law. The National Assembly conducted assessments on the draft and advised the MIC to review and ensure its consistency and compatibility with international standards and practices on electronic transactions.

## INVESTMENT BARRIERS

Vietnam generally affords foreign investors the same market access as domestic investors. However, Vietnam maintains statutory restrictions on foreign ownership in certain enumerated sectors, such as joint partnerships, and projects in banking, network infrastructure services, non-infrastructure telecommunications services, transportation, and energy. Decree 31/2021/ND-CP promulgated on March 26, 2021 lists 25 business lines in which foreigners are prohibited from investing and 59 other business lines subject to market access conditions.

## ENVIRONMENT

In October 2020, the U.S. Trade Representative initiated a Section 301 investigation into Vietnam's acts, policies, and practices related to the import and use of illegal timber, and in particular to examine reports that Vietnam's wood processing industry relies upon imported timber that may have been illegally harvested or traded. On October 1, 2021, the United States and Vietnam signed an agreement (Timber Agreement) that addresses U.S. concerns in the investigation. The agreement secures commitments that will help keep illegally harvested or traded timber out of the supply chain and protect the environment and natural resources.

The United States held working group meetings with Vietnam in April and November 2022 and will continue to monitor Vietnam's implementation of its commitments.

## OTHER BARRIERS

U.S. stakeholders continue to have concerns about the lack of transparency and accountability, and other governance issues in Vietnam. The United States will continue to work with Vietnam to support reform efforts and to promote greater transparency.

## Export Policies

*Export Bans*

Under MARD Circular 24 of 2016, Vietnam bans the export of certain wood products. These products include round timber and sawn timber made from natural wood, firewood, and charcoal made from timber, and firewood made from natural wood.

*Export Taxes*

Vietnam imposes export taxes (ranging from 5 percent to 40 percent) on goods indicated in Decree 125/2017/ND-CP, which are primarily goods produced from minerals and natural resources in which the cost of energy, minerals, and natural resources is more than 51 percent of the value of the product. These goods include plants and botanical parts, ores, coal, crude oil, chemicals, skins, wood, charcoal, gems, silver and gold, jewelry, and metals and metal products. Decree 57/2020/ND-CP, revising and supplementing Decree 125, increased export tax rates for copper tubes and pipes (HS heading 74.11) from zero percent to five percent.

# APPENDIX I

# APPENDIX I

**Report on Progress in Reducing Trade-Related Barriers to the Export of Greenhouse Gas Intensity Reducing Technologies**

This Appendix provides an update on progress the Administration has made in reducing trade-related barriers to the export of greenhouse gas intensity reducing technologies (GHGIRTs), as called for by the Energy Policy Act of 2005. In October 2006, pursuant to section 1611 of the Act,[3] the Office of the U.S. Trade Representative (USTR) prepared a report that identified trade barriers that U.S. exporters of GHGIRTs face in the top 25 greenhouse gas (GHG) emitting developing countries and described the steps the United States is taking to reduce these and other barriers to trade. The Act also calls for USTR to report annually on progress made with respect to removing the barriers identified in the initial report. USTR submitted the first annual progress report in October 2007. USTR will continue to submit further annual progress reports as part of the NTE Report.

As described in the initial 2006 GHGIRT report,[4] barriers to the exports of GHGIRTs are generally similar to those identified in the NTE Report with respect to other exports to the 25 developing countries: *e.g.*, lack of regulatory transparency and sound legal infrastructure; state-controlled oil and energy sectors, that are often slower to invest in new technologies; cumbersome and unpredictable customs procedures; corruption; import licensing schemes; investment restrictions, including requirements to partner with domestic firms; lack of adequate and effective intellectual property rights protections; and, in some countries, high applied tariff rates. Progress in removing such barriers is noted in the appropriate country chapters of this NTE Report. USTR's Special 301 Report, pursuant to section 182 of the Trade Act of 1974, identifies those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access for persons that rely on intellectual property protection. The 2023 Special 301 Report will be released later this year.

The global market in environmental goods and services, including GHGIRTs, is estimated to be over $1.1 trillion annually, and the United States exported $273 billion of environmental goods in 2022.[5]

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[3] Section 1611 of the Act amends the Global Environmental Protection Assistance Act of 1989 (Public Law 101-240) to add new Sections 731-39. Section 732(a)(2)(A) directs the Department of State to identify the top 25 GHG emitting developing countries for the purpose of promoting climate change technology. Section 734 calls on the United States Trade Representative "(as appropriate and consistent with applicable bilateral, regional, and mutual trade agreements) [to] (1) identify trade-relations barriers maintained by foreign countries to the export of greenhouse gas intensity reducing technologies and practices from the United States to the developing countries identified in the report submitted under section 732(a)(2)(A); and (2) negotiate with foreign countries for the removal of those barriers."

[4] The Department of State's 2006 "Report to Congress on Developing Country Emissions of Greenhouse Gases and Climate Change Technology Deployment" identified the following 25 countries: Algeria; Argentina; Azerbaijan; Bangladesh; Brazil; Chile; China; Colombia; Egypt; India; Indonesia; Iraq; Kazakhstan; Libya; Malaysia; Mexico; Nigeria; Pakistan; Philippines; South Africa; Thailand; Turkmenistan; Uzbekistan; Venezuela; and Vietnam.

[5] Based on 2022 U.S. Bureau of Census data and includes U.S. exports and re-exports. Re-exports are defined as exports of foreign goods without significant modification.

# APPENDIX II

# APPENDIX II

**U.S. Goods Trade for Select Trade Partners in Rank Order of U.S. Goods Exports, 2021-2022**
**(Values in Millions of Dollars)**

| Country | Goods Balance | | Change | Exports | Exports | Change 2021-22 | | Imports | Imports | Change 2021-22 | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2021 | 2022 | 2021-22 | 2021 | 2022 | Value | Percent | 2021 | 2022 | Value | Percent |
| World | -1,076,845 | -1,183,747 | -106,901 | 1,754,265 | 2,062,684 | 308,420 | 17.6 | 2,831,110 | 3,246,431 | 415,321 | 14.7 |
| Canada | -50,029 | -82,735 | -32,706 | 307,758 | 356,113 | 47,235 | 15.3 | 357,788 | 437,729 | 79,941 | 22.3 |
| Mexico | -108,158 | -130,552 | -22,394 | 276,491 | 324,378 | 47,887 | 17.3 | 384,649 | 454,930 | 70,281 | 18.3 |
| China | -353,493 | -382,917 | -29,424 | 151,442 | 153,837 | 2,395 | 1.6 | 504,935 | 536,754 | 31,819 | 6.3 |
| Japan | -60,296 | -68,013 | -7,717 | 74,565 | 80,317 | 5,752 | 7.7 | 134,860 | 148,330 | 13,470 | 10.0 |
| United Kingdom | 5,061 | 13,282 | 8,222 | 61,425 | 77,301 | 15,876 | 25.8 | 56,364 | 64,018 | 7,654 | 13.6 |
| Germany | -69,883 | -73,686 | -3,803 | 65,333 | 72,922 | 7,590 | 11.6 | 135,216 | 146,608 | 11,392 | 8.4 |
| Netherlands | 17,975 | 38,324 | 20,349 | 53,080 | 72,890 | 19,809 | 37.3 | 35,105 | 34,566 | -540 | -1.5 |
| Korea, South | -28,976 | -43,868 | -14,892 | 65,942 | 71,470 | 5,528 | 8.4 | 94,918 | 115,338 | 20,420 | 21.5 |
| Brazil | 15,671 | 14,551 | -1,120 | 46,935 | 53,578 | 6,643 | 14.2 | 31,264 | 39,027 | 7,763 | 24.8 |
| India | -33,120 | -38,338 | -5,218 | 40,052 | 47,332 | 7,280 | 18.2 | 73,173 | 85,671 | 12,498 | 17.1 |
| Singapore | 5,745 | 14,285 | 8,541 | 35,250 | 45,934 | 10,684 | 30.3 | 29,505 | 31,648 | 2,143 | 7.3 |
| France | -20,210 | -11,536 | 8,674 | 29,893 | 45,842 | 15,949 | 53.4 | 50,104 | 57,379 | 7,275 | 14.5 |
| Taiwan | -40,226 | -48,132 | -7,906 | 36,838 | 43,713 | 6,875 | 18.7 | 77,064 | 91,845 | 14,781 | 19.2 |
| Switzerland | -39,543 | -22,584 | 16,959 | 23,638 | 36,892 | 13,254 | 56.1 | 63,181 | 59,475 | -3,705 | -5.9 |
| Belgium | 12,725 | 8,754 | -3,971 | 33,721 | 35,528 | 1,807 | 5.4 | 20,996 | 26,774 | 5,778 | 27.5 |
| Australia | 13,987 | 14,008 | 21 | 26,454 | 30,210 | 3,756 | 14.2 | 12,466 | 16,202 | 3,735 | 30.0 |
| Italy | -39,290 | -41,713 | -2,423 | 21,661 | 27,417 | 5,756 | 26.6 | 60,951 | 69,130 | 8,179 | 13.4 |
| Spain | -2,254 | 3,416 | 5,670 | 16,332 | 26,480 | 10,148 | 62.1 | 18,586 | 23,063 | 4,477 | 24.1 |
| Hong Kong | 25,778 | 21,054 | -4,724 | 29,894 | 25,853 | -4,041 | -13.5 | 4,116 | 4,800 | 683 | 16.6 |
| Chile | 2,275 | 7,735 | 5,459 | 17,338 | 23,329 | 5,991 | 34.6 | 15,063 | 15,594 | 531 | 3.5 |
| United Arab Emirates | 11,110 | 13,945 | 2,835 | 17,064 | 20,854 | 3,789 | 22.2 | 5,954 | 6,908 | 954 | 16.0 |
| Colombia | 3,509 | 2,011 | -1,497 | 16,687 | 20,573 | 3,887 | 23.3 | 13,178 | 18,562 | 5,384 | 40.9 |
| Malaysia | -40,943 | -36,645 | 4,298 | 15,174 | 18,107 | 2,933 | 19.3 | 56,117 | 54,752 | -1,365 | -2.4 |
| Ireland | -59,913 | -66,066 | -6,153 | 13,785 | 15,969 | 2,184 | 15.8 | 73,697 | 82,034 | 8,337 | 11.3 |
| Thailand | -34,698 | -43,138 | -8,440 | 12,652 | 15,593 | 2,940 | 23.2 | 47,351 | 58,730 | 11,380 | 24.0 |
| Turkey | -3,965 | -3,863 | 102 | 11,905 | 14,993 | 3,088 | 25.9 | 15,870 | 18,856 | 2,986 | 18.8 |
| Israel | -5,784 | -7,209 | -1,425 | 12,862 | 14,233 | 1,371 | 10.7 | 18,646 | 21,442 | 2,796 | 15.0 |
| Dominican Republic | 4,342 | 6,937 | 2,595 | 10,673 | 13,853 | 3,180 | 29.8 | 6,331 | 6,916 | 585 | 9.2 |
| Peru | 3,439 | 5,137 | 1,698 | 10,323 | 13,746 | 3,423 | 33.2 | 6,885 | 8,609 | 1,724 | 25.0 |
| Argentina | 2,639 | 5,913 | 3,273 | 7,762 | 12,850 | 5,088 | 65.6 | 5,123 | 6,938 | 1,815 | 35.4 |
| Panama | 7,378 | 11,509 | 4,132 | 8,133 | 12,032 | 3,899 | 47.9 | 756 | 523 | -233 | -30.8 |
| Saudi Arabia | -2,581 | -11,896 | -9,315 | 11,133 | 11,565 | 432 | 3.9 | 13,714 | 23,462 | 9,748 | 71.1 |
| Vietnam | -90,885 | -116,123 | -25,238 | 11,011 | 11,398 | 387 | 3.5 | 101,896 | 127,521 | 25,626 | 25.1 |
| Poland | -3,897 | -581 | 3,316 | 5,843 | 11,325 | 5,482 | 93.8 | 9,741 | 11,907 | 2,166 | 22.2 |
| Guatemala | 3,403 | 4,923 | 1,520 | 8,070 | 10,237 | 2,167 | 26.8 | 4,667 | 5,313 | 646 | 13.8 |
| Indonesia | -17,674 | -24,581 | -6,907 | 9,379 | 9,986 | 607 | 6.5 | 27,053 | 34,567 | 7,514 | 27.8 |
| Philippines | -4,716 | -6,882 | -2,166 | 9,290 | 9,291 | 1 | 0.0 | 14,006 | 16,173 | 2,167 | 15.5 |
| Costa Rica | 809 | -225 | -1,034 | 7,345 | 8,525 | 1,180 | 16.1 | 6,536 | 8,751 | 2,214 | 33.9 |
| Honduras | 1,179 | 2,060 | 881 | 6,393 | 8,133 | 1,741 | 27.2 | 5,214 | 6,073 | 859 | 16.5 |
| Ecuador | -3,150 | -2,502 | 648 | 5,009 | 7,902 | 2,893 | 57.7 | 8,159 | 10,404 | 2,244 | 27.5 |
| Sweden | -9,568 | -9,435 | 133 | 5,263 | 7,668 | 2,405 | 45.7 | 14,831 | 17,103 | 2,272 | 15.3 |
| Egypt | 2,545 | 3,747 | 1,202 | 5,849 | 6,553 | 704 | 12.0 | 3,304 | 2,806 | -498 | -15.1 |
| South Africa | -10,247 | -8,059 | 2,188 | 5,479 | 6,515 | 1,036 | 18.9 | 15,726 | 14,574 | -1,152 | -7.3 |
| Bahamas | 2,450 | 3,869 | 1,419 | 2,899 | 5,590 | 2,691 | 92.8 | 449 | 1,721 | 1,272 | 283.1 |
| El Salvador | 1,599 | 2,120 | 520 | 4,116 | 5,020 | 905 | 22.0 | 2,516 | 2,901 | 384 | 15.3 |
| Austria | -11,210 | -13,057 | -1,847 | 3,935 | 4,763 | 827 | 21.0 | 15,145 | 17,819 | 2,675 | 17.7 |
| Norway | -2,776 | -1,952 | 823 | 3,956 | 4,713 | 756 | 19.1 | 6,732 | 6,665 | -67 | -1.0 |
| Denmark | -8,565 | -8,482 | 83 | 3,544 | 4,502 | 958 | 27.0 | 12,108 | 12,983 | 875 | 7.2 |
| New Zealand | -1,225 | -1,199 | 25 | 3,724 | 4,182 | 458 | 12.3 | 4,949 | 5,382 | 433 | 8.7 |

**U.S. Goods Trade for Select Trade Partners in Rank Order of U.S. Goods Exports, 2021-2022**
**(Values in Millions of Dollars)**

| Country | Goods Balance | | Change | Exports | Exports | Change 2021-22 | | Imports | Imports | Change 2021-22 | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2021 | 2022 | 2021-22 | 2021 | 2022 | Value | Percent | 2021 | 2022 | Value | Percent |
| Czech Republic | -2,705 | -3,739 | -1,033 | 3,661 | 3,799 | 138 | 3.8 | 6,366 | 7,537 | 1,171 | 18.4 |
| Qatar | 669 | 725 | 57 | 2,581 | 3,647 | 1,066 | 41.3 | 1,912 | 2,922 | 1,009 | 52.8 |
| Trinidad and Tobago | -1,621 | -1,836 | -215 | 2,676 | 3,586 | 910 | 34.0 | 4,297 | 5,422 | 1,125 | 26.2 |
| Morocco | 1,524 | 1,811 | 287 | 2,794 | 3,512 | 718 | 25.7 | 1,270 | 1,701 | 431 | 33.9 |
| Kuwait | 1,967 | 1,349 | -619 | 3,038 | 3,398 | 360 | 11.9 | 1,070 | 2,050 | 979 | 91.5 |
| Nigeria | 443 | -1,405 | -1,848 | 3,887 | 3,375 | -512 | -13.2 | 3,444 | 4,780 | 1,336 | 38.8 |
| Pakistan | -1,665 | -2,822 | -1,157 | 3,614 | 3,177 | -437 | -12.1 | 5,279 | 5,999 | 720 | 13.6 |
| Hungary | -4,178 | -4,833 | -655 | 2,908 | 2,871 | -37 | -1.3 | 7,086 | 7,705 | 618 | 8.7 |
| Uruguay | 1,165 | 1,959 | 794 | 1,799 | 2,865 | 1,066 | 59.3 | 634 | 906 | 272 | 42.9 |
| Bangladesh | -5,949 | -8,356 | -2,408 | 2,351 | 2,814 | 463 | 19.7 | 8,299 | 11,170 | 2,871 | 34.6 |
| Portugal | -2,577 | -3,378 | -801 | 2,369 | 2,783 | 414 | 17.5 | 4,946 | 6,161 | 1,215 | 24.6 |
| Finland | -5,047 | -6,057 | -1,010 | 1,727 | 2,651 | 923 | 53.5 | 6,774 | 8,708 | 1,934 | 28.5 |
| Jamaica | 1,470 | 2,294 | 824 | 1,975 | 2,644 | 668 | 33.8 | 506 | 350 | -156 | -30.9 |
| Nicaragua | -2,503 | -3,151 | -648 | 2,153 | 2,577 | 424 | 19.7 | 4,656 | 5,728 | 1,072 | 23.0 |
| Lithuania | -825 | -137 | 687 | 1,237 | 2,493 | 1,255 | 101.5 | 2,062 | 2,630 | 568 | 27.5 |
| Venezuela | 1,319 | 1,853 | 535 | 1,614 | 2,266 | 653 | 40.4 | 295 | 413 | 118 | 40.0 |
| Greece | -125 | -113 | 12 | 1,556 | 2,170 | 614 | 39.5 | 1,681 | 2,283 | 602 | 35.8 |
| Paraguay | 1,868 | 1,845 | -23 | 2,055 | 2,115 | 60 | 2.9 | 188 | 270 | 83 | 44.0 |
| Croatia | -67 | 908 | 975 | 751 | 1,770 | 1,018 | 135.5 | 818 | 861 | 43 | 5.3 |
| Russia | -23,248 | -12,743 | 10,505 | 6,387 | 1,715 | -4,672 | -73.1 | 29,635 | 14,458 | -15,177 | -51.2 |
| Luxembourg | 939 | 926 | -13 | 1,531 | 1,669 | 138 | 9.0 | 593 | 743 | 150 | 25.4 |
| Jordan | -1,541 | -1,506 | 35 | 1,203 | 1,540 | 337 | 28.0 | 2,744 | 3,045 | 301 | 11.0 |
| Oman | -451 | -1,240 | -789 | 1,397 | 1,487 | 90 | 6.5 | 1,848 | 2,728 | 879 | 47.6 |
| Cayman Islands | 1,150 | 1,402 | 252 | 1,167 | 1,450 | 283 | 24.2 | 17 | 48 | 31 | 177.9 |
| Ukraine | 636 | -35 | -671 | 2,525 | 1,442 | -1,083 | -42.9 | 1,889 | 1,477 | -412 | -21.8 |
| Haiti | 216 | 386 | 171 | 1,322 | 1,432 | 109 | 8.3 | 1,107 | 1,046 | -61 | -5.5 |
| Romania | -1,505 | -2,432 | -927 | 1,412 | 1,350 | -62 | -4.4 | 2,916 | 3,782 | 866 | 29.7 |
| Georgia | 466 | 894 | 428 | 657 | 1,236 | 580 | 88.3 | 190 | 342 | 152 | 80.0 |
| Algeria | -1,104 | -1,860 | -756 | 784 | 1,201 | 417 | 53.2 | 1,888 | 3,061 | 1,173 | 62.1 |
| Guyana | -1,231 | -1,638 | -407 | 1,012 | 1,180 | 168 | 16.6 | 2,243 | 2,818 | 575 | 25.6 |
| Ethiopia | -26 | 378 | 404 | 575 | 1,094 | 519 | 90.3 | 601 | 717 | 116 | 19.3 |
| Kazakhstan | -907 | -1,568 | -660 | 808 | 1,085 | 277 | 34.3 | 1,715 | 2,653 | 938 | 54.7 |
| Antigua and Barbuda | 541 | 1,019 | 478 | 570 | 1,028 | 457 | 80.2 | 29 | 9 | -21 | -70.0 |
| St Lucia | 524 | 980 | 456 | 535 | 991 | 456 | 85.2 | 11 | 11 | 1 | 4.9 |
| Ghana | -762 | -1,794 | -1,031 | 957 | 974 | 17 | 1.8 | 1,720 | 2,768 | 1,048 | 61.0 |
| Bahrain | -297 | -941 | -644 | 934 | 952 | 18 | 2.0 | 1,231 | 1,894 | 663 | 53.8 |
| Iraq | -2,988 | -9,106 | -6,118 | 803 | 950 | 147 | 18.3 | 3,790 | 10,056 | 6,266 | 165.3 |
| Barbados | 710 | 761 | 52 | 754 | 814 | 60 | 8.0 | 44 | 52 | 8 | 19.0 |
| Lebanon | 474 | 554 | 80 | 665 | 766 | 101 | 15.2 | 191 | 211 | 21 | 10.8 |
| Sint Maarten | 336 | 618 | 281 | 386 | 698 | 312 | 80.9 | 49 | 80 | 31 | 62.6 |
| Angola | -598 | -960 | -361 | 445 | 651 | 206 | 46.2 | 1,044 | 1,611 | 567 | 54.3 |
| Iceland | 49 | -66 | -115 | 629 | 651 | 22 | 3.6 | 580 | 717 | 137 | 23.7 |
| | | | | | | | | | | | |
| European Union - 27 | -218,743 | -203,911 | 14,832 | 271,700 | 349,344 | 77,644 | 28.6 | 490,444 | 553,255 | 62,812 | 12.8 |
| | | | | | | | | | | | |

**U.S. Services Trade for Select Trade Partners in Rank Order of U.S. Services Exports, 2020-2021 (latest data available)**
**(Values in Millions of Dollars)**

| Country | Services Balance | | Change | Exports | Exports | Change 2020-2021 | | Imports | Imports | Change 2020-2021 | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2020 | 2021 | 2020-21 | 2020 | 2021 | Value | Percent | 2020 | 2021 | Value | Percent |
| World | 259,896 | 245,248 | -14,648 | 726,433 | 795,273 | 68,840 | 9.5 | 466,537 | 550,025 | 83,488 | 17.9 |
| Ireland | 48,182 | 53,532 | 5,350 | 67,186 | 74,797 | 7,611 | 11.3 | 19,004 | 21,265 | 2,261 | 11.9 |
| United Kingdom | 7,124 | 6,689 | -435 | 61,741 | 67,761 | 6,020 | 9.8 | 54,617 | 61,072 | 6,455 | 11.8 |
| Canada | 22,197 | 23,042 | 845 | 52,771 | 56,136 | 3,365 | 6.4 | 30,574 | 33,094 | 2,520 | 8.2 |
| Switzerland | 17,638 | 19,028 | 1,390 | 41,652 | 47,114 | 5,462 | 13.1 | 24,014 | 28,086 | 4,072 | 17.0 |
| China | 25,021 | 18,029 | -6,992 | 41,183 | 39,498 | -1,685 | -4.1 | 16,162 | 21,469 | 5,307 | 32.8 |
| Japan | 5,446 | 5,771 | 325 | 38,009 | 36,892 | -1,117 | -2.9 | 32,563 | 31,121 | -1,442 | -4.4 |
| Germany | -1,643 | -2,712 | -1,069 | 29,858 | 32,037 | 2,179 | 7.3 | 31,501 | 34,749 | 3,248 | 10.3 |
| Mexico | 6,260 | 2,687 | -3,573 | 23,486 | 30,488 | 7,002 | 29.8 | 17,226 | 27,801 | 10,575 | 61.4 |
| Singapore | 14,655 | 18,535 | 3,880 | 25,813 | 30,149 | 4,336 | 16.8 | 11,158 | 11,614 | 456 | 4.1 |
| Netherlands | 10,065 | 11,657 | 1,592 | 21,162 | 23,834 | 2,672 | 12.6 | 11,097 | 12,177 | 1,080 | 9.7 |
| Korea | 8,090 | 6,895 | -1,195 | 17,809 | 19,238 | 1,429 | 8.0 | 9,719 | 12,343 | 2,624 | 27.0 |
| India | -9,833 | -10,295 | -462 | 16,339 | 18,536 | 2,197 | 13.4 | 26,172 | 28,831 | 2,659 | 10.2 |
| France | 2,206 | -1,207 | -3,413 | 15,636 | 17,189 | 1,553 | 9.9 | 13,430 | 18,396 | 4,966 | 37.0 |
| Australia | 9,037 | 10,224 | 1,187 | 15,075 | 16,489 | 1,414 | 9.4 | 6,038 | 6,265 | 227 | 3.8 |
| Brazil | 10,207 | 10,076 | -131 | 14,991 | 15,287 | 296 | 2.0 | 4,784 | 5,211 | 427 | 8.9 |
| Hong Kong | 2,687 | 2,130 | -557 | 12,544 | 14,031 | 1,487 | 11.9 | 9,857 | 11,901 | 2,044 | 20.7 |
| Saudi Arabia | 9,061 | 9,073 | 12 | 10,305 | 10,343 | 38 | 0.4 | 1,244 | 1,270 | 26 | 2.1 |
| Taiwan | 2,993 | 170 | -2,823 | 9,271 | 9,986 | 715 | 7.7 | 6,278 | 9,816 | 3,538 | 56.4 |
| Luxembourg | 4,935 | 6,902 | 1,967 | 6,990 | 9,196 | 2,206 | 31.6 | 2,055 | 2,294 | 239 | 11.6 |
| Denmark | 487 | -461 | -948 | 7,536 | 9,164 | 1,628 | 21.6 | 7,049 | 9,625 | 2,576 | 36.5 |
| Colombia | 2,394 | 3,389 | 995 | 4,733 | 7,534 | 2,801 | 59.2 | 2,339 | 4,145 | 1,806 | 77.2 |
| Sweden | 2,057 | 4,023 | 1,966 | 5,081 | 7,092 | 2,011 | 39.6 | 3,024 | 3,069 | 45 | 1.5 |
| Italy | 1,365 | 461 | -904 | 5,879 | 6,430 | 551 | 9.4 | 4,514 | 5,969 | 1,455 | 32.2 |
| Spain | 1,662 | 1,274 | -388 | 5,169 | 5,620 | 451 | 8.7 | 3,507 | 4,346 | 839 | 23.9 |
| Chile | 2,587 | 2,915 | 328 | 4,256 | 5,268 | 1,012 | 23.8 | 1,669 | 2,353 | 684 | 41.0 |
| Israel | -1,718 | -2,581 | -863 | 4,070 | 5,052 | 982 | 24.1 | 5,788 | 7,633 | 1,845 | 31.9 |
| Argentina | 2,216 | 2,941 | 725 | 4,023 | 4,817 | 794 | 19.7 | 1,807 | 1,876 | 69 | 3.8 |
| Russia | 3,204 | 2,496 | -708 | 4,587 | 4,206 | -381 | -8.3 | 1,383 | 1,710 | 327 | 23.6 |
| Peru | 2,281 | 2,718 | 437 | 3,024 | 3,941 | 917 | 30.3 | 743 | 1,223 | 480 | 64.6 |
| Belgium | 1,552 | -859 | -2,411 | 5,644 | 3,834 | -1,810 | -32.1 | 4,092 | 4,693 | 601 | 14.7 |
| Turkey | 1,420 | 1,227 | -193 | 2,789 | 3,373 | 584 | 20.9 | 1,369 | 2,146 | 777 | 56.8 |
| Malaysia | 1,148 | 548 | -600 | 2,705 | 2,787 | 82 | 3.0 | 1,557 | 2,239 | 682 | 43.8 |
| Dominican Republic | -881 | -2,737 | -1,856 | 1,729 | 2,563 | 834 | 48.2 | 2,610 | 5,300 | 2,690 | 103.1 |
| Philippines | -1,944 | -2,029 | -85 | 2,116 | 2,381 | 265 | 12.5 | 4,060 | 4,410 | 350 | 8.6 |
| Thailand | 1,321 | 1,291 | -30 | 2,327 | 2,339 | 12 | 0.5 | 1,006 | 1,048 | 42 | 4.2 |
| Panama | 2,782 | 1,011 | -1,771 | 3,773 | 2,306 | -1,467 | -38.9 | 991 | 1,295 | 304 | 30.7 |
| South Africa | 1,021 | 1,024 | 3 | 1,888 | 2,145 | 257 | 13.6 | 867 | 1,121 | 254 | 29.3 |
| Indonesia | 1,328 | 1,402 | 74 | 1,857 | 1,899 | 42 | 2.3 | 529 | 497 | -32 | -6.0 |
| Vietnam | 1,997 | 1,397 | -600 | 2,453 | 1,837 | -616 | -25.1 | 456 | 440 | -16 | -3.5 |
| New Zealand | 513 | 849 | 336 | 1,981 | 1,836 | -145 | -7.3 | 1,468 | 987 | -481 | -32.8 |
| Poland | -91 | -406 | -315 | 1,791 | 1,796 | 5 | 0.3 | 1,882 | 2,202 | 320 | 17.0 |
| Norway | 297 | -68 | -365 | 1,877 | 1,736 | -141 | -7.5 | 1,580 | 1,804 | 224 | 14.2 |
| Costa Rica | -768 | -1,456 | -688 | 1,170 | 1,673 | 503 | 43.0 | 1,938 | 3,129 | 1,191 | 61.5 |
| Guatemala | 136 | 555 | 419 | 941 | 1,648 | 707 | 75.1 | 805 | 1,093 | 288 | 35.8 |
| Finland | 177 | 283 | 106 | 1,428 | 1,642 | 214 | 15.0 | 1,251 | 1,359 | 108 | 8.6 |
| Nigeria | 1,034 | 1,126 | 92 | 1,321 | 1,562 | 241 | 18.2 | 287 | 436 | 149 | 51.9 |
| El Salvador | 352 | 299 | -53 | 832 | 1,383 | 551 | 66.2 | 480 | 1,084 | 604 | 125.8 |
| Honduras | 230 | 576 | 346 | 690 | 1,364 | 674 | 97.7 | 460 | 788 | 328 | 71.3 |
| Greece | -732 | -1,553 | -821 | 1,154 | 1,298 | 144 | 12.5 | 1,886 | 2,851 | 965 | 51.2 |
| Cyprus | -42 | -523 | -481 | 1,099 | 1,118 | 19 | 1.7 | 1,141 | 1,641 | 500 | 43.8 |
| Austria | 271 | 209 | -62 | 1,048 | 1,102 | 54 | 5.2 | 777 | 893 | 116 | 14.9 |
| Czech Republic | 201 | -125 | -326 | 1,049 | 1,022 | -27 | -2.6 | 848 | 1,147 | 299 | 35.3 |

**U.S. Services Trade for Select Trade Partners in Rank Order of U.S. Services Exports, 2020-2021 (latest data available)**
**(Values in Millions of Dollars)**

| Country | Services Balance | | Change | Exports | Exports | Change 2020-2021 | | Imports | Imports | Change 2020-2021 | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2020 | 2021 | 2020-21 | 2020 | 2021 | Value | Percent | 2020 | 2020 | 2021 | Percent |
| Hungary | 530 | 464 | -66 | 988 | 948 | -40 | -4.0 | 458 | 484 | 26 | 5.7 |
| Portugal | 345 | 49 | -296 | 822 | 822 | 0 | 0.0 | 477 | 773 | 296 | 62.1 |
| Jordan | 212 | 49 | -163 | 543 | 638 | 95 | 17.5 | 331 | 589 | 258 | 77.9 |
| Romania | 55 | 123 | 68 | 539 | 617 | 78 | 14.5 | 484 | 494 | 10 | 2.1 |
| Bahrain | -92 | -169 | -77 | 562 | 553 | -9 | -1.6 | 654 | 722 | 68 | 10.4 |
| Morocco | 193 | 132 | -61 | 432 | 538 | 106 | 24.5 | 239 | 406 | 167 | 69.9 |
| Oman | 365 | 266 | -99 | 528 | 465 | -63 | -11.9 | 163 | 199 | 36 | 22.1 |
| Malta | -84 | -287 | -203 | 477 | 380 | -97 | -20.3 | 561 | 667 | 106 | 18.9 |
| Nicaragua | -15 | 49 | 64 | 249 | 354 | 105 | 42.2 | 264 | 305 | 41 | 15.5 |
| Bulgaria | -33 | -64 | -31 | 365 | 314 | -51 | -14.0 | 398 | 378 | -20 | -5.0 |
| Slovakia | 41 | 58 | 17 | 248 | 261 | 13 | 5.2 | 207 | 203 | -4 | -1.9 |
| Croatia | 68 | -54 | -122 | 181 | 231 | 50 | 27.6 | 113 | 285 | 172 | 152.2 |
| Lithuania | -50 | 71 | 121 | 134 | 167 | 33 | 24.6 | 184 | 96 | -88 | -47.8 |
| Slovenia | 73 | 49 | -24 | 116 | 121 | 5 | 4.3 | 43 | 72 | 29 | 67.4 |
| Latvia | 49 | 36 | -13 | 109 | 113 | 4 | 3.7 | 60 | 77 | 17 | 28.3 |
| Estonia | 52 | 22 | -30 | 117 | 110 | -7 | -6.0 | 65 | 88 | 23 | 35.4 |
| Brunei | 49 | 39 | -10 | 55 | 53 | -2 | -3.6 | 6 | 14 | 8 | 133.3 |
| | | | | | | | | | | | |
| European Union - 27 | 72,162 | 71,373 | -789 | 182,306 | 201,712 | 19,406 | 10.6 | 110,144 | 130,339 | 20,195 | 18.3 |
| | | | | | | | | | | | |

**U.S. FDI Abroad (Stock) for Select Trade Partners in Rank Order of FDI, 2020-2021 (latest data available)**
**(Values in Millions of Dollars)**

| Country | FDI Stock | | Percent Change | |
|---|---|---|---|---|
| | 2020 | 2021 | 2020-21 | Leading FDI Categories Reported |
| | | | | |
| World | 6,085,708 | 6,489,012 | 6.6 | Nonbank holding companies, finance and insurance, and manufacturing. |
| | | | | |
| United Kingdom | 918,147 | 1,005,470 | 9.5 | Nonbank holding companies, finance and insurance, and information services. |
| Netherlands | 829,352 | 885,305 | 6.7 | Nonbank holding companies, manufacturing, and finance and insurance. |
| Luxembourg | 713,615 | 715,591 | 0.3 | Nonbank holding companies, finance and insurance, and manufacturing. |
| Ireland | 373,443 | 556,599 | 49.0 | Nonbank holding companies, information services, and manufacturing. |
| Canada | 373,823 | 406,356 | 8.7 | Manufacturing, nonbank holding companies, and finance and insurance. |
| Singapore | 273,137 | 294,540 | 7.8 | Nonbank holding companies, manufacturing, and wholesale trade. |
| Bermuda | 324,592 | 278,842 | -14.1 | Nonbank holding companies, finance and insurance, and information services. |
| Switzerland | 225,230 | 216,116 | -4.0 | Nonbank holding companies, manufacturing, and wholesale trade. |
| Germany | 151,475 | 170,218 | 12.4 | Nonbank holding companies, manufacturing, and depository institutions. |
| Australia | 169,669 | 167,193 | -1.5 | Nonbank holding companies, manufacturing, and mining. |
| Japan | 121,809 | 118,746 | -2.5 | Finance and insurance, manufacturing, and information services. |
| China | 115,026 | 118,186 | 2.7 | Manufacturing, wholesale trade, and finance and insurance. |
| Mexico | 104,351 | 110,684 | 6.1 | Manufacturing, nonbank holding companies, and finance and insurance. |
| France | 104,635 | 106,167 | 1.5 | Manufacturing, nonbank holding companies, and wholesale trade. |
| Hong Kong | 86,303 | 86,836 | 0.6 | Nonbank holding companies, wholesale trade, and manufacturing. |
| Brazil | 66,476 | 67,547 | 1.6 | Manufacturing, finance and insurance, and mining. |
| Belgium | 66,901 | 61,934 | -7.4 | Manufacturing, finance and insurance, and wholesale trade. |
| Sweden | 57,561 | 57,698 | 0.2 | Nonbank holding companies, manufacturing, and finance and insurance. |
| India | 42,257 | 45,448 | 7.6 | Professional, scientific, and technical services, manufacturing, and information services. |
| Bahamas | 44,734 | 44,303 | -1.0 | Finance and insurance and professional, scientific, and technical services. |
| Israel | 39,461 | 41,302 | 4.7 | Manufacturing, information services, and professional, scientific, and technical services. |
| Spain | 37,712 | 38,956 | 3.3 | Manufacturing, nonbank holding companies, and professional, scientific, and technical services. |
| South Korea | 34,300 | 38,115 | 11.1 | Manufacturing, finance and insurance, and information services. |
| Barbados | 48,996 | 36,419 | -25.7 | Finance and insurance and manufacturing. |
| Norway | 21,325 | 30,554 | 43.3 | Mining, finance and insurance, and information services. |
| Italy | 27,441 | 28,096 | 2.4 | Manufacturing, wholesale trade, and nonbank holding companies. |
| Chile | 23,426 | 22,582 | -3.6 | Mining, finance and insurance, and manufacturing. |
| Taiwan | 17,939 | 16,768 | -6.5 | Manufacturing, finance and insurance, and wholesale trade. |
| Denmark | 15,793 | 16,414 | 3.9 | Manufacturing, nonbank holding companies, and information services. |
| UAE | 15,892 | 16,241 | 2.2 | Mining, wholesale trade, and finance and insurance. |
| Indonesia | 13,164 | 15,737 | 19.5 | Mining, manufacturing, and professional, scientific, and professional, scientific, and technical services. |
| Thailand | 16,693 | 15,474 | -7.3 | Manufacturing, wholesale trade, and professional, scientific, and technical services. |
| Poland | 12,920 | 13,372 | 3.5 | Manufacturing, professional, scientific, and technical services, wholesale trade. |
| Argentina | 12,073 | 12,543 | 3.9 | Information services, manufacturing, and finance and insurance. |
| Malaysia | 12,114 | 12,537 | 3.5 | Manufacturing, nonbank holding companies, and finance and insurance. |
| Russia | 13,243 | 12,298 | -7.1 | Manufacturing, wholesale trade, and information services. |
| New Zealand | 11,715 | 12,129 | 3.5 | Finance and insurance, manufacturing, and wholesale trade. |
| Saudi Arabia | 10,793 | 11,875 | 10.0 | Nonbank holding companies, mining, and wholesale trade. |
| Egypt | 11,001 | 11,697 | 6.3 | Wholesale trade, manufacturing, and information services. |
| Hungary | 12,800 | 11,436 | -10.7 | Manufacturing, wholesale trade, and information services. |
| South Africa | 7,242 | 7,553 | 4.3 | Manufacturing, wholesale trade, and finance and insurance. |
| Peru | 7,260 | 7,544 | 3.9 | Mining, manufacturing, and wholesale trade. |
| Mauritius | 7,875 | 6,929 | -12.0 | Finance and insurance and nonbank holding companies. |
| Qatar | 8,526 | 6,832 | -19.9 | Mining, professional, scientific, and technical services, and information services. |
| Colombia | 6,844 | 6,802 | -0.6 | Mining, manufacturing, and finance and insurance. |
| Cyprus | 6,007 | 6,658 | 10.8 | |
| Finland | 3,454 | 6,487 | 87.8 | Manufacturing, professional, scientific, and technical services, and information services. |
| Turkey | 6,221 | 6,190 | -0.5 | Manufacturing, wholesale trade, and professional, scientific, and technical services. |
| Nigeria | 6,686 | 5,920 | -11.5 | Mining, manufacturing, and information services. |
| Czech Republic | 5,086 | 5,253 | 3.3 | Manufacturing, information services, and wholesale trade. |
| Philippines | 4,548 | 4,724 | 3.9 | Manufacturing, professional, scientific, and technical services, and wholesale trade. |
| Austria | 4,585 | 4,632 | 1.0 | Manufacturing, wholesale trade, and professional, scientific, and professional, scientific, and technical services. |
| Trinidad and Tobago | 3,704 | 4,148 | 12.0 | |
| El Salvador | 3,229 | 3,690 | 14.3 | |

**U.S. FDI Abroad (Stock) for Select Trade Partners in Rank Order of FDI, 2020-2021 (latest data available)**
**(Values in Millions of Dollars)**

| Country | FDI Stock | | % Change | |
|---|---|---|---|---|
| | 2020 | 2021 | 2020-21 | Leading FDI Categories Reported |
| Panama | 3,900 | 3,460 | -11.3 | Nonbank holding companies, wholesale trade, and mining. |
| Marshall Islands | 3,001 | 3,145 | 4.8 | |
| Costa Rica | 2,569 | 2,807 | 9.3 | Manufacturing, wholesale trade, and professional, scientific, and technical services. |
| Equatorial Guinea | 817 | 2,793 | 241.9 | |
| Dominican Republic | 2,411 | 2,722 | 12.9 | Manufacturing and wholesale trade. |
| Vietnam | 2,714 | 2,696 | -0.7 | Manufacturing, wholesale trade, and information services. |
| Venezuela | 2,595 | 2,630 | 1.3 | |
| Romania | 2,830 | 2,595 | -8.3 | |
| Malta | 2,342 | 2,341 | 0.0 | |
| Algeria | 2,265 | 2,169 | -4.2 | |
| Portugal | 2,151 | 2,154 | 0.1 | Manufacturing, wholesale trade, and professional, scientific, and technical services. |
| Oman | 1,202 | 1,704 | 41.8 | (Insufficient data) |
| Iraq | 1,933 | 1,608 | -16.8 | Mining and wholesale trade. |
| Honduras | 1,107 | 1,251 | 13.0 | Manufacturing and wholesale trade. |
| Tanzania | 1,480 | 1,014 | -31.5 | |
| Iceland | 848 | 878 | 3.5 | |
| Slovakia | 916 | 779 | -15.0 | Manufacturing, information services and wholesale trade. |
| Guatemala | 702 | 727 | 3.6 | Wholesale trade and information services. |
| Bahrain | 656 | 659 | 0.5 | |
| Bangladesh | (D) | 633 | - | |
| Seychelles | 575 | 599 | 4.2 | |
| Kuwait | 492 | 587 | 19.3 | |
| Macau | 1,059 | 538 | -49.2 | |
| Ukraine | 403 | 532 | 32.0 | |
| Liberia | 326 | 525 | 61.0 | |
| Serbia | 465 | 474 | 1.9 | |
| Liechtenstein | 506 | 461 | -8.9 | |
| St Kitts and Nevis | 472 | 461 | -2.3 | Finance and insurance and nonbank holding companies. |
| Morocco | 433 | 409 | -5.5 | |
| Uruguay | (D) | 388 | - | |
| Pakistan | 424 | 386 | -9.0 | |
| Lebanon | 347 | 346 | -0.3 | |
| Greece | 157 | 303 | 93.0 | |
| Guinea | 289 | 296 | 2.4 | |
| St Lucia | 231 | 254 | 10.0 | |
| Libya | 219 | 254 | 16.0 | |
| Anguilla | 360 | 248 | -31.1 | |
| | | | | |
| European Union - 27 | 2,432,606 | 2,694,019 | 10.7 | Nonbank holding companies, manufacturing, and finance and insurance. |
| | | | | |

(D) indicates that the data in the cell have been suppressed to avoid disclosure of data of individual companies.

**UNITED STATES TRADE REPRESENTATIVE**

EXECUTIVE OFFICE OF THE PRESIDENT

WASHINGTON, D.C. 20508

USTR.GOV